

SECURITIES AND EXCHANGE COMMISSION

**FORM 8-K**

Current report filing

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**FILER**

**MORGAN STANLEY ABS CAPITAL 1 INC CDC MORT CAP TRUST 2004-HE1**

CIK: **1287479** | IRS No.: **64046521** | State of Incorpor.: **DE** | Fiscal Year End: **1231**  
Type: **8-K** | Act: **34** | File No.: **333-104046-21** | Film No.: **04742531**  
SIC: **6189** Asset-backed securities

Business Address  
*1585 BROADWAY 2ND FL  
NEW YORK NY 10036*

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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FORM 8-K

CURRENT REPORT

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

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Date of Report (Date of earliest event reported): March 9, 2004

MORGAN STANLEY ABS CAPITAL I INC.  
(Exact name of registrant as specified in its charter)

DELAWARE  
(State or Other Jurisdiction  
of Incorporation)

333-104046  
(Commission  
File Number)

13-3939229  
(I.R.S. Employer  
Identification No.)

1585 BROADWAY  
NEW YORK, NEW YORK  
(Address of Principal  
Executive Offices)

10036  
(Zip Code)

Registrant's telephone number, including area code: (212) 761-4000

No Change

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(Former name or former address, if changed since last report)

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## Item 2. Acquisition or Disposition of Assets

### Description of the Certificates and the Mortgage Loans

Morgan Stanley ABS Capital I Inc. registered issuances of Mortgage Pass-Through Certificates on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Act"), by the Registration Statements on Form S-3 (Registration File No. 333-104046) (as amended, the "Registration Statement"). Pursuant to the Registration Statement, CDC Mortgage Capital Trust 2004-HE1 (the "Trust") issued approximately \$875,000,000 in aggregate principal amount of its Mortgage Pass-Through Certificates, Series 2004-HE1 (the "Certificates"), on February 25, 2004. This Current Report on Form 8-K is being filed to satisfy an undertaking to file copies of certain agreements executed in connection with the issuance of the Certificates, the forms of which were filed as Exhibits to the Registration Statement.

The Certificates were issued pursuant to a Pooling and Servicing Agreement (the "Pooling and Servicing Agreement") attached hereto as Exhibit 4.1, dated as of February 1, 2004, between Morgan Stanley ABS Capital I Inc., Countrywide Home Loans Servicing LP, in its capacity as servicer (the "Servicer"), CDC Mortgage Capital Inc. (the "Unaffiliated Seller") and Deutsche Bank National Trust Company, in its capacity as trustee (the "Trustee"). The Certificates consist of ten classes of senior Certificates, the Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class B-1, Class B-2 and Class B-3 Certificates (collectively, the "Offered Certificates") and three classes of subordinated Certificates (the "Class X Certificates", the "Class P Certificates" and the "Class R Certificates"). Only the Offered Certificates were offered. The Certificates initially evidenced, in the aggregate, 100% of the undivided beneficial ownership interests in the Trust.

The assets of the Trust consist primarily of one pool of fixed-rate, closed-end, conventional, monthly pay, generally fully amortizing, business and consumer purpose residential home equity loans (the "Mortgage Loans") secured by first or second lien mortgages or deeds of trust (the "Mortgages") on real properties (the "Mortgage Properties"). The Mortgaged Properties securing the Mortgage Loans consist primarily of single family residences (which may be detached, part of a two-to four-family dwelling, a condominium unit or a unit in a planned unit development).

Interest distributions on the Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class B-1, Class B-2 and Class B-3 Certificates are based on the Certificate Principal Balance thereof and the then applicable Pass-Through Rate thereof. The Pass-Through Rates for the Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class B-1,

Class B-2 and Class B-3 Certificates are adjustable.

The Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class B-1, Class B-2 and Class B-3 Certificates have an original Certificate Principal Balance of \$400,226,000; \$200,226,000; \$91,000,000; \$35,827,000; \$53,218,000; \$44,349,000; \$15,966,000; \$11,974,000; \$11,087,000 and \$11,087,000, respectively.

As of the Closing Date, the Mortgage Loans possessed the characteristics described in the Prospectus dated January 23, 2004 and the Prospectus Supplement dated February 20, 2004 filed pursuant to Rule 424(b) (5) of the Act on March 1, 2004.

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Item 7. Financial Statements, Pro Forma Financial Information and Exhibits.

- (a) Not applicable
- (b) Not applicable
- (c) Exhibits:
  - 1.1 Underwriting Agreement, dated February 20, 2004, between Morgan Stanley ABS Capital I Inc. and Morgan Stanley & Co. Incorporated.
  - 1.2 Indemnification Agreement, dated as of February 20, 2004, among Morgan Stanley ABS Capital I Inc., Morgan Stanley & Co. Incorporated and CDC Mortgage Capital Inc.
  - 4.1 Pooling and Servicing Agreement, dated as of February 1, 2004, among Morgan Stanley ABS Capital I Inc., as depositor, CDC Mortgage Capital Inc., as unaffiliated seller, Countrywide Home Loans Servicing LP, as servicer, and Deutsche Bank National Trust Company, as trustee.
  - 8.1 Opinion of Dewey Ballantine LLP, special tax counsel to Morgan Stanley ABS Capital I Inc., regarding certain tax matters.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the

undersigned hereunto duly authorized.

MORGAN STANLEY ABS CAPITAL I INC.

As Depositor and on behalf of CDC  
Mortgage Capital Trust 2004-HE1  
Registrant

By: /s/ Gail McDonnell

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Name: Gail McDonnell  
Title: Vice President

Dated: March 9, 2004

EXHIBIT INDEX

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8.1	Opinion of Dewey Ballantine LLP, special tax counsel to Morgan Stanley ABS Capital I Inc., regarding certain

tax matters.

MORGAN STANLEY ABS CAPITAL I INC.

MORTGAGE PASS-THROUGH CERTIFICATES  
Series 2004-HE1

UNDERWRITING AGREEMENT

New York, New York  
February 20, 2004

Morgan Stanley & Co. Incorporated  
as representative of the several underwriters listed on  
the attached Schedule A  
1585 Broadway  
New York, New York 10036

Dear Sirs:

Morgan Stanley ABS Capital I Inc., a Delaware corporation (the "Company"), proposes to sell to you, as representative (the "Representative") of yourself, Banc of America Securities LLC ("Banc of America"), Greenwich Capital Markets, Inc. ("Greenwich") and Countrywide Securities, Inc. ("Countrywide") (together, the "Underwriters"), CDC Mortgage Capital Trust 2004-HE1, Mortgage Pass-Through Certificates, Series 2004-HE1 in the original principal amount and with the designation described on Schedule A attached hereto (the "Offered Certificates"). The Offered Certificates will be issued pursuant to a pooling and servicing agreement dated as of February 1, 2004 (the "Pooling and Servicing Agreement") among Morgan Stanley ABS Capital I, Inc., as depositor (the "Depositor"), Countrywide Home Loans Servicing LP, as servicer ("Countrywide"), Deutsche Bank National Trust Company, as trustee (the "Trustee") and CDC Mortgage Capital Inc., as unaffiliated seller (the "Unaffiliated Seller"). In addition to the Offered Certificates, the Depositor will authorize for issuance the Mortgage Pass-Through Certificates, Series 2004-HE1, Class X, Class P and Class R pursuant to the Pooling and Servicing Agreement (the "Private Certificates" and together with the Offered Certificates, the "Certificates").

The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement, including a prospectus, relating to the Offered Certificates and has filed with, or mailed for filing to, the Commission a prospectus supplement specifically relating to the Offered Certificates pursuant to Rule 424 under the Securities Act of 1933 (the "Securities Act"). The term "Registration Statement" means such registration statement as amended to the Closing Date (as defined herein). The term "Base Prospectus" means the prospectus included in the Registration Statement. The term "Prospectus" means the Base Prospectus together with the prospectus supplement specifically relating to the Offered Certificates, as filed with, or mailed for filing to, the Commission pursuant to Rule 424 (the "Prospectus Supplement"). The term "preliminary prospectus" means a preliminary prospectus supplement specifically relating to the Offered Certificates together with the Base Prospectus. Any reference in this underwriting agreement (the "Agreement") to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, including Computational Materials, ABS Term Sheets and Collateral Term Sheets (each as defined herein), as of the effective date of the Registration Statement, the date of such preliminary prospectus or the Prospectus or the

Closing Date, as the case may be. Terms not otherwise defined in this Agreement are used herein as defined in the Pooling and Servicing Agreement.

I.

The Company represents and warrants to and agrees with the Underwriters that:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose are pending before or threatened by the Commission.

(b) Each part of the Registration Statement, when such part became effective, did not contain, and each such part, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (ii) the Registration Statement and the Prospectus comply, and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder and (iii) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph I(b) do not apply to the Excluded Information (as defined in paragraph VII hereof).

(c) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the State of Delaware, has the corporate power and authority to own its property and to conduct its business as described in the Prospectus and to enter into and perform its obligations under this Agreement and the Pooling and Servicing Agreement.

(d) This Agreement has been duly authorized, executed and delivered by the Company.

(e) The Pooling and Servicing Agreement has been duly authorized, executed and delivered by the Company and is a valid and binding agreement of the Company, enforceable in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and to general principles of equity regardless of whether enforcement is sought in a proceeding in equity or at law.

(f) The direction by the Company to the Trustee to execute, authenticate and deliver the Offered Certificates has been duly authorized by the Company, and the Offered Certificates, when executed and authenticated in the manner contemplated in the Pooling and Servicing Agreement, and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, will be

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validly issued and outstanding and entitled to the benefits of the Pooling and Servicing Agreement.

(g) Neither the execution and delivery by the Company of, nor the performance by the Company of its obligations under, this Agreement or the Pooling and Servicing Agreement, will contravene any provision of applicable law or the certificate of incorporation or by-laws of the Company or any agreement or other instrument binding upon the Company that is material to the Company or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or any subsidiary, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under this Agreement and the Pooling and Servicing Agreement, except such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Offered Certificates.

(h) There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiaries, taken as a whole, from that set forth in the Prospectus.



(i) There are no legal or governmental proceedings pending or threatened to which the Company is a party or to which any of the properties of the Company are subject that are required to be described in the Registration Statement or the Prospectus and that are not so described, nor are there any statutes, regulations, contracts or other documents required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

(j) Each preliminary prospectus filed as part of the Registration Statement as originally filed or as a part of any amendment thereto, or filed pursuant to Rule 424 under the Securities Act, complied as to form, when so filed, in all material respects with the Securities Act and the rules and regulations of the Commission thereunder.

(k) The Company is not an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

## II.

The Company hereby agrees to sell the Offered Certificates to the Underwriters, and the Underwriters, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees to purchase the Offered Certificates from the Company, for a purchase price which is the sum of 99.8% of the original principal amount of the Offered Certificates.

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## III.

A. The Underwriters propose to make a public offering of the Offered Certificates as soon as this Agreement is entered into. The terms of the public offering of the Offered Certificates are set forth in the Prospectus.

B. It is understood that the Underwriters may prepare and provide to prospective investors certain Computational Materials and ABS Term Sheets (each as defined below) in connection with the offering of the Offered Certificates, subject to the following conditions:

(a) In connection with the use of Computational Materials, the Underwriters shall comply with all applicable requirements of the No-Action Letter of May 20, 1994, issued by the Commission to Kidder, Peabody Acceptance Corporation I, Kidder, Peabody & Co. Incorporated and Kidder Structured Asset Corporation, as made applicable to other issuers and underwriters by the Commission in response to the request of the Public Securities Association dated May 24, 1994 (collectively, the "Kidder/PSA Letter"), as well as the PSA Letter referred to below. In connection with the use of ABS Term Sheets, the Underwriters shall comply with all applicable requirements of the No-Action Letter of February 17, 1995, issued by the Commission to the Public Securities Association (the "PSA Letter" and, together with the Kidder/PSA Letter, the "No-Action Letters").

(b) "Computational Materials" as used herein shall have the meaning given such term in the No-Action Letters, but shall include only those Computational Materials that have been prepared or delivered to prospective investors by or at the direction of the Underwriters. "ABS Term Sheets" and "Collateral Term Sheets" as used herein shall have the meanings given such terms in the PSA Letter but shall include only those ABS Term Sheets or Collateral Term Sheets that have been prepared or delivered to prospective investors by or at the direction of the Underwriters.

(c) All Computational Materials and ABS Term Sheets provided to prospective investors that are required to be filed pursuant to the No-Action Letters shall bear a legend on each page including the following statement:

"THIS INFORMATION IS BEING DELIVERED TO A SPECIFIC NUMBER OF PROSPECTIVE SOPHISTICATED INVESTORS IN ORDER TO ASSIST THEM IN DETERMINING WHETHER THEY HAVE AN INTEREST IN THE TYPE OF SECURITY DESCRIBED HEREIN. IT HAS BEEN PREPARED SOLELY FOR INFORMATION PURPOSES AND IS NOT AN OFFER TO BUY OR SELL OR A SOLICITATION OF AN OFFER TO BUY OR SELL ANY SECURITY OR INSTRUMENT OR TO PARTICIPATE IN ANY TRADING STRATEGY. THIS MATERIAL IS BASED ON INFORMATION THAT [UNDERWRITER] CONSIDERS RELIABLE. [UNDERWRITER] MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION, OR WITH RESPECT TO THE TERMS OF ANY FUTURE OFFER OF

BE, PREPARED BY THE ISSUER WHICH COULD CONTAIN MATERIAL INFORMATION NOT CONTAINED HEREIN AND TO WHICH THE PROSPECTIVE PURCHASERS ARE REFERRED. IN THE EVENT OF ANY SUCH OFFERING, THIS INFORMATION SHALL BE DEEMED SUPERSEDED, AMENDED AND SUPPLEMENTED IN ITS ENTIRETY BY SUCH PROSPECTUS OR PRIVATE PLACEMENT MEMORANDUM. SUCH PROSPECTUS OR PRIVATE PLACEMENT WILL CONTAIN ALL MATERIAL INFORMATION IN RESPECT OF ANY SECURITIES OFFERED THEREBY AND ANY DECISION TO INVEST IN SUCH SECURITIES SHOULD BE MADE SOLELY IN RELIANCE UPON SUCH PROSPECTUS OR PRIVATE PLACEMENT MEMORANDUM. THE INFORMATION CONTAINED HERE IN MAY BE BASED ON CERTAIN ASSUMPTIONS REGARDING MARKET CONDITIONS AND OTHER MATTERS AND IS THEREFORE SUBJECT TO CHANGE. WE MAKE NO REPRESENTATIONS REGARDING THE REASONABLENESS OF SUCH ASSUMPTIONS OR THE LIKELIHOOD THAT ANY OF SUCH ASSUMPTIONS WILL COINCIDE WITH ACTUAL MARKET CONDITIONS OR EVENTS, AND THIS MATERIAL SHOULD NOT BE RELIED ON FOR SUCH PURPOSES. NO REPRESENTATION IS MADE THAT ANY RETURNS INDICATED WILL BE ACHIEVED."

The Company shall have the right to require additional specific legends or notations to appear on any Computational Materials or ABS Term Sheets, the right to require changes regarding the use of terminology and the right to determine the types of information appearing therein. Notwithstanding the foregoing, paragraph III(B)(c) will be satisfied if all Computational Materials and ABS Term Sheets referred to therein bear a legend in a form previously approved in writing by the Company.

(d) Any Computational Materials and ABS Term Sheets are subject to the review by and approval of the Company prior to their distribution to any prospective investors and a copy of such Computational Materials and ABS Term Sheets as are delivered to prospective investors shall, in addition to the foregoing delivery requirements, be delivered to the Company simultaneously with delivery to prospective investors.

(e) The Underwriters shall provide to the Company, for filing on Form 8-K as provided in paragraph VI(e), five (5) copies (in such format as required by the Company) of all Computational Materials and ABS Term Sheets that are required to be filed with the Commission pursuant to the No-Action Letters. The Underwriters may provide copies of the foregoing in a consolidated or aggregate form that includes all information required to be filed. All Computational Materials and ABS Term Sheets described in this paragraph III(B)(e) must be provided to the Company not later than 10:00 a.m. New York time one business day before filing thereof is required pursuant to the terms of this Agreement. Each Underwriter agrees that it will not provide to any investor or prospective investor in the Offered Certificates any Computational Materials or ABS Term Sheets on or after the day on which Computational Materials and ABS Term Sheets are required to be provided to the Company pursuant to this paragraph III(B)(e) (other than copies of Computational Materials or ABS Term Sheets previously submitted to the Company in accordance with this paragraph III(B)(e)

for filing pursuant to paragraph VI(e)), unless such Computational Materials or ABS Term Sheets are preceded or accompanied by the delivery of a Prospectus to such investor or prospective investor.

(f) All information included in the Computational Materials and ABS Term Sheets shall be generated based on substantially the same methodology and assumptions that are used to generate the information in the Prospectus Supplement as set forth therein; provided, however, that the Computational Materials and ABS Term Sheets may include information based on alternative methodologies or assumptions if specified therein.

(g) The Company shall not be obligated to file any Computational Materials or ABS Term Sheets that in the reasonable determination of the Company are not required to be filed pursuant to the No-Action Letters.

C. Each Underwriter severally represents and warrants and agrees with the Company that as of the date hereof and as of the Closing Date that: (i) the Computational Materials and ABS Term Sheets furnished to the Company pursuant to paragraph III(B)(e) constitute (either in original, aggregated or consolidated

form) all of the materials furnished to prospective investors by the Underwriter prior to the time of delivery thereof to the Company that are required to be filed with the Commission with respect to the Offered Certificates in accordance with the No-Action Letters; (ii) on the date any such Computational Materials and ABS Term Sheets with respect to such Certificates (or any written or electronic materials furnished to prospective investors on which the Computational Materials and ABS Term Sheets are based) were last furnished to each prospective investor and on the date of delivery thereof to the Company pursuant to paragraph III(B) (e) and on the related Closing Date, such Computational Materials and ABS Term Sheets (or materials) were accurate in all material respects when read in conjunction with the Prospectus; (iii) the Underwriters have not and will not represent to potential investors that any Computational Materials and ABS Term Sheets were prepared or disseminated on behalf of the Company; and (iv) all Computational Materials and ABS Terms Sheets (or underlying materials distributed to prospective investors on which the Computational Materials and ABS Term Sheets were based) contained and will contain the legend in the form set forth in paragraph III(B) (c) (or in such other form previously approved in writing by the Company).

Notwithstanding the foregoing, the Underwriters make no representation or warranty as to whether any Computational Materials or ABS Term Sheets (or any written or electronic materials furnished to prospective investors on which the Computational Materials or ABS Term Sheets are based) included or will include any inaccurate statement resulting directly from any error contained in the information (i) regarding the Mortgage Loans, the related mortgagors and/or the related Mortgaged Properties (but only to the extent any untrue statement or omission arose from errors or omissions in the information concerning the Mortgage Loans, the related mortgagors and/or the related Mortgage Properties, as applicable, provided to the Underwriters by the Depositor (the "Pool Information") or (ii) contained in (but not incorporated by reference in) any Prospectus; provided, however, in each case, that if any information that would

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otherwise constitute Pool Information or Prospectus Information is presented in any Computational Materials or ABS Term Sheets (or any written or electronic materials furnished to prospective investors on which the Computational Materials or ABS Term Sheets are based) in a way that is either inaccurate or misleading in any material respect, such information shall not be Pool Information or Prospectus Information.

#### IV.

Payment for the Offered Certificates shall be made to the order of the Company in immediately available funds at the office of Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York 10036, at 10:00 A.M., local time, on February 25, 2004, or at such other time or place on the same or such other date, not later than five business days after the date of this Agreement, or as may be agreed to by the Company and Morgan Stanley & Co. Incorporated. Payment for the Offered Certificates shall be made upon delivery to the Underwriters of the Offered Certificates registered in such names and in such denominations as the Underwriters shall request in writing not less than two full business days prior to the date of delivery. The time and date of such payment and delivery with respect to the Offered Certificates are herein referred to as the "Closing Date."

#### V.

The obligations of the Underwriters hereunder are subject to the following conditions:

A. Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading, or any review for a possible change, that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g) (2) under the Securities Act;

(ii) there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations, of the Company and its subsidiaries, taken as a whole, from that set forth in the Prospectus, that in the judgment of the Underwriters, is material and adverse and that makes it, in the judgment of the Underwriters, impracticable to market the Offered

Certificates on the terms and in the manner contemplated in the Prospectus;  
and

(iii) the Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, to the effect set forth in clause (i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements

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and satisfied all of the conditions on its part to be performed or satisfied on or before the Closing Date.

The officer signing and delivering such certificate may rely upon the best of his knowledge as to proceedings threatened.

B. The Underwriters shall have received on the Closing Date an opinion of counsel for the Company, dated the Closing Date, to the effect set forth in Exhibit A.

C. The Underwriters shall have received on the Closing Date an opinion of counsel to the Underwriters in form and substance acceptable to them.

D. The Underwriters shall have received on the Closing Date an opinion of counsel of Countrywide, in form and substance acceptable to the Underwriters.

E. The Underwriters shall have received on the Closing Date an opinion of counsel to the Trustee in form and substance acceptable to them.

F. The Underwriters shall have received on the Closing Date an opinion of counsel to the Unaffiliated Seller, in form and substance acceptable to the Underwriters.

G. The Underwriters shall have received on the Closing Date an opinion of counsel to Encore Credit Corp., in form and substance acceptable to the Underwriters.

H. The Underwriters shall have received on the Closing Date an opinion of counsel to People's Choice Home Loan, Inc., in form and substance acceptable to the Underwriters.

I. The Underwriters shall have received on the Closing Date an opinion of counsel to Accredited Home Lenders, Inc., in form and substance acceptable to the Underwriters.

J. The Underwriters shall have received on the Closing Date an opinion of counsel to the CIT Group, in form and substance acceptable to the Underwriters.

K. The Underwriters shall have received on the Closing Date an opinion of counsel to Master Financial Corporation, in form and substance acceptable to the Underwriters.

L. The Underwriters shall have received on the Closing Date an opinion of counsel to Chapel Mortgage Corporation, in form and substance acceptable to the Underwriters.

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M. The Underwriters shall have received on the Closing Date an opinion of counsel to First Guaranty Mortgage Corporation, in form and substance acceptable to the Underwriters.

N. The Underwriters shall have received on the Closing Date an opinion of counsel to SIB Mortgage Corp., in form and substance acceptable to the Underwriters.

O. The Underwriters shall have received on the Closing Date an opinion of counsel to Impac Funding Corporation, in form and substance acceptable to the Underwriters.

P. The Underwriters shall have received on the Closing Date an opinion of counsel to First Banc Mortgage, Inc., in form and substance acceptable to the Underwriters.

Q. The Underwriters shall have received on the Closing Date an opinion of counsel to Ameriquest Mortgage Company, in form and substance acceptable to the Underwriters.

R. The Underwriters shall have received on the Closing Date an opinion of counsel to BNC Mortgage, Inc., in form and substance acceptable to the Underwriters.

S. The Underwriters shall have received on the Closing Date an opinion of counsel to Aegis Mortgage Corporation, in form and substance acceptable to the Underwriters.

T. The Underwriters shall have received on the Closing Date an opinion of counsel to Lenders Direct Capital Corporation, in form and substance acceptable to the Underwriters.

U. The Underwriters shall have received on the Closing Date an opinion of counsel to the Certificate Insurer, in form and substance acceptable to the Underwriters.

V. The Underwriters shall have received on the Closing Date an opinion of counsel to the Company with respect to certain matters relating to the transfer of the Mortgage Loans to the Depositor and from the Depositor to the Trustee, and such counsel shall have consented to reliance on such opinion by the Rating Agencies as though such opinion had been addressed to them.

W. The Certificate Insurance Policy shall have been duly executed, delivered and issued with respect to the Class A-1 Certificates.

X. The Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class B-1, Class B-2 and Class B-3 Certificates shall have been rated "Aaa", "Aaa", "Aaa", "Aaa", "Aa2", "A2", "A3", "Baa1", "Baa2" and "Baa3",

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respectively, by Moody's Investors Service, Inc., "AAA", "AAA", "AAA", "AAA", "AA", "A", "A-", "BBB+", "BBB" and "BBB-" by Fitch Ratings and "AAA", "AAA", "AAA", "AAA", "AA", "A", "A-", "BBB+", "BBB" and "BBB-", respectively, by Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

Y. The Underwriters shall have received on the Closing Date a letter of Deloitte & Touche LLP, dated the date of this Agreement in form and substance satisfactory to the Underwriters, regarding certain specified procedures performed thereby with respect to information set forth in the Prospectus.

#### VI.

In further consideration of the agreements of the Underwriters contained in this Agreement, the Company covenants as follows:

A. To furnish the Underwriters, without charge, a signed copy of the Registration Statement and any amendments thereto, including exhibits, and, during the period mentioned in paragraph (C) below, as many copies of the Prospectus and any supplements and amendments thereto as the Underwriters may reasonably request.

B. Before amending or supplementing the Registration Statement or the Prospectus with respect to the Offered Certificates, to furnish the Underwriters a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which the Underwriters reasonably objects.

C. If, during such period after the first date of the public offering of the Offered Certificates, as in the opinion of counsel for the Underwriters the Prospectus is required by law to be delivered in connection with sales by the Underwriters, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if it is necessary to amend or supplement the Prospectus to comply with law, forthwith to prepare and furnish, at its own expense, to the Underwriters, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus will comply with law.

D. To endeavor to qualify the Offered Certificates for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Underwriters shall reasonably request and to pay all expenses (including fees and disbursements of counsel) in connection with such qualification and in connection with the determination of the eligibility of the Offered Certificates for investment under the laws of such jurisdictions as the Underwriters may designate.

E. To file in a timely manner with the Commission in current reports on Form 8-K under the Securities and Exchange Act of 1934 (the "Exchange Act") all information with respect to the Offered Certificates which constitutes "Computational Materials" as defined in the No-Action Letter of May 20, 1994 issued by the Commission

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to Kidder, Peabody Acceptance Corporation I, Kidder, Peabody & Co. Incorporated and Kidder Structured Asset Corporation, the No-Action Letter of May 27, 1994 issued by the Commission to the Public Securities Association and the No-Action Letter of March 9, 1995 issued by the Commission to the Public Securities Association, in accordance with and in the time frames set forth in such letters; provided, however, that prior to such filing of the Computational Materials and ABS Term Sheets by the Company, the Underwriters must comply with their obligations pursuant to paragraph III(B).

VII.

The Company agrees to indemnify and hold harmless the Underwriters and each person, if any, who controls the Underwriters within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus or the Prospectus (if used within the period set forth in paragraph C of Article VI and as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon and in conformity with (i) the information furnished in writing to the Company by any Underwriter specifically for use in connection with the preparation of the Registration Statement, any preliminary prospectus or the Prospectus or any revision or amendment thereof or supplement thereto, (ii) any information in any Computational Materials or ABS Terms Sheets required to be provided by any Underwriter to the Company pursuant to paragraph III(B) other than Pool Information or Prospectus Information (clause (i) and (ii) collectively, the "Underwriter Information"), (iii) the information concerning the Certificate Insurer under the caption "The Insurer" in the Prospectus Supplement, including information contained therein through incorporation by reference under the caption "Incorporation of Information by Reference" (the "Insurer Information"), (iv) the information concerning Countrywide under the captions "Transaction Overview - The Servicer" and "The Servicer" in the Prospectus Supplement (the "Servicer Information") and (v) the information and data concerning the Mortgage Loans set forth on any computer tape (or other electronic or printed medium) furnished to the Company and any other information set forth in the Prospectus Supplement other than the Underwriter Information, the Insurer Information, the Servicer Information and the information underlining the caption "The Depositor" in the Prospectus (such information, together with the Underwriter Information, the Issuer Information and the Servicer Information, the "Excluded Information").

Each Underwriter, severally and not jointly, agrees to indemnify and hold harmless the Company and its directors and officers who sign the Registration Statement and any person controlling the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to the Underwriters, but only with reference to (i) information relating to the Underwriters furnished in writing to the Company by any

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Underwriter specifically for use in connection with the preparation of the Registration Statement, any preliminary prospectus or the Prospectus or any revision or amendment thereof or supplement thereto and (ii) any Computational Materials, the ABS Term Sheets or the Collateral Term sheets, as applicable, furnished by such Underwriter, to the extent not Pool Information or Prospectus

Information.

In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to either of the two preceding paragraphs, such person (the "indemnified party") shall promptly notify the person against whom such indemnity may be sought (the "indemnifying party") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by the Underwriters in the case of parties indemnified pursuant to the first paragraph of this Article VII and by the Company in the case of parties indemnified pursuant to the second paragraph of this Article VII. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the third sentence of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

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To the extent the indemnification provided for in this Article VII is unavailable to an indemnified party under the first or second paragraph of this Article VII or is insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand, and the Underwriters on the other, from the offering of the Offered Certificates or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand, and of the Underwriters on the other, in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand, and the Underwriters on the other, in connection with the offering of the Offered Certificates shall be deemed to be in the same proportions that the total net proceeds from the offering of the Offered Certificates (before deducting expenses) received by the Company and the total underwriting discounts and commissions received by the Underwriters in respect thereof respectively, bear to the aggregate public offering price of the Offered Certificates. The relative fault of the Company on the one hand, and of the Underwriters on the other, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such

statement or omission.

The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Article VII were determined by pro rata allocation or by any other method of allocation that does not take account of the considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Article VII, no Underwriter shall be required to contribute any amount in excess of the amount by which the total underwriting discounts and commissions received by the Underwriters in connection with the Offered Certificates underwritten and distributed to the public by the Underwriters exceeds the amount of any damages that the Underwriters have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

The indemnity and contribution agreements contained in this Article VII and the representations and warranties of the Company in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement,

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(ii) any investigation made by or on behalf of the Underwriters or any person controlling the Underwriters or by or on behalf of the Company, its directors or officers or any person controlling the Company and (iii) acceptance of any payment for any of the Offered Certificates.

#### VIII.

This Agreement shall be subject to termination in the Underwriters' absolute discretion, by notice given to the Company, if (a) after the execution and delivery of this Agreement and prior to the Closing Date: (i) trading generally shall have been suspended or materially limited on or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers, Inc., the Chicago Board of Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a general moratorium on commercial banking activities in New York shall have been declared by either Federal or New York State authorities, or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis that, in the judgment of the Underwriters, is material and adverse and (b) in the case of any of the events specified in clauses (a) (i) through (iv), such event singly or together with any other such event, makes it, in the judgment of the Underwriters, impracticable to market the Offered Certificates on the terms and in the manner contemplated in the Prospectus.

#### IX.

If this Agreement shall be terminated by the Underwriters because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Underwriters for all out-of-pocket expenses (including the fees and disbursements of its counsel) reasonably incurred by the Underwriters in connection with the Offered Certificates.

All communications hereunder shall be in writing and effective only upon receipt and, if sent to the Company, will be mailed, hand delivered, couriered or sent by facsimile transmission to it at 1585 Broadway, New York, NY 10036, Attention: Securitized Products Group, with a copy to 1221 Avenue of the Americas, New York, NY 10020, Attention: Michelle Wilke, or, if sent to Morgan Stanley & Co. Incorporated, will be mailed, hand delivered, couriered or sent by facsimile transmission to it at 1585 Broadway, New York, NY 10036, Attention: Securitized Products Group, with a copy to 1221 Avenue of the Americas, New York, NY 10020, Attention: Michelle Wilke.

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.



[SIGNATURE PAGE FOLLOWS]

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

Very truly yours,  
MORGAN STANLEY ABS CAPITAL I INC.

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

Accepted and agreed to by:  
MORGAN STANLEY & CO. INCORPORATED

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

[Signature Page to the Underwriting Agreement]

SCHEDULE A

<TABLE>  
<CAPTION>

UNDERWRITERS	CLASS A-1 CERTIFICATES	CLASS A-2 CERTIFICATES	CLASS A-3 CERTIFICATES	CLASS A-4 CERTIFICATES	CLASS M-1 CERTIFICATES
<S>	<C>	<C>	<C>	<C>	<C>
Morgan Stanley & Co. Incorporated.....	\$316,210,140	\$158,178,540	\$71,890,000	\$28,303,330	\$42,042,220
Banc of America Securities LLC.....	\$28,018,620	\$14,015,820	\$6,370,000	\$2,507,890	\$3,725,260
Countrywide Securities, Inc.....	\$28,018,620	\$14,015,820	\$6,370,000	\$2,507,890	\$3,725,260
Greenwich Capital Markets, Inc.....	\$28,018,620	\$14,015,820	\$6,370,000	\$2,507,890	\$3,725,260
Total.....	\$400,266,000	\$200,226,000	\$91,000,000	\$35,827,000	\$53,218,000

</TABLE>

<TABLE>  
<CAPTION>

UNDERWRITERS -----	CLASS M-2 CERTIFICATES -----	CLASS M-3 CERTIFICATES -----	CLASS B-1 CERTIFICATES -----	CLASS B-2 CERTIFICATES -----	CLASS B-3 CERTIFICATES -----
<S>	<C>	<C>	<C>	<C>	<C>
Morgan Stanley & Co. Incorporated.....	\$35,035,710	\$12,613,140	\$9,459,460	\$8,758,730	\$8,758,730
Banc of America Securities LLC.....	\$3,104,430	\$1,117,620	\$ 838,180	\$ 776,090	\$ 776,090
Countrywide Securities, Inc.....	\$3,104,430	\$1,117,620	\$ 838,180	\$ 776,090	\$ 776,090
Greenwich Capital Markets, Inc.....	\$3,104,430	\$1,117,620	\$ 838,180	\$ 776,090	\$ 776,090
	-----	-----	-----	-----	-----
Total.....	\$44,349,000	\$15,966,000	\$11,974,000	\$11,087,000	\$11,087,000
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</TABLE>

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EXHIBIT A

OPINION OF DEWEY BALLANTINE LLP,  
COUNSEL FOR THE COMPANY

A-1

INDEMNIFICATION AGREEMENT

MORGAN STANLEY ABS CAPITAL I INC.  
CDC MORTGAGE CAPITAL TRUST  
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2004-HE1

WHEREAS, Morgan Stanley ABS Capital I Inc. (the "Depositor") is acting as depositor with respect to the Prospectus (the "Base Prospectus"), dated January 23, 2004, and the Prospectus Supplement to the Prospectus, dated February 20, 2004 (the "Prospectus Supplement", and together with the Base Prospectus, the "Prospectus"), relating to CDC Mortgage Capital Trust 2004-HE1, Mortgage Pass-Through Certificates, Series 2004-HE1, (the "Certificates") to be issued pursuant to a Pooling and Servicing Agreement, dated as of February 1, 2004 (the "P&S"), among CDC Mortgage Capital Inc., as Unaffiliated Seller (the "Unaffiliated Seller"), the Depositor, Countrywide Home Loans Servicing LP, as Servicer (the "Servicer") and Deutsche Bank National Trust Company as Trustee (the "Trustee");

WHEREAS, the Depositor purchased the Mortgage Loans from the Unaffiliated Seller pursuant to an Unaffiliated Seller's Agreement dated as of February 1, 2004 (the "Unaffiliated Seller's Agreement"), by and between the Depositor and the Unaffiliated Seller; and

WHEREAS, Morgan Stanley & Co. Incorporated, as representative (the "Representative"), of itself and the other underwriters named in the Underwriting Agreement dated February 20, 2004 (the "Underwriting Agreement"), between the Depositor and the Representative pursuant to which the Representative on behalf of the Underwriters is agreeing, subject to the terms and conditions therein, that the Underwriters purchase on the Closing Date described therein the Offered Certificates (the "Offered Certificates") as described therein.

NOW THEREFORE, in consideration of the agreements contained herein, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Unaffiliated Seller, the Depositor and the Representative agree as follows:

1. Indemnification and Contribution.

(a) The Unaffiliated Seller agrees to indemnify and hold harmless the Depositor and each Underwriter, their respective officers and directors and each person, if any, who controls the Depositor or any Underwriter within the meaning of either Section 15 of the Securities Act of 1933, as amended (the "1933 Act") or Section 20 of the Securities Exchange Act of 1934, as amended (the "1934 Act"), against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the 1933 Act, the 1934 Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in

respect thereof) arise out of or are based in whole or in part upon any untrue statement or alleged untrue statement of a material fact contained in the Prospectus Supplement or in the Computational Materials or any omission or alleged omission to state in the Prospectus Supplement or in the Computational Materials a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any such untrue statement or omission or alleged untrue statement or alleged omission made in any amendment of or supplement to the Prospectus Supplement or to the Computational Materials, and agrees to

reimburse the Depositor and each Underwriter and each such officer, director and controlling person promptly upon demand for any legal or other expenses reasonably incurred by any of them in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; provided however, that the Unaffiliated Seller shall be liable in any such case only to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with the Seller Information. The foregoing indemnity agreement is in addition to any liability which the Unaffiliated Seller may otherwise have to the Underwriters, the Depositor or any such director, officer or controlling person of the Underwriters or of the Depositor.

(b) Each Underwriter, severally but not jointly, agrees to indemnify and hold harmless the Unaffiliated Seller, its officers and directors and each person, if any, who controls the Unaffiliated Seller within the meaning of either Section 15 of the 1933 Act or Section 20 of the 1934 Act, against any and all losses, claims, damages or liabilities, joint or several, to which the Unaffiliated Seller may become subject under the 1933 Act, the 1934 Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based in whole or in part upon any untrue statement or alleged untrue statement of a material fact contained in the Prospectus Supplement or any omission or alleged omission to state in the Prospectus Supplement a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, or any such untrue statement or omission or alleged untrue statement or alleged omission made in any amendment of or supplement to the Prospectus Supplement, and including in each case any information included therein by its incorporation by reference into the Prospectus and agrees to reimburse the Unaffiliated Seller, and each such director, officer or controlling person for any legal or other expenses reasonably incurred by any of them in connection with investigating or defending or preparing to defend against any such loss, claim, damage, liability or action as such expenses are incurred; provided however, that the Underwriters shall be liable in any such case only to the extent that any such loss, claim, damage, liability or action arises out of, or is based upon, any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in

conformity with the Underwriter Information. The foregoing indemnity agreement is in addition to any liability which the Underwriter may otherwise have to the Unaffiliated Seller or any such director, officer or controlling person of the Unaffiliated Seller.

As used herein:

"Certificate Insurer Information" means the information concerning the Certificate Insurer under the caption "The Certificate Insurer" in the Prospectus Supplement, including information contained therein through incorporation by reference under the caption "Incorporation of Information By Reference".

"Depositor Information" means the statements set forth in the Prospectus Supplement under the caption "Transaction Overview - Parties - The Depositor".

"Seller Information" means (x) the information and data concerning the Mortgage Loans set forth on any computer tape (or other electronic or printed medium) furnished to the Depositor

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and/or the Unaffiliated Seller, in the Computational Materials, (as defined below) to the extent such Computational Materials were approved by the Unaffiliated Seller, and (y) the information set forth in the Prospectus Supplement, other than the Depositor Information, the Certificate Insurer Information, the Servicer Information, and the Underwriter Information.

"Servicer Information" means the information concerning the Servicer under the caption "Transaction Overview--The Servicer" and "The Servicer".

"Underwriter Information" means the statements set forth (i) in the last paragraph on the cover page of the Prospectus Supplement, and (ii) under the caption "Plan of Distribution" in the Prospectus Supplement.

The terms "Collateral term sheet" and "Structural term sheet" shall have the respective meanings assigned to them in the February 13, 1995 letter (the "PSA Letter") of Cleary, Gottlieb, Steen & Hamilton on behalf of the Public Securities Association (which letter, and the SEC staff's response thereto, were publicly available February 17, 1995). The term "Collateral term sheet" as used herein includes any subsequent Collateral term sheet that reflects a substantive change in the information presented. The term "Computational Materials" has the meaning assigned to it in the May 17, 1994 letter (the "Kidder letter" and together with the PSA Letter, the "No-Action Letters") of Brown & Wood on behalf of Kidder, Peabody & Co., Inc. (which letter, and the SEC staff's response thereto, were publicly available May 20, 1994). The term "Comp Materials" as used herein means collectively Collateral Term Sheets, Structural Term Sheet and Computation Materials.

(c) Promptly after receipt by any indemnified party under this Section 1 of notice of any claim or the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against any indemnifying party under this Section 1, notify the indemnifying party in writing of the claim or the commencement of that action; provided, however, that the failure to notify an indemnifying party shall not relieve it from any liability which it may have under this Section 1 except to the extent it has been materially prejudiced by such failure; and provided further, however, that the failure to notify any indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under this Section 1.

If any such claim or action shall be brought against an indemnified party, and it shall notify the indemnifying party thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it wishes, jointly with any other similarly notified indemnifying party, to assume the defense thereof with counsel reasonably satisfactory to the indemnified party. After notice from the indemnifying party to the indemnified party of its election to assume the defense of such claim or action, except as provided in the following paragraph, the indemnifying party shall not be liable to the indemnified party under this Section 1 for any legal or other expenses subsequently incurred by the indemnified party in connection with the defense thereof other than reasonable costs of investigation.

Any indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless: (i) the employment thereof has been specifically authorized by the indemnifying party in writing; (ii) such indemnified party shall have been

advised by such counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the indemnifying party and in the reasonable judgment of such counsel it is advisable for such indemnified party to employ separate counsel; or (iii) the indemnifying party has failed to assume the defense of such action and employ counsel reasonably satisfactory to the indemnified party, in which case, if such indemnified party notifies the indemnifying party in writing that it elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such action on behalf of such indemnified party, it being understood, however, the indemnifying party shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to local counsel) at any time for all such indemnified parties, which firm shall be designated in writing by (x) the Representative, if the indemnified parties under this Section 1 consist of the Underwriters and/or the Depositor or any of their respective directors, officers or controlling persons,

or (y) by the Unaffiliated Seller if the indemnified parties under this Section 1 consist of the Unaffiliated Seller or any of its respective directors, officers or controlling persons.

Each indemnified party, as a condition of the indemnity agreements contained in this Section 1, shall cooperate with the indemnifying party in the defense of any such action or claim. No indemnifying party shall be liable for any settlement of any such action effected without its written consent (which consent shall not be unreasonably withheld), but if settled with its written consent or if there be a final judgment for the plaintiff in any such action, the indemnifying party agrees to indemnify and hold harmless any indemnified party from and against any loss or liability by reason of such settlement or judgment.

Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for the reasonable fees and expenses of counsel, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement.

(d) If the indemnification provided for in this Section 1 is unavailable to an indemnified party under Sections 1(a) or 1(b) hereof or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then (i) the indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities, in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party and the indemnified party, respectively, from the issuance of the Offered Certificates or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party and the indemnified party, respectively, in connection with the statements or omissions that result in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Unaffiliated Seller on the one hand and the Depositor, and the Underwriters on the other shall be deemed to be in such proportion as the total net proceeds

from the offering received by the Unaffiliated Seller bears to the total underwriting discounts and commissions. The relative fault of the indemnified party and indemnifying party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission and any other

equitable considerations.

The Depositor, the Underwriters and the Unaffiliated Seller agree that it would not be just and equitable if contribution pursuant to this Section 1(d) were determined by pro rata allocation or by any other method of allocation which does not take account of the considerations referred to in this Section 1(d) above. The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in this Section 1(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim, except where the indemnified party is required to bear such expenses pursuant to this Section 1, which expenses the indemnifying party shall pay, at the request of the indemnified party, to the extent that the indemnifying party will be ultimately obligated to pay such expenses. In the event that any expenses so paid by the indemnifying party are subsequently determined to not be required to be borne by the indemnifying party hereunder, the indemnified shall promptly refund the amount so paid to the indemnifying party. In no case shall any Underwriter, together with the Depositor be responsible for any amount in excess of (x) the amount received by such Underwriter in connection with its resale of the Offered Certificates over (y) the amount paid by such Underwriter to the Depositor for the Offered Certificates. No person guilty of fraudulent misrepresentations (within the meaning of Section 11(f) of the 1933 Act), shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The indemnity and contribution agreements contained in this Section 1 and the representations and warranties set forth in Section 2 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by the Depositor, its directors or officers or any person controlling the Depositor, by or on behalf of the Underwriter, its directors or officers or any person controlling the Underwriter or by or on behalf of the Unaffiliated Seller and each of their respective directors, officers or any person controlling the Sellers, and (iii) acceptance of and payment for any of the Offered Certificates.

2. Representations and Warranties. The Unaffiliated Seller represents that:

(i) the Unaffiliated Seller is validly existing and in good standing under the laws of its jurisdiction of formation or incorporation, as applicable, and has full power and authority to own its assets and to transact the business in which it is currently engaged. The Unaffiliated Seller is duly qualified to do business and is in good standing in each jurisdiction in which the character of the business transacted by it or any properties owned or leased by it requires such qualification and in which the failure so to qualify would have a material adverse effect on the business, properties, assets or condition (financial or otherwise) of the Unaffiliated Seller;



(ii) the Unaffiliated Seller is not required to obtain the consent of any other person or any consent, license, approval or authorization from, or registration or declaration with, any governmental authority, bureau or agency in connection with the execution, delivery, performance, validity or enforceability of this Agreement;

(iii) the execution, delivery and performance of this Agreement by the Unaffiliated Seller will not violate any provision of any existing law or regulation or any order decree of any court applicable to the Unaffiliated Seller or any provision of the charter or bylaws of the Unaffiliated Seller, or constitute a material breach of any mortgage, indenture, contract or other agreement to which the Unaffiliated Seller is a party or by which it may be bound;

(iv) (a) no proceeding of or before any court, tribunal or governmental body is currently pending or, (b) to the knowledge of the Unaffiliated Seller, threatened against the Unaffiliated Seller or any of its properties or with respect to this Agreement or the Offered Certificates in either case, which would have a material adverse effect on the business, properties, assets or condition (financial or otherwise) of the Unaffiliated Seller;

(v) the Unaffiliated Seller has full power and authority to make, execute, deliver and perform this Agreement and all of the transactions contemplated hereunder, and has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement. When executed and delivered, this Agreement will constitute the legal, valid and binding obligation of the Unaffiliated Seller enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, by the availability of equitable remedies, and by limitations of public policy under applicable securities law as to rights of indemnity and contribution thereunder; and

(vi) this Agreement has been duly executed and delivered by the Unaffiliated Seller.

3. Notices. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Depositor will be mailed, delivered or telegraphed and confirmed to Morgan Stanley ABS Capital I Inc. 1585 Broadway, New York, New York 10036, Attention: Valerie Kay with a copy to Michelle Wilke at Morgan Stanley & Co. Incorporated's legal department at 1221 Avenue of the Americas, New York, New York 10021; if sent to the Representative will be mailed, delivered or telegraphed and confirmed to Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York 10036, Attention: Valerie Kay with a copy to Michelle Wilke at Morgan Stanley & Co. Incorporation's legal department at 1221 Avenue of the Americas, New York, New York 10021; or, if sent to the Unaffiliated Seller, will be mailed, delivered or telegraphed and confirmed to the Unaffiliated Seller, 9 West 57th Street, New York, New York 10019, Attention: General Counsel.

4. Miscellaneous. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to the conflict of laws provisions thereof. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns and the controlling persons referred to herein, and no other person shall have any right or obligation hereunder. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by

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the party against whom enforcement of the change, waiver, discharge or termination is sought. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be considered an original, and all such counterparts shall constitute one and the same instrument. Capitalized terms used but not defined herein shall have the meanings provided in the P&S.

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7

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective officers hereunto duly authorized, this 20th day of February, 2004.

MORGAN STANLEY ABS CAPITAL I INC.

By

-----

Name:

Title:

MORGAN STANLEY & CO. INCORPORATED,  
as Representative

By

-----

Name:

Title:

By

-----

Name:

Title:

By

-----

Name:

Title:

[Signature Page to the Underwriter Indemnification Agreement]

=====

MORGAN STANLEY ABS CAPITAL I INC.,  
as Depositor,  
COUNTRYWIDE HOME LOANS SERVICING LP,  
as Servicer,  
CDC MORTGAGE CAPITAL INC.,  
as Unaffiliated Seller,  
and  
DEUTSCHE BANK NATIONAL TRUST COMPANY,  
as Trustee,  
POOLING AND SERVICING AGREEMENT  
Dated as of February 1, 2004  
CDC MORTGAGE CAPITAL TRUST 2004-HE1  
MORTGAGE PASS-THROUGH CERTIFICATES,  
SERIES 2004-HE1

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THIS POOLING AND SERVICING AGREEMENT, dated as of February 1, 2004, among MORGAN STANLEY ABS CAPITAL I INC., a Delaware corporation, as depositor (the "Depositor"), COUNTRYWIDE HOME LOANS SERVICING LP, a Texas limited partnership, as servicer (the "Servicer"), CDC MORTGAGE CAPITAL INC., a New York corporation, as unaffiliated seller (the "Unaffiliated Seller") and DEUTSCHE BANK NATIONAL TRUST COMPANY, a national banking association, as trustee (the "Trustee"),

W I T N E S S E T H :  
- - - - -

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

PRELIMINARY STATEMENT

The Trustee shall elect that three segregated asset pools within the Trust Fund be treated for federal income tax purposes as comprising three REMICs (each a "REMIC" or, in the alternative, the Lower Tier REMIC, the Middle Tier REMIC and the Upper Tier REMIC, respectively). Each Class of Certificates, other than the Class P and Class R Certificates and other than the right of each Class of LIBOR Certificates to receive Basis Risk Carry Forward Amounts and the right of the Class X Certificates to receive payments from the Cap Agreements,

represents ownership of one or more regular interests in the Upper Tier REMIC for purposes of the REMIC Provisions. The Class R Certificate represents ownership of the sole class of residual interest in each of the Lower Tier REMIC, Middle Tier REMIC and the Upper Tier REMIC for purposes of the REMIC Provisions. Class UT-R, Class MT-R and Class LT-R comprise the Class R Certificate. The Startup Day for each REMIC described herein is the Closing Date. The latest possible maturity date for each regular interest is the date referenced for such regular interest in this preliminary statement.

The Upper Tier REMIC shall hold as assets the several classes of uncertificated Middle Tier Regular Interests. Each such Middle Tier Regular Interest is hereby designated as a regular interest in the Middle Tier REMIC. Class MT-A-1, Class MT-A-2, Class MT-A-3, Class MT-A-4, Class MT-M-1, Class MT-M-2, Class MT-M-3, Class MT-B-1, Class MT-B-2 and Class MT-B-3 are hereby designated the MT Accretion Directed Classes. The Class P Certificate represents beneficial ownership of the Prepayment Charges, which portion of the Trust Fund shall be treated as a grantor trust.

The Middle Tier REMIC shall hold as assets the several classes of uncertificated Lower Tier Regular Interests. Each such Lower Tier Regular Interest is hereby designated as a regular interest in the Lower Tier REMIC.

The Lower Tier REMIC shall hold as assets all of the assets included in the Trust Fund other than Prepayment Charges, the Excess Reserve Fund Account, the Pre-Funding Accounts, the Capitalized Interest Account and the Cap Agreements. The Lower Tier REMIC shall issue the following classes of interests, and each Lower Tier Interest, other than the Class LT-R Interest, is hereby designated as a regular interest in the Lower Tier REMIC.

1

LOWER TIER CLASS DESIGNATION	TIER INTEREST RATE	INITIAL TIER PRINCIPAL AMOUNT	LATEST POSSIBLE MATURITY DATE
Class LT-C	(1)	\$718,833,368	June 25, 2034
Class LT-N	(2)	(3)	June 25, 2034
Class LT-PO	(4)	\$168,140,783	June 25, 2034
Class LT-R	(5)	(5)	June 25, 2034

- (1) The interest rate with respect to any Distribution Date for this interest is (i) during the Pre-Funding Period, an interest rate equal to a per annum variable rate equal to the weighted average of the Adjusted Net Mortgage Rates then in effect on the beginning of the related Due Period on the Initial Mortgage Loans, and (ii) thereafter, a per annum variable rate equal to the weighted average of the Adjusted Net Mortgage Rates then in effect on the beginning of the related Due Period on the Mortgage Loans.
- (2) The interest rate with respect to any Distribution Date for the Class LT-N is (i) during the Pre-Funding Period, all interest on the Subsequent Mortgage Loans for such Distribution Date divided by \$168,140,783, and (ii) thereafter, 0.00%.
- (3) The Class LT-N will have a notional principal balance equal to \$168,140,783.
- (4) The interest rate with respect to any Distribution Date for the Class LT-PO is (i) during the Pre-Funding Period, 0.00% and (ii) thereafter, a per annum variable rate equal to the weighted average of the Adjusted Net Mortgage Rates then in effect on the beginning of the related Due Period on the Mortgage Loans.
- (5) The Class LT-R is the sole class of residual interest in the Lower Tier REMIC. The Class LT-R does not have a principal amount or an interest rate.

During the Pre-Funding Period, all principal payments (scheduled and prepaid) and Realized Losses with respect to the Initial Mortgage Loans shall be allocated to the Class LT-C, until such Class is paid in full or eliminated by such losses. All principal payments (scheduled and prepaid) and Realized Losses generated with respect to the Subsequent Mortgage Loans and any amounts transferred from the Pre-Funding Accounts to the Lower Tier REMIC shall be allocated to the Class LT-PO.

On each Distribution Date thereafter, all principal payments (scheduled and prepaid) and Realized Losses generated with respect to the Mortgage Loans shall be allocated, pro rata, to the Class LT-C and Class LT-PO, until such Classes are paid in full or eliminated by such losses.

The Middle Tier REMIC shall issue the following classes of interests, and each Middle Tier Interest, other than the Class MT-R Interest, is hereby designated as a regular interest in the Middle Tier REMIC.

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MIDDLE TIER CLASS DESIGNATION	TIER INTEREST RATE	INITIAL TIER PRINCIPAL AMOUNT	CORRESPONDING CLASS	LATEST POSSIBLE MATURITY DATE
<S>	<C>	<C>	<C>	<C>
Class MT-A-1	(1)	1/2 of the Corresponding Class initial principal balance	Class A-1	June 25, 2034
Class MT-A-2	(1)	1/2 of the Corresponding Class initial principal balance	Class A-2	June 25, 2034
Class MT-A-3	(1)	1/2 of the Corresponding Class initial principal balance	Class A-3	June 25, 2034
Class MT-A-4	(1)	1/2 of the Corresponding Class initial principal balance	Class A-4	June 25, 2034
Class MT-M-1	(1)	1/2 of the Corresponding Class initial principal balance	Class M-1	June 25, 2034
Class MT-M-2	(1)	1/2 of the Corresponding Class initial principal balance	Class M-2	June 25, 2034
Class MT-M-3	(1)	1/2 of the Corresponding Class initial principal balance	Class M-3	June 25, 2034
Class MT-B-1	(1)	1/2 of the Corresponding Class initial principal balance	Class B-1	June 25, 2034
Class MT-B-2	(1)	1/2 of the Corresponding Class initial principal balance	Class B-2	June 25, 2034
Class MT-B-3	(1)	1/2 of the Corresponding Class initial principal balance	Class B-3	June 25, 2034
Class MT-Accrual	(1)	1/2 of the sum of the Pool Stated Principal Balance, the Subordinated Amount and the Pre-Funding Amount, minus \$100.		June 25, 2034

3

MIDDLE TIER CLASS DESIGNATION	TIER INTEREST RATE	INITIAL TIER PRINCIPAL AMOUNT	CORRESPONDING CLASS	LATEST POSSIBLE MATURITY DATE
<S>	<C>	<C>	<C>	<C>
Class MT-N	(2)	(3)		June 25, 2034
Class MT-R	(4)	(4)		June 25, 2034

- (1) The interest rate with respect to any Distribution Date for these interests is (i) during the Pre-Funding Period, the weighted average Pass-Through Rate of the Class LT-C and Class LT-PO, and (ii) thereafter, a per annum variable rate equal to the weighted average of the Adjusted Net Mortgage Rates then in effect on the beginning of the related Due Period on the Mortgage Loans.
- (2) The Class MT-N is entitled to all distributions of interest on the Class LT-N.
- (3) The Class MT-N will have a notional principal balance equal to the notional principal balance of the Class LT-N.
- (4) The Class MT-R is the sole class of residual interest in the Middle Tier REMIC. The Class MT-R does not have a principal amount or an interest rate.

On each Distribution Date, 50% of the increase in the Subordinated Amount will be payable as a reduction of the principal balances of the MT Accretion Directed Classes and will be accrued and added to the principal balance of the MT-Accrual Class. To this end, each MT Accretion Directed Class will be reduced by an amount equal to 50% of any increase in the Subordinated Amount that is attributable to a reduction in the principal balance of its Corresponding Class. On each Distribution Date, the increase in the principal balance of the MT-Accrual Class may not exceed interest accruals for such Distribution Date for the MT-Accrual Class. If, with respect to any Distribution Date, 50% of the increase in the Subordinated Amount exceeds accrued interest on the MT-Accrual Class, the excess (accumulated with all such excess for all prior Distribution Dates) will be added to any increase in the Subordinated Amount for



purposes of calculating accrued interest on the MT-Accrual Class payable as principal on the MT Accretion Directed Classes on the next Distribution Date.

All principal payments (scheduled and prepaid) on the Mortgage Loans shall be allocated 50% to the MT-Accrual Class and 50% to the MT Accretion Directed Classes, until paid in full. To this end, principal payments shall be allocated among such MT Accretion Directed Classes in an amount equal to 50% of the principal amounts allocated to their respective Corresponding Classes. Notwithstanding the foregoing, principal payments allocated to the Class X Certificates that result in the reduction in the Subordinated Amount shall be allocated to the MT-Accrual Class until paid in full. Realized losses shall be applied so that after all distributions have been made on each Distribution Date (i) the principal balance of each MT Accretion Directed Class is equal to 50% of the principal balance of its Corresponding Class, and (ii) the MT-Accrual Class is equal to 50% of the sum of (1) the Pool Stated Principal Balance, (2) the Subordinated Amount and (3) the Pre-Funding Amount, minus \$100.

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The Upper Tier REMIC shall issue the following classes of interests, and each Upper Tier Interest, other than the Class UT-R Interest, is hereby designated as a regular interest in the Upper Tier REMIC.

<TABLE>  
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UPPER TIER CLASS DESIGNATION	UPPER TIER INTEREST RATE	INITIAL UPPER TIER PRINCIPAL AMOUNT	CORRESPONDING CLASS	LATEST POSSIBLE MATURITY DATE
<S>	<C>	<C>	<C>	<C>
Class A-1	(1)	\$400,266,000	Class A-1(16)	June 25, 2034
Class A-2	(2)	\$200,226,000	Class A-2(16)	June 25, 2034
Class A-3	(3)	\$91,000,000	Class A-3(16)	June 25, 2034
Class A-4	(4)	\$35,827,000	Class A-4(16)	June 25, 2034
Class M-1	(5)	\$53,218,000	Class M-1(16)	June 25, 2034
Class M-2	(6)	\$44,349,000	Class M-2(16)	June 25, 2034
Class M-3	(7)	\$15,966,000	Class M-3(16)	June 25, 2034
Class B-1	(8)	\$11,974,000	Class B-1(16)	June 25, 2034
Class B-2	(9)	\$11,087,000	Class B-2(16)	June 25, 2034
Class B-3	(10)	\$11,087,000	Class B-3(16)	June 25, 2034
Class X-1(15)	(11)	(11)		June 25, 2034
Class X-2(15)	(12)	(13)	Class X	June 25, 2034
Class UT-R	(14)	\$	Class R	June 25, 2034

</TABLE>

- (1) The Class A-1 Certificates will bear interest during each Interest Accrual Period at a per annum rate equal to the least of (a) one-month LIBOR plus (x) on or prior to the Optional Termination Date, 0.290% or (y) after the Optional Termination Date, 0.580%, (b) the Adjusted WAC Cap minus the Premium Rate and (c) the Loan Group I Cap.
- (2) The Class A-2 Certificates will bear interest during each Interest Accrual Period at a per annum rate equal to the least of (a) one-month LIBOR plus (x) on or prior to the Optional Termination Date, 0.310% or (y) after the Optional Termination Date, 0.620%, (b) the Adjusted WAC Cap and (c) the Loan Group II Cap.
- (3) The Class A-3 Certificates will bear interest during each Interest Accrual Period at a per annum rate equal to the least of (a) one-month LIBOR plus (x) on or prior to the Optional Termination Date, 0.210% or (y) after the Optional Termination Date, 0.420%, (b) the Adjusted WAC Cap and (c) the Loan Group III Cap.
- (4) The Class A-4 Certificates will bear interest during each Interest Accrual Period at a per annum rate equal to the least of (a) one-month LIBOR plus (x) on or prior to the Optional Termination Date, 0.460% or (y) after the Optional Termination Date, 0.920%, (b) the Adjusted WAC Cap and (c) the Loan Group III Cap.

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- (5) The Class M-1 Certificates will bear interest during each Interest Accrual Period at a per annum rate equal to the lesser of (a) one-month LIBOR plus (x) on or prior to the Optional Termination Date, 0.570% or (y) after the Optional Termination Date, 0.855% and (b) the Adjusted WAC Cap.
- (6) The Class M-2 Certificates will bear interest during each Interest Accrual Period at a per annum rate equal to the lesser of (a) one-month LIBOR plus (x) on or prior to the Optional Termination Date, 1.200% or (y) after the Optional Termination Date, 1.80% and (b) the Adjusted WAC Cap.
- (7) The Class M-3 Certificates will bear interest during each Interest Accrual Period at a per annum rate equal to the lesser of (a) one-month LIBOR plus

- (x) on or prior to the Optional Termination Date, 1.350% or (y) after the Optional Termination Date, 2.025% and (b) the Adjusted WAC Cap.
- (8) The Class B-1 Certificates will bear interest during each Interest Accrual Period at a per annum rate equal to the lesser of (a) one-month LIBOR plus (x) on or prior to the Optional Termination Date, 1.700% or (y) after the Optional Termination Date, 2.550% and (b) the Adjusted WAC Cap.
- (9) The Class B-2 Certificates will bear interest during each Interest Accrual Period at a per annum rate equal to the lesser of (a) one-month LIBOR plus (x) on or prior to the Optional Termination Date, 1.800% or (y) after the Optional Termination Date, 2.700% and (b) the Adjusted WAC Cap.
- (10) The Class B-3 Certificates will bear interest during each Interest Accrual Period at a variable rate equal to the lesser of (a) one-month LIBOR plus (x) on or prior to the Optional Termination Date, 3.750% or (y) after the Optional Termination Date, 5.625% and (b) the Adjusted WAC Cap.
- (11) The Class X has an initial principal balance of \$11,974,051.04 but it will not accrue interest on such balance but will accrue interest on a notional principal balance. As of any Distribution Date, the Class X-1 shall have a notional principal balance equal to the Pool Stated Principal Balance as of the first day of the related Interest Accrual Period. With respect to any Interest Accrual Period, the Class X-1 shall bear interest at a rate equal to the excess, if any, of the Middle Tier WAC Cap over the product of (i) 2 and (ii) the weighted average Pass-Through Rate of the Middle Tier Regular Interests, where each MT Accretion Directed Class is subject to a cap and a floor equal to the Pass-Through Rate on its Corresponding Class, and the MT-Accrual Class is subject to a cap of zero. With respect to any Distribution Date, interest that so accrues on the notional principal balance of the Class X-1 shall be deferred in an amount equal to any increase in the Subordinated Amount on such Distribution Date. Such deferred interest shall not itself bear interest.
- (12) The Class X-2 is entitled to all distributions of interest on the Class MT-N.
- (13) The Class X-2 will have a notional principal balance equal to the notional principal balance of the Class MT-N.
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- (14) The Class UT-R is the sole class of residual interest in the Upper Tier REMIC. The Class UT-R does not have an interest rate.
- (15) The Class X Certificates will represent two regular interests in the Upper Tier REMIC, the Class X-1 and Class X-2.
- (16) Each of these Certificates will represent not only the ownership of the Corresponding Class of Upper Tier Regular Interest but also the right to receive payments from the Excess Reserve Fund Account in respect of any Basis Risk Carry Forward Amounts. For federal income tax purposes, the Trustee will treat a Certificateholder's right to receive payments from the Excess Reserve Fund Account as payments made pursuant to a notional principal contract written by the Class X Certificateholder.

The minimum denomination for each Class of Certificates, other than the Class P, Class R and the Class X Certificates, will be \$25,000 and integral multiples of \$1 in excess thereof. The Class P, Class R and the Class X Certificates will each represent a 100% Percentage Interest in such class.

Set forth below are designations of Classes of Certificates to the categories used herein:

- |                                    |  |
|------------------------------------|--|
| Book-Entry Certificates.....       | All Classes of Certificates other than the Physical Certificates.  |
| Subordinated Certificates.....     | Class M-1, Class M-2, Class M-3, Class B-1, Class B-2 and Class B-3 Certificates.  |
| Delay Certificates.....            | None.  |
| ERISA-Restricted Certificates..... | Class R Certificates, Class P Certificate and Class X Certificate; any certificate with a rating below the lowest applicable permitted rating under the Underwriters' Exemption. |
| LIBOR Certificates.....            | Class A-1, Class A-2, Class A-3, Class A-4 and Subordinated Certificates.  |
| Non-Delay Certificates.....        | Class A-1, Class A-2, Class A-3, Class A-4, Class X and Subordinated Certificates.   |

Offered Certificates..... All Classes of Certificates other than the Private Certificates.

Physical Certificates..... Class P, Class X and Class R Certificates.

Private Certificates..... Class P, Class X and Class R Certificates.

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Rating Agencies..... Moody's, Fitch and Standard & Poor's.

Regular Certificates..... All Classes of Certificates other than the Class P and Class R Certificates.

Residual Certificates..... Class R Certificates.

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ARTICLE I

DEFINITIONS

Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

60+ Day Delinquent Loan: Each Mortgage Loan with respect to which any portion of a Scheduled Payment is, as of the last day of the prior Due Period, two months or more past due (without giving effect to any grace period), each Mortgage Loan in foreclosure, all REO Property and each Mortgage Loan for which the Mortgagor has filed for bankruptcy.

Aames: Aames Capital Corporation, a California corporation.

Aames Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Accredited, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Accredited in connection with any Subsequent Transfer of Accredited Mortgage Loans.

Aames Mortgage Loan: A Mortgage Loan which was acquired from Aames by the Unaffiliated Seller pursuant to the Aames Purchase Agreement, and which has been acquired by the Trust Fund.

Aames Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of June 23, 2003, as amended to date, by and between the Unaffiliated Seller and Aames.

Accepted Servicing Practices: With respect to any Mortgage Loan, those mortgage servicing practices set forth in Section 3.01.

Account: Any of the Capitalized Interest Account, the Collection Account, the Distribution Account, any Escrow Account, the Excess Reserve Fund Account, the Insurance Payment Account or the Pre-Funding Accounts. Each Account shall be an Eligible Account.

Accredited: Accredited Home Lenders, Inc., a California corporation.

Accredited Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Accredited, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Accredited in connection with any Subsequent Transfer of Accredited Mortgage Loans.

Accredited Mortgage Loan: A Mortgage Loan which was acquired from Accredited by the Unaffiliated Seller pursuant to the Accredited Purchase Agreement, and which has been acquired by the Trust Fund.

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Accredited Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of October 1, 2003, as amended to date, by and between the Unaffiliated Seller and Accredited.

Accrued Certificate Interest: With respect to any Distribution Date for each Class of Certificates (other than the Class P, Class R and Class X Certificates), the amount of interest accrued during the related Interest

Accrual Period at the applicable Pass-Through Rate on the related Class Certificate Balance immediately prior to such Distribution Date, as reduced by such Class's share of Net Prepayment Interest Shortfalls and Relief Act Shortfalls for the related Due Period allocated to such Class pursuant to Section 4.02.

Addition Notice: A written notice from the Unaffiliated Seller to the Trustee, the Rating Agencies and the Certificate Insurer that the Unaffiliated Seller desires to make a Subsequent Transfer.

Adjustable Rate Mortgage Loan: A Mortgage Loan bearing interest at an adjustable rate.

Adjusted Mortgage Rate: As to each Mortgage Loan and at any time, the per annum rate equal to the Mortgage Rate less the Servicing Fee Rate.

Adjusted Net Mortgage Rate: As to each Mortgage Loan and at any time, the per annum rate equal to the Mortgage Rate less the Expense Fee Rate.

Adjusted WAC Cap: The weighted average of the Pass-Through Rates of the Middle Tier Regular Interests (other than the Class MT-N).

Adjustment Date: As to any Adjustable Rate Mortgage Loan, the first Due Date on which the related Mortgage Rate adjusts as set forth in the related Mortgage Note and each Due Date thereafter on which the Mortgage Rate adjusts as set forth in the related Mortgage Note.

Advances: Collectively, the P&I Advances and Servicing Advances.

Advance Facility: As defined in Section 3.27.

Advance Facility Trustee: As defined in Section 3.27.

Advance Reimbursement Amount: As defined in Section 3.27.

Advancing Person: As defined in Section 3.27.

Aegis: Aegis Mortgage Corporation, a Delaware corporation.

Aegis Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Aegis, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Aegis in connection with any Subsequent Transfer of Aegis Mortgage Loans.

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Aegis Mortgage Loan: A Mortgage Loan which was acquired from Aegis by the Unaffiliated Seller pursuant to the Aegis Purchase Agreement, and which has been acquired by the Trust Fund.

Aegis Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of December 1, 2002, as amended to date, by and between the Unaffiliated Seller and Aegis.

Affiliate: With respect to any Person, any other Person controlling, controlled by or under common control with such first Person. For the purposes of this definition, "control" means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Agreement: This Pooling and Servicing Agreement and all amendments or supplements hereto.

Ameriquest: Ameriquest Mortgage Company, a Delaware corporation.

Ameriquest Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Ameriquest, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Ameriquest in connection with any Subsequent Transfer of Ameriquest Mortgage Loans.

Ameriquest Mortgage Loan: A Mortgage Loan which was acquired from Ameriquest by the Unaffiliated Seller pursuant to the Ameriquest Purchase Agreement, and which has been acquired by the Trust Fund.

Ameriquest Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of June 30, 2003, as amended to date, by and between the Unaffiliated Seller and Ameriquest.

Amount Held for Future Distribution: As to the Certificates on any Distribution Date, the aggregate amount held in the Collection Account at the close of business on the related Determination Date on account of (i) Principal

Prepayments, Insurance Proceeds, Condemnation Proceeds and Liquidation Proceeds on the Mortgage Loans received after the end of the related Prepayment Period and (ii) all Scheduled Payments on the Mortgage Loans due after the end of the related Due Period.

Applied Realized Loss Amount: With respect to any Distribution Date, the amount, if any, by which the aggregate Class Certificate Balance of the LIBOR Certificates after distributions of principal on such Distribution Date exceeds the aggregate Stated Principal Balance of the Mortgage Loans for such Distribution Date.

Appraised Value: The value set forth in an appraisal made in connection with the origination of the related Mortgage Loan as the value of the Mortgaged Property.

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Assignment and Recognition Agreement: The Ames Assignment Agreement, Accredited Assignment Agreement, the Aegis Assignment Agreement, the Ameriquest Assignment Agreement, the BNC Assignment Agreement, the Chapel Mortgage Assignment Agreement, the CIT Assignment Agreement, the Encore Assignment Agreement, the FGMC Assignment Agreement, the First Banc Assignment Agreement, the Impac Assignment Agreement, the Lenders Direct Assignment Agreement, the Master Financial Assignment Agreement, the Novelle Assignment Agreement, the Oakmont Assignment Agreement, the People's Choice Assignment Agreement or the SIB Mortgage Assignment Agreement, as applicable.

Assignment of Mortgage: An assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form (other than the assignee's name and recording information not yet returned from the recording office), reflecting the sale of the Mortgage to the Trustee.

Available Funds: With respect to any Distribution Date and the Mortgage Loans, to the extent received by the Trustee (x) the sum of (i) the aggregate amount of Scheduled Payments on the Mortgage Loans due on the related Due Date (net of the related Expense Fees) and received by the Servicer on or prior to the related Determination Date, together with any P&I Advance in respect thereof, (ii) certain unscheduled payments in respect of the Mortgage Loans received by the Servicer and remitted to the Trustee, including all partial or full prepayments, Insurance Proceeds, Condemnation Proceeds, Liquidation Proceeds, Substitute Adjustment Amounts and proceeds from repurchase of those Mortgage Loans occurring during the related Due Period at the Repurchase Price (excluding Prepayment Charges), (iii) Compensating Interest payments from the Servicer to the Trustee in respect of Prepayment Interest Shortfalls for that Distribution Date, (iv) for any Distribution Date on or prior to May 24, 2004, any funds required to be paid from the Capitalized Interest Account to make up for any interest shortfalls on the Initial Mortgage Loans and (v) immediately following the end of the Pre-Funding Period, all amounts, if any, on deposit in the Pre-Funding Accounts reduced by (y) amounts in reimbursement for Advances previously made with respect to the Mortgage Loans and other amounts, in each case, as to which the Servicer, the Depositor or the Trustee are entitled to be paid or reimbursed pursuant to the Agreement.

Average Net Proceeds: As defined in Exhibit M hereto.

Balloon Loan: Any Mortgage Loan that provided on the date of origination for an amortization schedule extending beyond its stated maturity date.

Basic Principal Distribution Amount: With respect to any Distribution Date, the excess of (i) the aggregate Principal Remittance Amount for such Distribution Date over (ii) the Excess Subordinated Amount, if any, for such Distribution Date.

Basis Risk Carry Forward Amount: With respect to each Class of LIBOR Certificates, as of any Distribution Date, the sum of (A) if on such Distribution Date the Pass-Through Rate for any Class of LIBOR Certificates is based upon the Adjusted WAC Cap, the Loan Group I Cap, the Loan Group II Cap or the Loan Group III Cap, as applicable, the excess of (i) the amount of interest such Class of Certificates would otherwise be entitled to receive on

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such Distribution Date had such rate been calculated as the sum of LIBOR and the applicable Pass-Through Margin on such Class of Certificates for such Distribution Date, over (ii) the amount of interest payable on such Class of Certificates calculated at the Adjusted WAC Cap, the Loan Group I Cap, the Loan Group II Cap or the Loan Group III Cap, as applicable, for such Distribution Date and (B) the Basis Risk Carry Forward Amount for such Class of Certificates for all previous Distribution Dates not previously paid, together with interest thereon at a rate equal to the sum of LIBOR and the applicable Pass-Through Margin for such Class of Certificates for such Distribution Date.

Basis Risk Payment: For any Distribution Date, a payment in an amount equal to any Basis Risk Carry Forward Amount; provided, however, that with respect to any Distribution Date, the payment cannot exceed the amounts otherwise available for distribution on the Class X Certificates plus any Interest Rate Cap Payment with respect to such Distribution Date.

Best's: Best's Key Rating Guide, as the same shall be amended from time to time.

BNC: BNC Mortgage, Inc., a Delaware corporation.

BNC Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and BNC, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and BNC in connection with any Subsequent Transfer of BNC Mortgage Loans.

BNC Mortgage Loan: A Mortgage Loan which was acquired from BNC by the Unaffiliated Seller pursuant to the BNC Purchase Agreement, and which has been acquired by the Trust Fund.

BNC Purchase Agreement: The Amended and Restated Mortgage Loan Purchase and Warranties Agreement, dated as of February 26, 2002, as amended to date, by and between the Unaffiliated Seller and BNC.

Book-Entry Certificates: As specified in the Preliminary Statement.  
Business Day: Any day other than (i) Saturday or Sunday, or (ii) a day on which banking and savings and loan institutions, in (a) the State of New York, Utah, New Jersey and Florida, (b) the applicable states in which the Servicer's servicing operations are located, or (c) the State in which the Trustee's operations are located, are authorized or obligated by law or executive order to be closed.

Cap Agreement: The Group II/Group III Class A Cap Agreement, the Class M Cap Agreement and/or the Class B Cap Agreement, as applicable.

Cap Provider: CDC Financial Products Inc., a Delaware corporation, and any successor thereto.

Capitalized Interest Account: The separate Eligible Account created and maintained by the Trustee pursuant to Section 3.07(e) in the name of the Trustee for the benefit

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of the Offered Certificateholders and designated "Deutsche Bank National Trust Company, in trust for registered holders of CDC Mortgage Capital Trust 2004-HE1, Mortgage Pass-Through Certificates, Series 2004-HE1".

Capitalized Interest Requirement: With respect to the Distribution Dates occurring in March 2004, April 2004 and May 2004, the excess, if any, of (x) the Accrued Certificate Interests for all classes of the Offered Certificates for such Distribution Date over (y) all scheduled installments of interest (net of the related Expense Fees) due on the Mortgage Loans in the related Due Period. In no event will the Capitalized Interest Requirement be less than zero.

Certificate: Any one of the Certificates executed by the Trustee in substantially the forms attached hereto as exhibits.

Certificate Balance: With respect to any Class of Certificates, other than the Class X and Class R Certificates, at any date, the maximum dollar amount of principal to which the Holder thereof is then entitled hereunder, such amount being equal to the Denomination thereof minus all distributions of principal previously made with respect thereto and in the case of any Subordinated Certificates, reduced by any Applied Realized Loss Amounts applicable to such Class of Subordinated Certificates. The Class X and Class R Certificates have no Certificate Balance.

Certificate Insurance Policy: The Financial Guaranty Insurance Policy No. 51494-N, and all endorsements thereto dated the Closing Date, issued by the Certificate Insurer for the benefit of the Class A-1 Certificateholders.

Certificate Insurer: Financial Security Assurance Inc., a monoline stock insurance company organized and created under the laws of the State of New York, and any successors thereto.

Certificate Insurer Default: The existence and continuance of any of the following:

(a) the Certificate Insurer shall have failed to make a required payment when due under the Certificate Insurance Policy;

(b) the Certificate Insurer shall have (i) filed a petition or

commenced any case or proceeding under any provision or chapter of the United States Bankruptcy Code, the New York State Insurance Law or any other similar federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation, or reorganization, (ii) made a general assignment for the benefit of its creditors or (iii) had an order for relief entered against it under the United States Bankruptcy Code, the New York State Insurance Law or any other similar federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation, or reorganization that is final and nonappealable; or

(c) a court of competent jurisdiction, the New York Department of Insurance or any other competent regulatory authority shall have entered a final and nonappealable order, judgment or decree (i) appointing a custodian, trustee, agent, or receiver for the

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Certificate Insurer or for all or any material portion of its property or (ii) authorizing the taking of possession by a custodian, trustee, agent, or receiver of the Certificate Insurer or of all or any material portion of its property.

Certificate Owner: With respect to a Book-Entry Certificate, the Person who is the beneficial owner of such Book-Entry Certificate.

Certificate Register: The register maintained pursuant to Section 5.02.

Certificateholder or Holder: The person in whose name a Certificate is registered in the Certificate Register, except that, solely for the purpose of giving any consent pursuant to this Agreement, any Certificate registered in the name of the Depositor or any Affiliate of the Depositor shall be deemed not to be Outstanding and the Percentage Interest evidenced thereby shall not be taken into account in determining whether the requisite amount of Percentage Interests necessary to effect such consent has been obtained; provided, however, that if any such Person (including the Depositor) owns 100% of the Percentage Interests evidenced by a Class of Certificates, such Certificates shall be deemed to be Outstanding for the purposes of any provision hereof that requires the consent of the Holders of Certificates of a particular Class as a condition to the taking of any action hereunder. The Trustee is entitled to rely conclusively on a certification of the Depositor or any Affiliate of the Depositor in determining which Certificates are registered in the name of an Affiliate of the Depositor.

Certification: As defined in Section 8.12(b).

Chapel Mortgage: Chapel Mortgage Corporation, a New Jersey corporation.

Chapel Mortgage Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Chapel Mortgage, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Chapel Mortgage in connection with any Subsequent Transfer of Chapel Mortgage Loans.

Chapel Mortgage Loan: A Mortgage Loan which was acquired from Chapel Mortgage by the Unaffiliated Seller pursuant to the Chapel Mortgage Purchase Agreement, and which has been acquired by the Trust Fund.

Chapel Mortgage Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of June 4, 2002, as amended to date, by and between the Unaffiliated Seller and Chapel Mortgage.

CIT: Collectively, The CIT Group/Consumer Finance, Inc., a Delaware corporation, The CIT Group/Consumer Finance, Inc. (NY), a New York corporation, and The CIT Group/Consumer Finance, Inc. (TN), a Delaware corporation.

CIT Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and CIT, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and CIT in connection with any Subsequent Transfer of CIT Mortgage Loans.

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CIT Mortgage Loan: A Mortgage Loan which was acquired from CIT by the Unaffiliated Seller pursuant to the CIT Purchase Agreement, and which has been acquired by the Trust Fund.

CIT Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of March 24, 2003, by and between the Unaffiliated Seller and CIT.

Class: All Certificates bearing the same class designation as set forth in the Preliminary Statement.

Class A Certificates: The Class A-1 Certificates, the Class A-2 Certificates and the Group III Class A Sequential Certificates.

Class A Principal Distribution Amount: With respect to any Distribution Date, an amount equal to the excess of (x) the aggregate Class Certificate Balances of the Class A Certificates immediately prior to such Distribution Date over (y) the lesser of (A) the product of 64.00% of the Current Maximum Amount and (B) the excess, if any, of the Current Maximum Amount over \$4,434,871.

Class A-1 Certificates: All Certificates bearing the class designation of "Class A-1 Certificates."

Class A-1 Deficiency: With respect to any Distribution Date and the Class A-1 Certificates, an amount equal to the sum of:

- (i) the Class A-1 Interest Deficit Amount; plus
- (ii) the Class A-1 Principal Parity Amount, if any, for such Distribution Date; and
- (iii) the Class Certificate Balance of the Class A-1 Certificates to the extent unpaid on the Final Scheduled Distribution Date or, if earlier, the date on which the final distribution is made to the Class A-1 Certificateholders pursuant to Article IX, in each case after giving effect to all distributions made on such date from sources other than the Certificate Insurance Policy for the Class A-1 Certificates.

Class A-1 Interest Deficit Amount: With respect to any Distribution Date and the Class A-1 Certificates, the product of (i) the Interest Deficit Amount and (ii) a fraction, the numerator of which is the outstanding Class Certificate Balance of the Class A-1 Certificates on such Distribution Date, and the denominator of which is the aggregate outstanding Class Certificate Balances of all Class A Certificates on such Distribution Date, in each case, without taking into account any reduction of principal on such Certificates on such Distribution Date.

Class A-1 Principal Parity Amount: With respect to any Distribution Date, the product of (i) the Principal Parity Deficit and (ii) a fraction, the numerator of which is the initial Class Certificate Balance of the Class A-1 Certificates, and the denominator of which is the initial aggregate Class Certificate Balances of all Class A Certificates.

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Class A-2 Certificates: All Certificates bearing the class designation of "Class A-2 Certificates."

Class A-3 Certificates: All Certificates bearing the class designation of "Class A-3 Certificates."

Class A-4 Certificates: All Certificates bearing the class designation of "Class A-4 Certificates."

Class B Cap Agreement: The interest rate cap agreement, relating to the Class B Certificates, dated February 25, 2004 with the Cap Provider, as "Party A" thereunder, and the Unaffiliated Seller, as "Party B" thereunder, or any replacement thereof.

Class B Interest Rate Cap Payment: On the 24th day of each month (subject to adjustment in accordance with ISDA's "Preceding Business Day Convention"), the product of (A) (i) commencing March 24, 2004 until and including November 24, 2005, the number of basis points by which one-month LIBOR exceeds 4.400% (up to a maximum excess of 235 basis points), (ii) commencing December 24, 2005 until and including May 24, 2006, the number of basis points by which one-month LIBOR exceeds 5.700% (up to a maximum excess of 180 basis points), (iii) commencing June 24, 2006 until and including November 24, 2006, the number of basis points by which one-month LIBOR exceeds 6.350% (up to a maximum excess of 140 basis points) or (iv) commencing December 24, 2006 until and including April, 24 2007, the number of basis points by which one-month LIBOR exceeds 7.150% (up to a maximum excess of 60 basis points), (B) the Class B notional balance and (C) the Class B notional balance multiplier, each as set forth on the notional balance and multiplier schedule attached to the Class B Cap Agreement as applicable to that Distribution Date, based on an "actual/360" accrual.

Class B-1 Certificates: All Certificates bearing the class designation of "Class B-1 Certificates."

Class B-1 Principal Distribution Amount: With respect to any Distribution Date, the excess of (i) the sum of (A) the aggregate Class Certificate Balances of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (B) the Class Certificate Balance of the Class M-1 Certificates (after



taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (C) the Class Certificate Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (D) the Class Certificate Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), and (E) the Class Certificate Balance of the Class B-1 Certificates immediately prior to such Distribution Date over (ii) the lesser of (A) 92.30% of the Current Maximum Amount and (B) the excess, if any, of the Current Maximum Amount over \$4,434,871.

Class B-2 Certificates: All Certificates bearing the class designation of "Class B-2 Certificates".

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Class B-2 Principal Distribution Amount: With respect to any Distribution Date, the excess of (i) the sum of (A) the aggregate Class Certificate Balances of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (B) the Class Certificate Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (C) the Class Certificate Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (D) the Class Certificate Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (E) the Class Certificate Balance of the Class B-1 Certificates (after taking into account the distribution of the Class B-1 Principal Distribution Amount on such Distribution Date), and (F) the Class Certificate Balance of the Class B-2 Certificates immediately prior to such Distribution Date over (ii) the lesser of (A) 94.80% of the Current Maximum Amount and (B) the excess, if any, of the Current Maximum Amount over \$4,434,871.

Class B-3 Certificates: All Certificates bearing the class designation of "Class B-3 Certificates".

Class B-3 Principal Distribution Amount: With respect to any Distribution Date, the excess of (i) the sum of (A) the aggregate Class Certificate Balances of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (B) the Class Certificate Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (C) the Class Certificate Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), (D) the Class Certificate Balance of the Class M-3 Certificates (after taking into account the distribution of the Class M-3 Principal Distribution Amount on such Distribution Date), (E) the Class Certificate Balance of the Class B-1 Certificates (after taking into account the distribution of the Class B-1 Principal Distribution Amount on such Distribution Date), (F) the Class Certificate Balance of the Class B-2 Certificates (after taking into account the distribution of the Class B-2 Principal Distribution Amount on such Distribution Date) and (G) the Class Certificate Balance of the Class B-3 Certificates immediately prior to such Distribution Date over (ii) the lesser of (A) 97.30% of the Current Maximum Amount and (B) the excess, if any, of the Current Maximum Amount over \$4,434,871.

Class Certificate Balance: With respect to any Class and as to any date of determination, the aggregate of the Certificate Balances of all Certificates of such Class as of such date.

Class M Cap Agreement: The interest rate cap agreement, relating to the Class M Certificates, dated February 25, 2004 with the Cap Provider, as "Party A" thereunder, and the Unaffiliated Seller, as "Party B" thereunder, or any replacement thereof.

Class M Interest Rate Cap Payment: On the 24th day of each month (subject to adjustment in accordance with ISDA's "Preceding Business Day Convention"), an amount equal

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to the product of (A) (i) commencing March 24, 2004 until and including November 24, 2005, the number of basis points by which one-month LIBOR exceeds 5.900% (up to a maximum excess of 235 basis points), (ii) commencing December 24, 2005 until and including May 24, 2006, the number of basis points by which one-month LIBOR exceeds 7.200% (up to a maximum excess of 180 basis points), (iii) commencing June 24, 2006 until and including November 24, 2006, the number of basis points by which one-month LIBOR exceeds 7.850% (up to a maximum excess of 140 basis points) or (iv) commencing December 24, 2006 until and including April, 24 2007, the number of basis points by which one-month LIBOR exceeds 8.650% (up to a maximum excess of 60 basis points), (B) the Class M notional

balance and (C) the Class M notional balance multiplier, each as set forth on the notional balance schedule attached to the Class M Cap Agreement as applicable to that Distribution Date, based on an "actual/360" accrual

Class M-1 Certificates: All Certificates bearing the class designation of "Class M-1 Certificates".

Class M-1 Principal Distribution Amount: With respect to any Distribution Date, the excess of (i) the sum of (A) the aggregate Class Certificate Balances of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), and (B) the Class Certificate Balance of the Class M-1 Certificates immediately prior to such Distribution Date over (ii) the lesser of (A) 76.00% of the Current Maximum Amount and (B) the excess, if any, of the Current Maximum Amount over \$4,434,871.

Class M-2 Certificates: All Certificates bearing the class designation of "Class M-2 Certificates."

Class M-2 Principal Distribution Amount: With respect to any Distribution Date, the excess of (i) the sum of (A) the aggregate Class Certificate Balances of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (B) the Class Certificate Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), and (C) the Class Certificate Balance of the Class M-2 Certificates immediately prior to such Distribution Date over (ii) the lesser of (A) 86.00% of the Current Maximum Amount and (B) the excess, if any, of the Current Maximum Amount over \$4,434,871.

Class M-3 Certificates: All Certificates bearing the class designation of "Class M-3 Certificates".

Class M-3 Principal Distribution Amount: With respect to any Distribution Date, the excess of (i) the sum of (A) the aggregate Class Certificate Balances of the Class A Certificates (after taking into account the distribution of the Class A Principal Distribution Amount on such Distribution Date), (B) the Class Certificate Balance of the Class M-1 Certificates (after taking into account the distribution of the Class M-1 Principal Distribution Amount on such Distribution Date), (C) the Class Certificate Balance of the Class M-2 Certificates (after taking into account the distribution of the Class M-2 Principal Distribution Amount on such Distribution Date), and (D) the Class Certificate Balance of the Class M-3

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Certificates immediately prior to such Distribution Date over (ii) 89.60% of the Current Maximum Amount and (B) the excess, if any, of the Current Maximum Amount over \$4,434,871.

Class P Certificates: All Certificates bearing the class designation of "Class P Certificates".

Class R Certificates: All Certificates bearing the class designation of "Class R Certificates".

Class X Certificates: All Certificates bearing the designation of "Class X Certificates".

Class X Distributable Amount: On any Distribution Date, the sum of (i) as a distribution in respect of interest, the amount of interest that has accrued on the Class X Regular Interests and not applied as an Extra Principal Distribution Amount on such Distribution Date, plus any such accrued interest remaining undistributed from prior Distribution Dates, plus (ii) as a distribution in respect of principal, any portion of the principal balance of the Class X Regular Interest which is distributable as a Subordination Reduction Amount, less (iii) any amounts paid as a Basis Risk Payment.

Class X Regular Interest: The Upper Tier Regular Interest represented by the Class X Certificates as specified and described in the Preliminary Statement and the related footnote thereto.

Closing Date: February 25, 2004.

Code: The Internal Revenue Code of 1986, including any successor or amendatory provisions.

Collection Account: As defined in Section 3.10(a).

Compensating Interest: For any Distribution Date, the lesser of (a) the Prepayment Interest Shortfall, if any, for such Distribution Date, and (b) the Servicing Fee payable to the Servicer for such Distribution Date.

Condemnation Proceeds: All awards of settlements in respect of a

Mortgaged Property, whether permanent or temporary, partial or entire, by exercise of the power of eminent domain or condemnation.

Corporate Trust Office: The designated office of the Trustee in the State of California at which at any particular time its corporate trust business with respect to this Agreement is administered, which office at the date of the execution of this Agreement is located at 1761 East St. Andrew Place, Santa Ana, California 92705, Attn: Trust Administration DC04M1, facsimile no. (714) 247-6478 and which is the address to which notices to and correspondence with the Trustee should be directed.

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Corresponding Class: The class of interests in any REMIC created under this Agreement that correspond to the Class of interests in another such REMIC or to a Class of Certificates in the manner set out below:

MIDDLE TIER CLASS DESIGNATION	UPPER TIER INTEREST	CORRESPONDING CERTIFICATE
Class MT-A-1	Class A-1	Class A-1
Class MT -A-2	Class A-2	Class A-2
Class MT -A-3	Class A-3	Class A-3
Class MT -A-4	Class A-4	Class A-4
Class MT -M-1	Class M-1	Class M-1
Class MT -M-2	Class M-2	Class M-2
Class MT -M-3	Class M-3	Class M-3
Class MT -B-1	Class B-1	Class B-1
Class MT -B-2	Class B-2	Class B-2
Class MT -B-3	Class B-3	Class B-3

Countrywide: Countrywide Home Loans Servicing LP, a Texas limited partnership.

Cumulative Loss Percentage: With respect to any Distribution Date, the percentage equivalent of a fraction, the numerator of which is the aggregate amount of Realized Losses incurred from the Cut-off Date to the last day of the preceding calendar month less any amounts received with respect to Realized Losses on the related Mortgage Loans subsequent to the Final Recovery Determination being made with respect to such Mortgage Loans and the denominator of which is the Cut-off Date Principal Balance of the Mortgage Loans.

Current Maximum Amount: With respect to any Distribution Date, the sum of (i) the aggregate of the Stated Principal Balances of the Mortgage Loans in the Trust at such time, and (ii) with respect to each Distribution Date on or prior to May 25, 2004, the Pre-Funding Amount immediately prior to such Distribution Date, net of investment earnings on deposit therein.

Custodial File: With respect to each Mortgage Loan, the file retained by the Trustee consisting of items (i) - (viii) of Section 2.01(b).

Cut-off Date: With respect to the Initial Mortgage Loans, February 1, 2004, and with respect to each Subsequent Mortgage Loan, the related Subsequent Cut-off Date.

Cut-off Date Pool Principal Balance: The aggregate Stated Principal Balances of all Mortgage Loans as of the Cut-off Date.

Cut-off Date Principal Balance: As to any Mortgage Loan, the Stated Principal Balance thereof as of the close of business on the Cut-off Date.

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Data Tape Information: The information provided by the Unaffiliated Seller as of February 1, 2004 to the Depositor setting forth the following information with respect to each Mortgage Loan: (1) the Mortgagor's name; (2) as to each Mortgage Loan, the Scheduled Principal Balance as of the Cut-off Date; (3) the Mortgage Rate Cap; (4) the Index; (5) a code indicating whether the Mortgaged Property is owner-occupied; (6) the type of Mortgaged Property; (7) the first date on which the Scheduled Payment was due on the Mortgage Loan and, if such date is not consistent with the Due Date currently in effect, such Due Date; (8) the "paid through date" based on payments received from the related Mortgagor; (9) the original principal amount of the Mortgage Loan; (10) with respect to Adjustable Rate Mortgage Loans, the Maximum Mortgage Rate; (11) the type of Mortgage Loan (i.e., fixed or adjustable); (12) a code indicating the purpose of the loan (i.e., purchase, rate and term refinance, equity take-out refinance); (13) a code indicating the documentation style (i.e., full, asset verification, income verification and no documentation); (14) the credit risk score (FICO score); (15) the loan credit grade classification (as described in the Underwriting Guidelines); (16) with respect to each Adjustable Rate Mortgage Loan, the Minimum Mortgage Rate; (17) the Mortgage Rate at origination; (18) with respect to each Adjustable Rate Mortgage Loan, the first Adjustment Date

immediately following the Cut-off Date; (19) the value of the Mortgaged Property; (20) a code indicating the type and term of Prepayment Charges applicable to such Mortgage Loan, if any; and (21) with respect to each Adjustable Rate Mortgage Loan, the Periodic Mortgage Rate Cap. With respect to the Mortgage Loans in the aggregate, the Data Tape Information shall set forth the following information, as of the Cut-off Date: (1) the number of Mortgage Loans; (2) the current aggregate outstanding principal balance of the Mortgage Loans; (3) the weighted average Mortgage Rate of the Mortgage Loans; and (4) the weighted average maturity of the Mortgage Loans.

**Debt Service Reduction:** With respect to any Mortgage Loan, a reduction by a court of competent jurisdiction in a proceeding under the United States Bankruptcy Code in the Scheduled Payment for such Mortgage Loan which became final and non-appealable, except such a reduction resulting from a Deficient Valuation or any reduction that results in a permanent forgiveness of principal.

**Deficient Valuation:** With respect to any Mortgage Loan, a valuation of the related Mortgaged Property by a court of competent jurisdiction in an amount less than the then-outstanding principal balance of the Mortgage Loan, which valuation results from a proceeding initiated under the United States Bankruptcy Code.

**Definitive Certificates:** Any Certificate evidenced by a Physical Certificate and any Certificate issued in lieu of a Book-Entry Certificate pursuant to Section 5.02(e).

**Delay Certificates:** As specified in the Preliminary Statement.

**Deleted Mortgage Loan:** A Mortgage Loan that is repurchased by the Unaffiliated Seller or the related Originator, as applicable, or replaced with a Substitute Mortgage Loan in accordance with the terms hereof and the related Mortgage Loan Purchase Agreement.

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**Delinquency Trigger Event:** With respect to a Distribution Date after the Stepdown Date, the event that is in effect if the quotient (expressed as a percentage) of (x) the three-month rolling daily average of the Stated Principal Balance of 60+ Day Delinquent Loans as of the last day of the related Due Period, over (y) the Pool Stated Principal Balance of the Mortgage Loans as of the last day of the related Due Period exceeds 44.50% of the prior period's Senior Enhancement Percentage.

**Delinquent:** A mortgage loan is "Delinquent" if any Scheduled Payment due on a due date is not made by the close of business on the next scheduled due date for that mortgage loan (including all Mortgage Loans in foreclosure, Mortgage Loans in respect of REO Properties and Mortgage Loans for which the related Mortgagor has declared bankruptcy). A mortgage loan is "30 days Delinquent" if the Scheduled Payment has not been received by the close of business on the corresponding day of the month immediately succeeding the month in which that Scheduled Payment was due or, if there was no corresponding date (e.g., as when a 30-day month follows a 31-day month in which the payment was due on the 31st day of that month), then on the last day of that immediately preceding month; and similarly for "60 days Delinquent" and "90 days Delinquent," etc.

**Delivery Date:** With respect to the Initial Mortgage Loans, the Closing Date; with respect to any Subsequent Mortgage Loans, the related Subsequent Transfer Date therefor.

**Denomination:** With respect to each Certificate, the amount set forth on the face thereof as the "Initial Certificate Balance of this Certificate" or the Percentage Interest appearing on the face thereof.

**Depositor:** Morgan Stanley ABS Capital I Inc., a Delaware corporation, or its successor in interest.

**Depository:** The initial Depository shall be The Depository Trust Company, the nominee of which is CEDE & Co., as the registered Holder of the Book-Entry Certificates. The Depository shall at all times be a "clearing corporation" as defined in Section 8-102(a)(5) of the Uniform Commercial Code of the State of New York.

**Depository Participant:** A broker, dealer, bank or other financial institution or other Person for whom from time to time a Depository effects book-entry transfers and pledges of securities deposited with the Depository.

**Determination Date:** With respect to each Remittance Date, the Business Day immediately preceding such Remittance Date.

**Distribution Account:** The separate Eligible Account created and maintained by the Trustee pursuant to Section 3.07(d) in the name of the Trustee for the benefit of the Certificateholders and designated "Deutsche Bank National Trust Company, in trust for registered holders of CDC Mortgage Capital Trust

Distribution Date: The 25th day of each calendar month after the initial issuance of the Certificates, or if such day is not a Business Day, the next succeeding Business Day, commencing in March 2004.

Document Certification and Exception Report: The report attached to Exhibit F hereto.

Due Date: The day of the month on which the Scheduled Payment is due on a Mortgage Loan, exclusive of any days of grace.

Due Period: With respect to each Distribution Date, the period commencing on the second day of the calendar month preceding the month in which such Distribution Date occurs and ending on the first day of the calendar month in which such Distribution Date occurs.

Eligible Account: Any of (i) an account or accounts maintained with a federal or state chartered depository institution or trust company the commercial paper, short-term debt obligations, demand deposits or other short-term deposits of which are rated in one of the two highest rating categories by each of the Rating Agencies at the time any amounts are held on deposit therein, (ii) an account or accounts the deposits in which are fully insured by the FDIC (to the limits established by such corporation), the uninsured deposits in which account are otherwise secured such that, as evidenced by an Opinion of Counsel delivered to each Rating Agency, the Certificateholders will have a claim with respect to the funds in such account or a perfected first priority security interest against such collateral (which shall be limited to Permitted Investments) securing such funds that is superior to claims of any other depositors or creditors of the depository institution with which such account is maintained, (iii) a trust account or accounts maintained with the trust department of a federal or state chartered depository institution, national banking association or trust company acting in its fiduciary capacity, (iv) an account otherwise acceptable to each Rating Agency or (v) an account maintained with a "qualified depository" (as such term is defined in the related Servicing Agreement). Eligible Accounts may bear interest.

Eligible Institution: A federal or state chartered depository institution or trust company, which (x) with respect to any Eligible Account, the amounts on deposit in which will be held for less than 30 days, the commercial paper, short-term debt obligations, or other short-term deposits of which are rated at least "F1" by Fitch, "P-1" by Moody's, and either "A-1+" or "A-1", if the amounts on deposit represent less than 20% of the initial par value of the securities, are not intended to be used as credit enhancement and are to be held for less than 30 days, by Standard & Poor's (or a comparable rating if another Rating Agency is specified by the Depositor by written notice to the Servicer and the Trustee) or (y) with respect to any Eligible Account, the amounts on deposit in which will be held for no more than 365 days, the long-term unsecured debt obligations of which are rated at least "A" by Fitch, "A" by Standard & Poor's and "A2" by Moody's (or a comparable rating if another Rating Agency is specified by the Depositor by written notice to the Servicer and the Trustee).

Encore: Encore Credit Corporation, a California corporation.

Encore Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Encore, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Encore in connection with any Subsequent Transfer of Encore Mortgage Loans.

Encore Mortgage Loan: A Mortgage Loan which was acquired from Encore by the Unaffiliated Seller pursuant to the Encore Purchase Agreement, and which has been acquired by the Trust Fund.

Encore Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of December 1, 2002, as amended to date, by and between the Unaffiliated Seller and Encore.

ERISA: The Employee Retirement Income Security Act of 1974, as amended.

ERISA-Restricted Certificate: As specified in the Preliminary Statement.

Escrow Account: The Eligible Account or Accounts established and maintained pursuant to Section 3.09(b).

Escrow Payments: As defined in Section 3.09(b).

Event of Default: As defined in Section 7.01.

Excess Reserve Fund Account: The separate Eligible Account created and maintained by the Trustee pursuant to Sections 3.07(b) and 3.07(c) in the name of the Trustee for the benefit of the Regular Certificateholders and designated "Deutsche Bank National Trust Company, in trust for registered holders of CDC Mortgage Capital Trust 2004-HE1, Mortgage Pass-Through Certificates, Series 2004-HE1". Amounts on deposit in the Excess Reserve Fund Account shall not be invested.

Excess Subordinated Amount: With respect to any Distribution Date, the excess, if any, of (a) the Subordinated Amount on such Distribution Date over (b) the Specified Subordinated Amount for such Distribution Date.

Exchange Act: As defined in Section 8.12(a).

Expense Fees: As to each Mortgage Loan, the sum of the Servicing Fee and the Trustee Fee.

Expense Fee Rate: As to each Mortgage Loan, a per annum rate equal to the sum of the Servicing Fee Rate and the Trustee Fee Rate.

Extra Principal Distribution Amount: As of any Distribution Date, the lesser of (x) the related Total Monthly Excess Spread for such Distribution Date and (y) the Subordination Deficiency for such Distribution Date.

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Fannie Mae: The Federal National Mortgage Association, or any successor thereto.

Fannie Mae Guides: The Fannie Mae Sellers' Guide and the Fannie Mae Servicers' Guide and all amendments or additions thereto.

FDIC: The Federal Deposit Insurance Corporation, or any successor thereto.

FGMC: First Guaranty Mortgage Corporation, a Virginia corporation.

FGMC Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and FGMC, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and FGMC in connection with any Subsequent Transfer of FGMC Mortgage Loans.

FGMC Mortgage Loan: A Mortgage Loan which was acquired from FGMC by the Unaffiliated Seller pursuant to the FGMC Purchase Agreement, and which has been acquired by the Trust Fund.

FGMC Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of August 1, 2003, as amended to date, by and between the Unaffiliated Seller and FGMC.

FHLMC: The Federal Home Loan Mortgage Corporation, a corporate instrumentality of the United States created and existing under Title III of the Emergency Home Finance Act of 1970, as amended, or any successor thereto.

Final Certification: A certification submitted by the Trustee in substantially the form of Exhibit G hereto.

Final Recovery Determination: With respect to any defaulted Mortgage Loan or any REO Property (other than a Mortgage Loan or REO Property purchased by an Originator as contemplated by the Assignment and Recognition Agreements), a determination made by the Servicer that all Insurance Proceeds, Condemnation Proceeds, Liquidation Proceeds and other payments or recoveries which the Servicer, in its reasonable good faith judgment, expects to be finally recoverable in respect thereof have been so recovered. The Servicer shall maintain records, prepared by a Servicing Officer, of each Final Recovery Determination made thereby.

Final Scheduled Distribution Date: The Final Scheduled Distribution Date for each Class of Certificates is the Distribution Date in each of the following months:

	FINAL SCHEDULED DISTRIBUTION DATE -----
Class A-1 Certificates.....	June 25, 2034
Class A-2 Certificates.....	June 25, 2034
Class A-3 Certificates.....	June 25, 2034

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FINAL SCHEDULED  
DISTRIBUTION DATE

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Class A-4 Certificates.....	June 25, 2034
Class M-1 Certificates.....	June 25, 2034
Class M-2 Certificates.....	June 25, 2034
Class M-3 Certificates.....	June 25, 2034
Class B-1 Certificates.....	June 25, 2034
Class B-2 Certificates.....	June 25, 2034
Class B-3 Certificates.....	June 25, 2034
Class X Certificates.....	June 25, 2034
Class P Certificates.....	June 25, 2034
Class R Certificates.....	June 25, 2034

First Banc: First Banc Mortgage, Inc., a Missouri corporation.

First Banc Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and First Banc, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and First Banc in connection with any Subsequent Transfer of First Banc Mortgage Loans.

First Banc Mortgage Loan: A Mortgage Loan which was acquired from First Banc by the Unaffiliated Seller pursuant to the First Banc Purchase Agreement, and which has been acquired by the Trust Fund.

First Banc Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of April 1, 2003, as amended to date, by and between the Unaffiliated Seller and First Banc.

Fitch: Fitch, Inc. If Fitch is designated as a Rating Agency in the Preliminary Statement, for purposes of Section 10.05(b) the address for notices to Fitch shall be Fitch, Inc., One State St. Plaza, New York, New York 10004, Attention: Residential Mortgage Surveillance Group - CDC Mortgage Capital Trust 2004-HE1, or such other address as Fitch may hereafter furnish to the Depositor and the Servicer.

Fixed Rate Mortgage Loan: A Mortgage Loan bearing interest at a fixed rate.

Floor Amount: An amount equal to the product of (x) 0.50% and (y) the Maximum Pool Principal Balance.

Gross Margin: With respect to each Adjustable Rate Mortgage Loan, the fixed percentage amount set forth in the related Mortgage Note to be added to the applicable Index to determine the Mortgage Rate.

Group I Allocation Percentage: With respect to any Distribution Date, the percentage equivalent of a fraction, (i) the numerator of which is the Group I Principal

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Remittance Amount for such Distribution Date and (ii) the denominator of which is the Principal Remittance Amount for such Distribution Date.

Group I Initial Pre-Funded Amount: \$92,766,053.

Group I Interest Remittance Amount: With respect to any Distribution Date, the portion of the Interest Remittance Amount that was collected or advanced on the Group I Mortgage Loans.

Group I Mortgage Loans: The Mortgage Loans allocated to Group I which primarily support the Class A-1 Certificates, as initially set forth on Schedule I hereto.

Group I Pre-Funding Account: The separate Eligible Account created and maintained by the Trustee pursuant to Section 3.07(f) in the name of the Trustee for the benefit of the Certificateholders, and designated "Deutsche Bank National Trust Company, in trust for registered holders of CDC Mortgage Capital Trust 2004-HE4, Mortgage Pass-Through Certificates, Series 2004-HE4," the funds of which, during the Pre-Funding Period, shall be applied solely to the purchase of Group I Subsequent Mortgage Loans.

Group I Principal Remittance Amount: With respect to any Distribution Date, that portion of the Principal Remittance Amount for such Distribution Date that was collected or advanced on the Group I Mortgage Loans.

Group I Subsequent Mortgage Loans: The Mortgage Loans hereafter transferred and assigned to the Trust Fund and allocated to Group I pursuant to Section 2.01(c), each of which shall have been purchased by the Unaffiliated Seller under a Mortgage Loan Purchase Agreement.

Group II Allocation Percentage: With respect to any Distribution Date, the percentage equivalent of a fraction, (i) the numerator of which is the Group II Principal Remittance Amount for such Distribution Date and (ii) the denominator of which is the Principal Remittance Amount for such Distribution Date.

Group II Initial Pre-Funded Amount: \$46,127,841.

Group II Interest Remittance Amount: With respect to any Distribution Date, the portion of the Interest Remittance Amount that was collected or advanced on the Group II Mortgage Loans.

Group II Mortgage Loans: The Mortgage Loans allocated to Group II which primarily support the Class A-2 Certificates, as initially set forth on Schedule I hereto.

Group II Pre-Funding Account: The separate Eligible Account created and maintained by the Trustee pursuant to Section 3.07(f) in the name of the Trustee for the benefit of the Certificateholders, and designated "Deutsche Bank National Trust Company, in trust for

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registered holders of CDC Mortgage Capital Trust 2004-HE1, Mortgage Pass-Through Certificates, Series 2004-HE1," the funds of which, during the Pre-Funding Period, shall be applied solely to the purchase of Group II Subsequent Mortgage Loans.

Group II Principal Remittance Amount: With respect to any Distribution Date, that portion of the Principal Remittance Amount for such Distribution Date that was collected or advanced on the Group II Mortgage Loans.

Group II Subsequent Mortgage Loans: The Mortgage Loans hereafter transferred and assigned to the Trust Fund and allocated to Group II pursuant to Section 2.01(c), each of which shall have been purchased by the Unaffiliated Seller under a Mortgage Loan Purchase Agreement.

Group II/Group III Class A Cap Agreement: The interest rate cap agreement, relating to the Class A-2 Certificates and the Group III Class A Sequential Certificates, dated February 25, 2004 with the Cap Provider, as "Party A" thereunder, and the Unaffiliated Seller, as "Party B" thereunder, or any replacement thereof.

Group II/Group III Class A Interest Rate Cap Payment: On the 24th day of each month (subject to adjustment in accordance with ISDA's "Preceding Business Day Convention"), the product of (A) (i) commencing March 24, 2004 until and including November 24, 2005, the number of basis points by which one-month LIBOR exceeds 6.650% (up to a maximum excess of 235 basis points); (ii) commencing December 24, 2005 until and including May 24, 2006, the number of basis points by which one-month LIBOR exceeds 8.000% (up to a maximum excess of 180 basis points); (iii) commencing June 24, 2006 until and including November 24, 2006, the number of basis points by which one-month LIBOR exceeds 8.700% (up to a maximum excess of 140 basis points; or (iv) commencing December 24, 2006 until and including February 24, 2007, the number of basis points by which one-month LIBOR exceeds 9.500% (up to a maximum excess of 60 basis points), (B) the Class A notional balance and (C) the Class A notional balance multiplier, each as set forth on the notional balance and multiplier schedule attached to the Class A Cap Agreement as applicable to that Distribution Date, based on an "actual/360" accrual.

Group III Allocation Percentage: With respect to any Distribution Date, the percentage equivalent of a fraction, (i) the numerator of which is the Group III Principal Remittance Amount for such Distribution Date and (ii) the denominator of which is the Principal Remittance Amount for such Distribution Date.

Group III Class A Sequential Certificates: The Class A-3 and Class A-4 Certificates.

Group III Interest Remittance Amount: With respect to any Distribution Date, the portion of the Interest Remittance Amount that was collected or advanced on the Group III Mortgage Loans.

Group III Mortgage Loans: The Mortgage Loans allocated to Group III which primarily support the Group III Class A Sequential Certificates, as initially set forth on Schedule I hereto.

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Group III Initial Pre-Funded Amount: \$29,246,889

Group III Pre-Funding Account: The separate Eligible Account created and maintained by the Trustee pursuant to Section 3.07(f) in the name of the



Trustee for the benefit of the Certificateholders, and designated "Deutsche Bank National Trust Company, in trust for registered holders of CDC Mortgage Capital Trust 2004-HE1, Mortgage Pass-Through Certificates, Series 2004-HE1," the funds of which, during the Pre-Funding Period, shall be applied solely to the purchase of Group III Subsequent Mortgage Loans.

Group III Principal Remittance Amount: With respect to any Distribution Date, that portion of the Principal Remittance Amount for such Distribution Date that was collected or advanced on the Group III Mortgage Loans.

Group III Subsequent Mortgage Loans: The Mortgage Loans hereafter transferred and assigned to the Trust Fund and allocated to Group III pursuant to Section 2.01(c), each of which shall have been purchased by the Unaffiliated Seller under a Mortgage Loan Purchase Agreement.

High Cost Loan: A Mortgage Loan classified as (a) a "high cost" loan under the Home Ownership and Equity Protection Act of 1994 or (b) a "high cost," "threshold," "covered", "predatory" or similar loan under any other applicable state, federal or local law.

I&I Payments: Payments due and owing under the Insurance and Indemnity Agreement.

Impac: Impac Funding Corporation, a California corporation.

Impac Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Impac, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Impac in connection with any Subsequent Transfer of Impac Mortgage Loans.

Impac Mortgage Loan: A Mortgage Loan which was acquired from Impac by the Unaffiliated Seller pursuant to the Impac Purchase Agreement, and which has been acquired by the Trust Fund.

Impac Purchase Agreement: The Amended and Restated Mortgage Loan Purchase and Warranties Agreement, dated as of January 29, 2003, as amended to date, by and between the Unaffiliated Seller and Impac.

Index: As to each Adjustable Rate Mortgage Loan, the index from time to time in effect for the adjustment of the Mortgage Rate set forth as such on the related Mortgage Note.

Initial Cut-off Date: February 1, 2004.

Initial Mortgage Loans: The Mortgage Loans delivered by the Depositor on the Startup Date.

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Initial Pre-Funded Amount: The sum of the Group I Initial Pre-Funded Amount, the Group II Initial Pre-Funded Amount and the Group III Initial Pre-Funded Amount.

Insurance and Indemnity Agreement: The Insurance and Indemnity Agreement dated as of February 1, 2004 among the Certificate Insurer, the Servicer and the Unaffiliated Seller, as such agreement may be amended or supplemented in accordance with the provisions thereof.

Insurance Payment Account: The separate Eligible Account created and maintained by the Trustee pursuant to Section 4.05(c) in the name of the Trustee for the benefit of the Class A-1 Certificateholders and the Certificate Insurer, and designated "Deutsche Bank National Trust Company, in trust for Financial Security Assurance Inc. and the registered holders of CDC Mortgage Capital Trust 2004-HE1, Mortgage Pass-Through Certificates, Series 2004-HE1."

Insurance Policy: With respect to any Mortgage Loan included in the Trust Fund, any insurance policy, including all riders and endorsements thereto in effect, including any replacement policy or policies for any Insurance Policies.

Insurance Proceeds: With respect to each Mortgage Loan, proceeds of insurance policies insuring the Mortgage Loan or the related Mortgaged Property.

Insured Payment: With respect to any Distribution Date, the amount of the Class A-1 Deficiency for that Distribution Date.

Interest Accrual Period: With respect to any Distribution Date, the period beginning with the immediately preceding Distribution Date (or in the case of the first Distribution Date, the period from and including the Closing Date to but excluding such first Distribution Date) and ending on the day prior to the current Distribution Date (on an actual/360 day count basis).

Interest Deficit Amount: With respect to any Distribution Date, the

excess of (i) the aggregate Accrued Certificate Interest for all Classes of the Class A Certificates on such Distribution Date, over (ii) an amount of Available Funds allocated to pay such aggregate Accrued Certificate Interest pursuant to Section 4.02(a)(i)(B).

Interest Rate Cap Payment: The Group II/Group III Class A Interest Rate Cap Payment, the Class M Interest Rate Cap Payment and/or the Class B Interest Rate Cap Payment, as applicable.

Interest Remittance Amount: With respect to any Distribution Date, the sum of (a) the sum, without duplication, of the following amounts received by the Trustee from the Servicer on the related Remittance Date:

(i) all installments of interest due on the Mortgage Loans during the related Due Period and received or advanced by the Servicer on or prior to the related Remittance Date;

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(ii) Compensating Interest paid by the Servicer on such Remittance Date;

(iii) the interest component of all Substitution Adjustment Amounts and Repurchase Prices received by the Servicer during the related Due Period;

(iv) the interest component of all Condemnation Proceeds, Insurance Proceeds and Liquidation Proceeds received by the Servicer during the related Due Period (in each case, net (but not to be reduced below zero) of unreimbursed expenses incurred in connection with a liquidation or foreclosure and unreimbursed Advances, if any); and

(v) the interest component of the proceeds of any termination of the Trust Fund;

reduced by the Servicing Fee for the related Due Period, together with amounts in reimbursement for Advances previously made with respect to the Mortgage Loans and other amounts as to which the Servicer is entitled to be reimbursed pursuant to the Agreement; and

(b) the Capitalized Interest Requirement, if any, deposited into the Distribution Account on such Distribution Date.

Investment Account: As defined in Section 3.12(a).

Investor: With respect to each MERS Designated Mortgage Loan, the Person named on the MERS System as the investor pursuant to the MERS Procedures Manual.

Late Collections: With respect to any Mortgage Loan and any Due Period, all amounts received subsequent to the Determination Date immediately following such Due Period, whether as late payments of Scheduled Payments or as Insurance Proceeds, Condemnation Proceeds, Liquidation Proceeds or otherwise, which represent late payments or collections of principal and/or interest due (without regard to any acceleration of payments under the related Mortgage and Mortgage Note) but delinquent for such Due Period and not previously recovered.

Late Payment Rate: Has the meaning ascribed thereto in the Insurance and Indemnity Agreement.

Lenders Direct: Lenders Direct Capital Corporation, a California corporation.

Lenders Direct Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Lenders Direct, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Lenders Direct in connection with any Subsequent Transfer of Lenders Mortgage Loans.

Lenders Direct Mortgage Loan: A Mortgage Loan which was acquired from Lenders Direct by the Unaffiliated Seller pursuant to the Lenders Direct Purchase Agreement, and which has been acquired by the Trust Fund.

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Lenders Direct Purchase Agreement: The Amended and Restated Mortgage Loan Purchase and Warranties Agreement, dated as of October 1, 2003, as amended to date, by and between the Unaffiliated Seller and Lenders Direct.

LIBOR: With respect to any Interest Accrual Period for the LIBOR Certificates, the rate determined by the Trustee on the related LIBOR Determination Date on the basis of the offered rate for one-month U.S. dollar deposits as such rate appears on Telerate Page 3750 as of 11:00 a.m. (London time) on such date; provided that if such rate does not appear on Telerate Page

3750, the rate for such date will be determined on the basis of the rates at which one-month U.S. dollar deposits are offered by the Reference Banks at approximately 11:00 a.m. (London time) on such date to prime banks in the London interbank market. In such event, the Trustee will request the principal London office of each of the Reference Banks to provide a quotation of its rate. If at least two such quotations are provided, the rate for that date will be the arithmetic mean of the quotations (rounded upwards if necessary to the nearest whole multiple of 1/16%). If fewer than two quotations are provided as requested, the rate for that date will be the arithmetic mean of the rates quoted by major banks in New York City, selected by the Servicer, at approximately 11:00 a.m. (New York City time) on such date for one-month U.S. dollar loan to leading European banks.

LIBOR Certificates: As specified in the Preliminary Statement.

LIBOR Determination Date: With respect to any Interest Accrual Period (other than the initial Interest Accrual Period) for the LIBOR Certificates, the second London Business Day preceding the commencement of such Interest Accrual Period.

Liquidated Mortgage Loan: With respect to any Distribution Date, a defaulted Mortgage Loan (including any REO Property) which was liquidated in the calendar month preceding the month of such Distribution Date and as to which the Servicer has certified (in accordance with this Agreement) that it has received all amounts it expects to receive in connection with the liquidation of such Mortgage Loan including the final disposition of an REO Property.

Liquidation Event: With respect to any Mortgage Loan, any of the following events: (i) such Mortgage Loan is paid in full; (ii) a Final Recovery Determination is made as to such Mortgage Loan; or (iii) such Mortgage Loan is removed from coverage under this Agreement by reason of its being purchased, sold or replaced pursuant to or as contemplated by this Agreement. With respect to any REO Property, either of the following events: (i) a Final Recovery Determination is made as to such REO Property; or (ii) such REO Property is removed from coverage under this Agreement by reason of its being purchased pursuant to this Agreement.

Liquidation Proceeds: Cash received in connection with the liquidation of a Liquidated Mortgage Loan, whether through trustee's sale, foreclosure sale or otherwise, including any subsequent recoveries related to the Mortgage Loan after it has been liquidated.

Loan-to-Value Ratio or LTV: With respect to any Mortgage Loan, the ratio (expressed as a percentage) of the original outstanding principal amount of the Mortgage Loan as

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of the Cut-off Date (unless otherwise indicated), to the lesser of (a) the Appraised Value of the Mortgaged Property at origination, and (b) if the Mortgage Loan was made to finance the acquisition of the related Mortgaged Property, the purchase price of the Mortgaged Property.

Loan Group I Cap: The per annum rate equal to the weighted average gross rate of the Group I Mortgage Loans then in effect on the beginning of the related Due Period, less the applicable Expense Fee Rate and further reduced by the Premium Rate in respect of the Class A-1 Certificates.

Loan Group II Cap: The per annum rate equal to the weighted average gross rate of the Group II Mortgage Loans then in effect on the beginning of the related Due Period, less the applicable Expense Fee.

Loan Group III Cap: The per annum rate equal to the weighted average gross rate of the Group III Mortgage Loans then in effect on the beginning of the related Due Period, less the applicable Expense Fee.

London Business Day: Any day on which dealings in deposits of United States dollars are transacted in the London interbank market.

Loss Trigger Event: With respect to any Distribution Date, the event that is in effect if the aggregate amount of Realized Losses incurred since the related Cut-off Date through the last day of the related Prepayment Period divided by the Maximum Pool Principal Balance exceeds the applicable percentage as follows with respect to such Distribution Date: (a) 3.50% for the Distribution Dates occurring from March 2007 to February 2008; (b) 5.00% for Distribution Dates occurring from March 2008 to February 2009; and (c) 5.75% for Distribution Dates occurring in March 2009 and thereafter.

Lower Tier Regular Interest: As described in the Preliminary Statement.

Lower Tier REMIC: As described in the Preliminary Statement

Master Financial: Master Financial, Inc., a California corporation.

Master Financial Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Master Financial, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Master Financial in connection with any Subsequent Transfer of Master Financial Mortgage Loans.

Master Financial Mortgage Loan: A Mortgage Loan which was acquired from Master Financial by the Unaffiliated Seller pursuant to the Master Financial Purchase Agreement, and which has been acquired by the Trust Fund.

Master Financial Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of June 1, 2003, as amended to date, by and between the Unaffiliated Seller and Master Financial.

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Maximum Mortgage Rate: With respect to each Adjustable Rate Mortgage Loan, a rate that (i) is set forth on the Data Tape Information and in the related Mortgage Note and (ii) is the maximum interest rate to which the Mortgage Rate on such Adjustable Rate Mortgage Loan may be increased during the lifetime of such Adjustable Rate Mortgage Loan.

Maximum Pool Principal Balance: The aggregate Stated Principal Balances of all Initial Mortgage Loans as of the Initial Cut-off Date plus the Initial Pre-Funded Amount.

MERS: Mortgage Electronic Registration System, Inc.

MERS Designated Mortgage Loan: Mortgage Loans for which (a) the Originators have designated or will designate MERS as, and have taken or will take such action as is necessary to cause MERS to be, the mortgagee of record, as nominee for the Originators, in accordance with the MERS Procedure Manual and (b) the Originators have designated or will designate the Trust as the Investor on the MERS(R) System.

MERS Procedures Manual: The MERS Procedures Manual, as it may be amended, supplemented or otherwise modified from time to time.

MERS(R) System: MERS mortgage electronic registry system, as more particularly described in the MERS Procedures Manual.

Middle Tier Regular Interest: As described in the Preliminary Statement.

Middle Tier REMIC: As described in the Preliminary Statement.

Middle Tier WAC Cap: The weighted average of the Pass-Through Rates of the Middle Tier Regular Interests (other than the Class MT-N) minus, in the case of the Class MT-A-1 Interest, two times the Premium Rate.

Minimum Mortgage Rate: With respect to each Adjustable Rate Mortgage Loan, a rate that (i) is set forth on the Data Tape Information and in the related Mortgage Note and (ii) is the minimum interest rate to which the Mortgage Rate on such Adjustable Rate Mortgage Loan may be decreased during the lifetime of such Adjustable Rate Mortgage Loan.

Monthly Statement: The statement delivered to the Certificateholders pursuant to Section 4.03.

Moody's: Moody's Investors Service, Inc. If Moody's is designated as a Rating Agency in the Preliminary Statement, for purposes of Section 10.05(b) the address for notices to Moody's shall be Moody's Investors Service, Inc., 99 Church Street, New York, New York 10007, Attention: Residential Mortgage Pass-Through Group, or such other address as Moody's may hereafter furnish to the Depositor and the Servicer.

Mortgage: The mortgage, deed of trust or other instrument identified on the Mortgage Loan Schedule as securing a Mortgage Note.

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Mortgage File: The items pertaining to a particular Mortgage Loan contained in either the Servicing File or Custodial File.

Mortgage Loan Purchase Agreement: The Aames Purchase Agreement, the Accredited Purchase Agreement, the Aegis Purchase Agreement, the Ameriquest Purchase Agreement, the BNC Purchase Agreement, the CIT Mortgage Purchase Agreement, the Chapel Mortgage Purchase Agreement, the Encore Purchase Agreement, the FGMC Purchase Agreement, the First Banc Purchase Agreement, the Impac Purchase Agreement, the Lenders Direct Purchase Agreement, the Master Financial Purchase Agreement, the Novelle Purchase Agreement, the Oakmont Purchase Agreement, the People's Choice Purchase Agreement or the SIB Mortgage

Purchase Agreement, as applicable.

**Mortgage Loans:** An individual Mortgage Loan which is the subject of this Agreement, each Mortgage Loan originally sold and subject to this Agreement being identified on the Mortgage Loan Schedule, which Mortgage Loan includes, without limitation, the Mortgage File, the Scheduled Payments, Principal Prepayments, Liquidation Proceeds, Condemnation Proceeds, Insurance Proceeds, REO Disposition proceeds, Prepayment Charges, and all other rights, benefits, proceeds and obligations arising from or in connection with such Mortgage Loan, excluding replaced or repurchased Mortgage Loans. As applicable, "Mortgage Loan" shall be deemed to refer to REO Property.

**Mortgage Loan Schedule:** A schedule of Mortgage Loans annexed hereto as Schedule I, such schedule setting forth the following information with respect to each Mortgage Loan: (1) the Originator's Mortgage Loan number; (2) the city, state and zip code of the Mortgaged Property; (3) a code indicating whether the Mortgaged Property is a single family residence, two-family residence, three-family residence, four-family residence, PUD or condominium; (4) the current Mortgage Interest Rate; (5) the current net Mortgage Rate; (6) the current Scheduled Payment; (7) the Gross Margin; (8) the original term to maturity; (9) the scheduled maturity date; (10) the principal balance of the Mortgage Loan as of the Cut-off Date after deduction of payments of principal due on or before the Cut-off Date whether or not collected; (11) the Loan-to-Value Ratio; (12) the next Interest Rate Adjustment Date; (13) the lifetime Mortgage Interest Rate Cap; (14) whether the Mortgage Loan is convertible or not; (15) a code indicating the mortgage guaranty insurance company; (16) the Servicing Fee; (17) the identity of the related Originator of such Mortgage Loan; (18) the Mortgagor's name; (19) the "paid-through" date (based on payments received from the related Mortgagor) as of the Cut-off Date; (20) the Servicing Transfer Date; (21) a Code indicating whether the Mortgage Loan is a Group I Mortgage Loan, Group II Mortgage Loan or Group III Mortgage Loan; and (22) a Code indicating whether the Mortgage Loan has been 30 days Delinquent since the applicable Servicing Transfer Date.

**Mortgage Note:** The note or other evidence of the indebtedness of a Mortgagor under a Mortgage Loan.

**Mortgage Rate:** The annual rate of interest borne on a Mortgage Note, which shall be adjusted from time to time with respect to Adjustable Rate Mortgage Loans.

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**Mortgage Rate Caps:** With respect to an Adjustable Rate Mortgage Loan, the Periodic Mortgage Rate Cap, the Maximum Mortgage Rate, and the Minimum Mortgage Rate for such Mortgage Loan.

**Mortgaged Property:** With respect to each Mortgage Loan, the real property (or leasehold estate, if applicable) identified on the Mortgage Loan Schedule as securing repayment of the debt evidenced by a Mortgage Note.

**Mortgagor:** The obligor(s) on a Mortgage Note.

**Net Interest Margin Securities:** As defined in Section 9.01.

**Net Monthly Excess Cash Flow:** For any Distribution Date the amount remaining for distribution pursuant to subsection 4.02(a)(iii) (before giving effect to distributions pursuant to such subsection).

**Net Prepayment Interest Shortfall:** For any Distribution Date, the amount by which the sum of the Prepayment Interest Shortfalls exceeds the sum of the Compensating Interest payments made on such Distribution Date.

**NIM Closing Date:** On or about February 25, 2004.

**NIMs Trust:** CDC Mortgage Capital Inc. NIM Trust 2004-HE1N, a Delaware statutory trust.

**Non-Delay Certificates:** As specified in the Preliminary Statement.

**Non-Permitted Transferee:** A Person other than a Permitted Transferee.

**Nonrecoverable P&I Advance:** Any P&I Advance previously made or proposed to be made in respect of a Mortgage Loan or REO Property that, in the good faith business judgment of the Servicer, will not or, in the case of a proposed P&I Advance, would not be ultimately recoverable from related late payments, Insurance Proceeds, Condemnation Proceeds, Liquidation Proceeds or otherwise on such Mortgage Loan or REO Property as provided herein.

**Nonrecoverable Servicing Advance:** Any Servicing Advances previously made or proposed to be made in respect of a Mortgage Loan or REO Property, which, in the good faith business judgment of the Servicer, will not or, in the case of a proposed Servicing Advance, would not, be ultimately recoverable from related late payments, Insurance Proceeds, Condemnation Proceeds, Liquidation

Proceeds or otherwise on such Mortgage Loan or REO Property. The determination by the Servicer that it has made a Nonrecoverable Servicing Advance or that any proposed Servicing Advances, if made, would constitute a Nonrecoverable Servicing Advance, shall be evidenced by an Officers' Certificate delivered to the Trustee.

Notice of Final Distribution: The notice to be provided pursuant to Section 9.02 to the effect that final distribution on any of the Certificates shall be made only upon presentation and surrender thereof.

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Novelle: Novelle Financial Services, Inc., a California corporation.

Novelle Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Novelle, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Novelle in connection with any Subsequent Transfer of Novelle Mortgage Loans.

Novelle Mortgage Loan: A Mortgage Loan which was acquired from Novelle by the Unaffiliated Seller pursuant to the Novelle Purchase Agreement, and which has been acquired by the Trust Fund.

Novelle Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of September 27, 2002, by and between the Unaffiliated Seller and Novelle.

Oakmont: Oakmont Mortgage Company, Inc., a California corporation.

Oakmont Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and Oakmont and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and Oakmont in connection with any Subsequent Transfer of Oakmont Mortgage Loans.

Oakmont Mortgage Loan: A Mortgage Loan which was acquired from Oakmont by the Unaffiliated Seller pursuant to the Oakmont Purchase Agreement, and which has been acquired by the Trust Fund.

Oakmont Purchase Agreement: The Mortgage Loan Purchase and Warranties Agreement, dated as of November 24, 2003, by and between the Unaffiliated Seller and Oakmont.

Offered Certificates: As specified in the Preliminary Statement.

Officer's Certificate: A certificate signed by an officer of the Servicer with responsibility for the servicing of the Mortgage Loans and listed on a list delivered to the Trustee pursuant to this Agreement.

Opinion of Counsel: A written opinion of counsel, who may be in-house counsel for the Servicer or the Subservicer, reasonably acceptable to the Trustee and to the Certificate Insurer; provided that any Opinion of Counsel relating to (a) qualification of the Mortgage Loans in a REMIC or (b) compliance with the REMIC Provisions, must be (unless otherwise stated in such Opinion of Counsel) an opinion of counsel who (i) is in fact independent of the Servicer of the Mortgage Loans, (ii) does not have any material direct or indirect financial interest in the Servicer of the Mortgage Loans or in an affiliate of either and (iii) is not connected with the Servicer of the Mortgage Loans as an officer, employee, director or person performing similar functions.

Optional Termination Date: means:

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(i) For so long as the Class X Certificates are 100% owned, either directly or indirectly, by the Unaffiliated Seller or any Affiliate thereof, then the Servicer may cause the Optional Termination Date to occur on any Distribution Date when the aggregate Stated Principal Balance of the Mortgage Loans is 10.00% or less of the Maximum Pool Principal Balance; and

(ii) If the Class X Certificates are not 100% owned, either directly or indirectly, by the Unaffiliated Seller or any Affiliate thereof, then the Holders of a majority in Class Certificate Balance of the Class X Certificates may cause the Optional Termination Date to occur on any Distribution Date when the aggregate Stated Principal Balance of the Mortgage Loans is 10.00% or less of the Maximum Pool Principal Balance, and, if such Class X Certificateholders do not do so, then the Servicer shall also have such right.

Originator: The party that originated or acquired a Mortgage Loan and, more specifically, (i) with respect to any Aames Mortgage Loan, Aames, (ii) with respect to any Accredited Mortgage Loan, Accredited, (iii) with respect to any

Aegis Mortgage Loan, Aegis, (iv) with respect to any Ameriquest Mortgage Loan, Ameriquest, (v) with respect to any BNC Mortgage Loan, BNC, (vi) with respect to any CIT Mortgage Loan, CIT (vii) with respect to any Chapel Mortgage Loan, Chapel Mortgage, (viii) with respect to any Encore Mortgage Loan, Encore, (ix) with respect to any First Banc Mortgage Loan, First Banc, (x) with respect to any FGMC Mortgage Loan, FGMC, (xi) with respect to any Impac Mortgage Loan or Novelle Mortgage Loan, Impac or Novelle, as applicable, (xii) with respect to any Lenders Direct Mortgage Loan, Lenders Direct(xiii) with respect to any Master Financial Mortgage Loan, Master Financial, (xiv) with respect to any Oakmont Mortgage Loan, Oakmont, (xv) with respect to any People's Choice Mortgage Loan, People's Choice and (xvi) with respect to any SIB Mortgage Loan, SIB Mortgage.

OTS: Office of Thrift Supervision, and any successor thereto.

Outstanding: With respect to the Certificates as of any date of determination, all Certificates theretofore executed and authenticated under this Agreement except:

(i) Certificates theretofore canceled by the Trustee or delivered to the Trustee for cancellation; and

(ii) Certificates in exchange for which or in lieu of which other Certificates have been executed and delivered by the Trustee pursuant to this Agreement.

Outstanding Mortgage Loan: As of any Due Date, a Mortgage Loan with a Stated Principal Balance greater than zero which was not the subject of a Principal Prepayment in Full prior to such Due Date and which did not become a Liquidated Mortgage Loan prior to such Due Date.

Ownership Interest: As to any Residual Certificate, any ownership interest in such Certificate including any interest in such Certificate as the Holder thereof and any other interest therein, whether direct or indirect, legal or beneficial.

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P&I Advance: As to any Mortgage Loan or REO Property, any advance made by the Servicer in respect of any Remittance Date with respect to any Mortgage Loan representing the aggregate of all payments of principal and interest on such Mortgage Loan, net of the related Servicing Fee, that were due during the related Due Period on the Mortgage Loan, and that were delinquent or unpaid on the related Determination Date, plus certain amounts representing assumed payments not covered by any current net income on the Mortgaged Properties acquired by foreclosure or deed in lieu of foreclosure as determined pursuant to Section 4.01.

Pass-Through Margin: With respect to each Class of Regular Certificates, on or prior to the Optional Termination Date the following percentages: Class A-1, 0.290%; Class A-2, 0.310%; Class A-3, 0.210%; Class A-4, 0.460%; Class M-1, 0.570%; Class M-2, 1.200%; Class M-3, 1.350%; Class B-1, 1.700%; Class B-2, 1.800%; and Class B-3, 3.750%. On the first Distribution Date after the Optional Termination Date, the Pass-Through Margins shall increase to the following percentages: Class A-1, 0.580%; Class A-2 0.620%; Class A-3, 0.420%; Class A-4, 0.920; Class M-1, 0.855%; Class M-2, 1.800%; Class M-3, 2.025%; Class B-1, 2.550%; Class B-2, 2.700%; and Class B-3, 5.625%.

Pass-Through Rate: For each Class of Certificates and each Lower Tier and Middle Tier Regular Interest, the per annum rate set forth or calculated in the manner described in the Preliminary Statement.

People's Choice: People's Choice Home Loan, Inc., a Wyoming corporation.

People's Choice Assignment Agreement: The Assignment and Recognition Agreement, dated as of February 25, 2004 as amended to date, by and among the Unaffiliated Seller, the Depositor and People's Choice, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and People's Choice in connection with any Subsequent Transfer of People's Choice Mortgage Loans.

People's Choice Mortgage Loan: A Mortgage Loan which was acquired from People's Choice by the Unaffiliated Seller pursuant to the People's Choice Purchase Agreement, and which has been acquired by the Trust Fund.

People's Choice Purchase Agreement: The Amended and Restated Mortgage Loan Purchase and Warranties Agreement, dated as of October 24, 2002, as amended to date, by and between the Unaffiliated Seller and People's Choice.

Percentage Interest: As to any Certificate, the percentage interest evidenced thereby in distributions required to be made on the related Class, such percentage interest being set forth on the face thereof or equal to the percentage obtained by dividing the Denomination of such Certificate by the

aggregate of the Denominations of all Certificates of the same Class.

Periodic Mortgage Rate Cap: With respect to an Adjustable Rate Mortgage Loan, the periodic limit on each Mortgage Rate adjustment as set forth in the related Mortgage Note.

Permitted Investments: Any one or more of the following obligations or securities acquired at a purchase price of not greater than par, regardless of whether issued by the Servicer, the Trustee or any of their respective Affiliates:

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(i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof; provided such obligations are backed by the full faith and credit of the United States;

(ii) demand and time deposits in, certificates of deposit of, or bankers' acceptances (which shall each have an original maturity of not more than 90 days and, in the case of bankers' acceptances, shall in no event have an original maturity of more than 365 days or a remaining maturity of more than 30 days) denominated in United States dollars and issued by, any Eligible Institution;

(iii) repurchase obligations with respect to any security described in clause (i) above entered into with an Eligible Institution (acting as principal);

(iv) securities bearing interest or sold at a discount that are issued by any corporation incorporated under the laws of the United States of America or any state thereof and that are rated by each Rating Agency that rates such securities in its highest long-term unsecured rating categories at the time of such investment or contractual commitment providing for such investment;

(v) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations payable on demand or on a specified date not more than 30 days after the date of acquisition thereof) that is rated by each Rating Agency that rates such securities in its highest short-term unsecured debt rating available at the time of such investment;

(vi) units of money market funds, including money market funds advised by the Depositor or an Affiliate thereof, that have been rated "Aaa" by Moody's, "AAA" by Fitch and "AAA" by Standard & Poor's; and

(vii) if previously confirmed in writing to the Trustee and to the Certificate Insurer, any other demand, money market or time deposit, or any other obligation, security or investment, as may be acceptable to the Rating Agencies as a permitted investment of funds backing "Aaa" or "AAA" rated securities;

provided, however, that no instrument described hereunder shall evidence either the right to receive (a) only interest with respect to the obligations underlying such instrument or (b) both principal and interest payments derived from obligations underlying such instrument and the interest and principal payments with respect to such instrument provide a yield to maturity at par greater than 120% of the yield to maturity at par of the underlying obligations.

Permitted Transferee: Any Person other than (i) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, (ii) a foreign government, international organization or any agency or instrumentality of either of the foregoing, (iii) an organization (except certain farmers' cooperatives described in section 521 of the Code) which is exempt from tax imposed by Chapter 1 of the Code (including the tax imposed by section 511 of the Code on unrelated business taxable income) on any excess inclusions (as defined in section 860E(c)(1) of the Code) with respect to any Residual Certificate, (iv) rural electric and telephone cooperatives described in section 1381(a)(2)(C) of

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the Code, (v) a Person that is not a U.S. Person, (vi) an "electing large partnership" within the meaning of section 775 of the Code and (vii) any other Person so designated by the Depositor based upon an Opinion of Counsel that the Transfer of an Ownership Interest in a Residual Certificate to such Person may cause any REMIC created hereunder to fail to qualify as a REMIC at any time that the Certificates are outstanding. The terms "United States," "State" and "international organization" shall have the meanings set forth in section 7701 of the Code or successor provisions. A corporation will not be treated as an instrumentality of the United States or of any State or political subdivision thereof for these purposes if all of its activities are subject to tax and, with



the exception of the Federal Home Loan Mortgage Corporation, a majority of its board of directors is not selected by such government unit.

Person: Any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization or government, or any agency or political subdivision thereof.

Physical Certificates: As specified in the Preliminary Statement.

Pool Stated Principal Balance: As to any Distribution Date, the aggregate of the Stated Principal Balances of the Mortgage Loans for such Distribution Date which were Outstanding Mortgage Loans as of the last day of the related Due Period.

Preference Amount: Any amounts distributed in respect of the Class A-1 Certificates that are recovered from any Holder of such Certificates as a voidable preference by a trustee in bankruptcy pursuant to the United States Bankruptcy Code or other similar law in accordance with a final, nonappealable order of a court having competent jurisdiction and which have not theretofore been repaid to such Holder.

Preference Claim: As defined in Section 4.05(f).

Pre-Funding Account: The Group I Pre-Funding Account, the Group II Pre-Funding Account and the Group III Pre-Funding Account, as applicable.

Pre-Funding Amount: With respect to any date, the amount on deposit in the Pre-Funding Accounts.

Pre-Funding Earnings: The actual investment earnings realized on amounts deposited in the Pre-Funding Accounts.

Pre-Funding Period: The period commencing on the Startup Date and ending on the earliest to occur of (i) the date on which the amount on deposit in each Pre-Funding Account (exclusive of any investment earnings) is less than \$100,000, (ii) the date on which any Event of Default occurs and (iii) May 24, 2004.

Premium Amount: The product of (i) the Premium Rate and (ii) the Certificate Balance of the Class A-1 Certificates immediately prior to such Distribution Date.

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Premium Rate: The rate at which the "Premium" is determined as described in the letter dated February 25, 2004 between the Unaffiliated Seller and the Certificate Insurer (a copy of which shall be provided by the Unaffiliated Seller to the Trustee).

Prepayment Charge: Any prepayment premium, penalty or charge collected by the Servicer with respect to a Mortgage Loan from a Mortgagor in connection with any voluntary Principal Prepayment in Full pursuant to the terms of the related Mortgage Note.

Prepayment Interest Shortfall: With respect to any Remittance Date, the sum of, for each Mortgage Loan that was during the related Prepayment Period the subject of a Principal Prepayment in Full, that was applied by the Servicer to reduce the outstanding principal balance of such Mortgage Loan on a date preceding the Due Date in the succeeding Prepayment Period, an amount equal to the product of (a) the Mortgage Rate net of the Servicing Fee Rate for such Mortgage Loan, (b) the amount of the Principal Prepayment for such Mortgage Loan, (c) 1/360 and (d) the number of days commencing on the date on which such Principal Prepayment was applied and ending on the last day of the related Prepayment Period.

Prepayment Period: With respect to any Distribution Date, the calendar month preceding the calendar month in which such Distribution Date occurs.

Principal Distribution Amount: For any Distribution Date, the sum of (i) the Basic Principal Distribution Amount for such Distribution Date and (ii) the Extra Principal Distribution Amount for such Distribution Date.

Principal Parity Deficit: With respect to any Distribution Date, the excess of (i) the aggregate Class Certificate Balances of the Class A Certificates on that Distribution Date, after taking into account any reduction (other than, with respect to the Class A-1 Certificates, reductions due to payments from the Certificate Insurance Policy on that Distribution Date), of those Class Certificate Balances on that Distribution Date, less the excess of (a) any Principal Parity Deficits for all prior Distribution Dates over (b) any Class A-1 Principal Parity Amount for all prior Distribution Dates over (ii) the Current Maximum Amount for that Distribution Date. For the first Distribution Date, the Principal Parity Deficit will equal zero.

Principal Prepayment: Any full or partial payment or other recovery of principal on a Mortgage Loan (including upon liquidation of a Mortgage Loan) which is received in advance of its scheduled Due Date, excluding any prepayment penalty or premium thereon and which is not accompanied by an amount of interest representing scheduled interest due on any date or dates in any month or months subsequent to the month of prepayment.

Principal Prepayment in Full: Any Principal Prepayment made by a Mortgagor of the entire principal balance of a Mortgage Loan.

Principal Remittance Amount: With respect to any Distribution Date, the amount equal to the sum (without duplication) with respect to the related Due Period, of: (i) all scheduled installments of principal due on the Mortgage Loans during the related Due Period and received by the Servicer on or prior to the related Determination Date or advanced by the Servicer for the related Remittance Date; (ii) the principal component of all Condemnation Proceeds, Insurance Proceeds and Liquidation Proceeds during the related Due Period (in each

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case, net of remaining (i.e., not deducted from the Interest Remittance Amount) unreimbursed expenses incurred in connection with a liquidation or foreclosure and unreimbursed Advances, if any); (iii) all partial or full prepayments on the Mortgage Loans received during the related Prepayment Period; (iv) the principal component of all Substitution Adjustment Amounts and Repurchase Prices received by the Servicer during the related Due Period; and (v) the principal component of the proceeds of any termination of the Trust Fund; reduced by remaining amounts (i.e., not deducted from the Interest Remittance Amount) in reimbursement for Advances previously made with respect to the Mortgage Loans and other amounts as to which the Servicer is entitled to be reimbursed pursuant to this Agreement.

Private Certificates: As specified in the Preliminary Statement.

Prospectus Supplement: The Prospectus Supplement, dated February 20, 2004, relating to the Offered Certificates.

PTCE 95-60: As defined in Section 5.02(b).

PUD: Planned Unit Development.

Qualified Insurer: A mortgage guaranty insurance company duly qualified as such under the laws of the state of its principal place of business and each state having jurisdiction over such insurer in connection with the insurance policy issued by such insurer, duly authorized and licensed in such states to transact a mortgage guaranty insurance business in such states and to write the insurance provided by the insurance policy issued by it, approved as a FNMA- or FHLMC-approved mortgage insurer or having a claims paying ability rating of at least "AA" or equivalent rating by a nationally recognized statistical rating organization. Any replacement insurer with respect to a Mortgage Loan must have at least as high a claims paying ability rating as the insurer it replaces had on the Closing Date.

Rating Agency: Each of Standard & Poor's, Fitch and Moody's. If such organization or a successor is no longer in existence, "Rating Agency" shall be such nationally recognized statistical rating organization, or other comparable Person, as is designated by the Depositor, notice of which designation shall be given to the Trustee. References herein to a given rating or rating category of a Rating Agency shall mean such rating category without giving effect to any modifiers. For purposes of Section 10.05(b), the addresses for notices to each Rating Agency shall be the address specified therefor in the definition corresponding to the name of such Rating Agency, or such other address as such Rating Agency may hereafter furnish to the Depositor and the Servicer.

Record Date: With respect to any Distribution Date, the close of business on the Business Day immediately preceding such Distribution Date; provided, however, that for any Certificate issued in Definitive Form, the Record Date shall be the close of business on the last Business Day of the month immediately preceding such applicable Distribution Date.

Realized Loss: The excess of the unpaid principal balance of a Liquidated Mortgage Loan together with accrued and unpaid interest thereon over the Liquidation Proceeds, net of customary out-of-pocket expenses incurred by the Servicer in connection with the

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liquidation of such Liquidated Mortgage Loan and net of the amount of any unreimbursed Servicing Advances with respect to such Liquidated Mortgage Loan.

Reference Bank: As defined in Section 4.04.

Regular Certificates: As specified in the Preliminary Statement.

Reimbursement Amount: As of any Distribution Date, the sum of (a) (i) all Insured Payments previously received by the Trustee and all Preference Amounts previously paid by the Certificate Insurer and in each case not previously repaid to the Certificate Insurer pursuant to Section 4.02(a) plus (ii) interest accrued on each such Insured Payment and Preference Amounts not previously repaid calculated at the Late Payment Rate from the date the Trustee received the related Insured Payment or Preference Amounts were paid by the Certificate Insurer and (b) (i) any amounts then due and owing to the Certificate Insurer under the Insurance and Indemnity Agreement (excluding the Premium Amount due on such Distribution Date), as certified to the Trustee by the Certificate Insurer plus (ii) interest on such amounts at the rate specified in the Insurance and Indemnity Agreement. The Certificate Insurer shall notify the Trustee and the Unaffiliated Seller of the amount of any Reimbursement Amount.

Relief Act Shortfall: With respect to any Distribution Date and any Mortgage Loan, any reduction in the amount of interest or principal collectible on such Mortgage Loan for the most recently ended Due Period as a result of the application of the Servicemembers Civil Relief Act and similar state laws.

Remainder Amount: As defined in Section 9.01.

REMIC: A "real estate mortgage investment conduit" within the meaning of section 860D of the Code.

REMIC Provisions: Provisions of the federal income tax law relating to REMICs, which appear at sections 860A through 860G of Subchapter M of Chapter 1 of the Code, and related provisions, and regulations promulgated thereunder, as the foregoing may be in effect from time to time as well as provisions of applicable state laws.

REMIC Trust: The segregated pool of assets consisting of the Trust Fund, exclusive of Prepayment Charges and the Excess Reserve Fund Account.

Remittance Date: The 18th day (or if such 18th day is not a Business Day, the first Business Day immediately preceding such day) of any month.

REO Disposition: The final sale by the Servicer of any REO Property.

REO Imputed Interest: As to any REO Property, for any period, an amount equivalent to interest (at the Mortgage Rate net of the Servicing Fee Rate that would have been applicable to the related Mortgage Loan had it been outstanding) on the unpaid principal balance of the Mortgage Loan as of the date of acquisition thereof (as such balance is reduced pursuant to Section 3.17 by any income from the REO Property treated as a recovery of principal).

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REO Property: A Mortgaged Property acquired by the Trust Fund through foreclosure or deed-in-lieu of foreclosure in connection with a defaulted Mortgage Loan.

Representative: Morgan Stanley & Co. Incorporated, as representative on behalf of itself, Banc of America Securities LLC, CDC Securities LLC, Countrywide Securities Corporation and Greenwich Capital Markets, Inc.

Repurchase Price: With respect to any Mortgage Loan, an amount equal to the sum (without duplication) of (i) the unpaid principal balance of such Mortgage Loan as of the date of repurchase and (ii) (x) if such Mortgage Loan is being repurchased by the Unaffiliated Seller, the sum of (A) interest on such unpaid principal balance of such Mortgage Loan at the Mortgage Rate from the last date through which interest has been paid and distributed to the Trustee to the last day of the month in which such repurchase occurs, (B) all unreimbursed P&I Advances and Servicing Advances, (C) all unpaid Servicing Fees, (D) all expenses reasonably incurred by the Servicer, the Trustee, the Certificate Insurer or the Unaffiliated Seller, as the case may be, in respect of a breach or defect, including, without limitation, expenses arising out of any such party's enforcement of the Originator's repurchase obligation, to the extent not included in (B), and (E) all costs and expenses incurred by, or on behalf of, the Trust Fund in connection with any violation by such Mortgage Loan of a predatory or abusive-lending law or (y) if such Mortgage Loan is being repurchased by the related Originator, all other amounts payable by such Originator in accordance with the terms of the related Mortgage Loan Purchase Agreement.

Request for Release: The Request for Release submitted by the Servicer to the Trustee, substantially in the form of Exhibit K.

Residual Certificates: As specified in the Preliminary Statement.

Responsible Officer: When used with respect to the Trustee, any vice president, any assistant vice president, any assistant secretary, any assistant treasurer or any other officer of the Trustee customarily performing functions

similar to those performed by any of the above designated officers who at such time shall be officers to whom, with respect to a particular matter, such matter is referred because of such officer's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.

Rule 144A Letter: As defined in Section 5.02(b).

Scheduled Payment: The scheduled monthly payment on a Mortgage Loan due on any Due Date allocable to principal and/or interest on such Mortgage Loan which, unless otherwise specified herein, shall give effect to any related Debt Service Reduction and any Deficient Valuation that affects the amount of the scheduled payment due on such Mortgage Loan.

Scheduled Principal Balance: With respect to any Mortgage Loan: (a) as of the Cut-off Date, the outstanding principal balance of such Mortgage Loan as of such date, net of the principal portion of all unpaid Scheduled Payments, if any, due on or before such date; (b) as of any Due Date subsequent to the Cut-off Date up to and including the Due Date in the calendar

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month in which a Liquidation Event occurs with respect to such Mortgage Loan, the Scheduled Principal Balance of such Mortgage Loan as of the Cut-off Date, minus the sum of (i) the principal portion of each Scheduled Payment due on or before such Due Date but subsequent to the Cut-off Date, whether or not received, (ii) all Principal Prepayments received before such Due Date but after the Cut-off Date, (iii) the principal portion of all Liquidation Proceeds and Insurance Proceeds received before such Due Date but after the Cut-off Date, net of any portion thereof that represents principal due (without regard to any acceleration of payments under the related Mortgage and Mortgage Note) on a Due Date occurring on or before the date on which such proceeds were received and (iv) any reduction in the principal balance of such Mortgage Loan incurred with respect thereto as a result of a Deficient Valuation occurring before such Due Date, but only to the extent such reduction in principal balance represents a reduction in the portion of principal of such Mortgage Loan not yet due (without regard to any acceleration of payments under the related Mortgage and Mortgage Note) as of the date of such Deficient Valuation; and (c) as of any Due Date subsequent to the occurrence of a Liquidation Event with respect to such Mortgage Loan, zero.

SEC: As defined in Section 8.12(a).

Securities Act: The Securities Act of 1933, as amended.

Senior Enhancement Percentage: With respect to any Distribution Date, the percentage obtained by dividing (x) the sum of (i) the aggregate Class Certificate Balances of the Subordinated Certificates and (ii) the Subordinated Amount (in each case after taking into account the distributions of the Principal Distribution Amount for such Distribution Date) by (y) the Current Maximum Amount for that Distribution Date.

Senior Specified Enhancement Percentage: As of any date of determination, 36.00%.

Servicer: Countrywide Home Loans Servicing LP, a Texas limited partnership, and its successors and assigns, in its capacity as servicer hereunder.

Servicing Advances: The reasonable "out-of-pocket" costs and expenses (including legal fees) incurred by the Servicer in the performance of its servicing obligations in connection with a default, delinquency or other unanticipated event, including, but not limited to, the cost of (i) the preservation, restoration and protection of a Mortgaged Property, (ii) any enforcement or judicial proceedings, including foreclosures and litigation, in respect of a particular Mortgage Loan, (iii) the management (including reasonable fees in connection therewith) and liquidation of any REO Property and (iv) the performance of its obligations under Section 3.01, Section 3.09, Section 3.13 and Section 3.15 hereof. Servicing Advances also include any reasonable "out-of-pocket" costs and expenses (including legal fees) incurred by the Servicer in connection with executing and recording instruments of satisfaction, deeds of reconveyance or Assignments of Mortgage in connection with any satisfaction or foreclosure in respect of any Mortgage Loan to the extent not recovered from the Mortgagor or otherwise payable under this Agreement. The Servicer shall not be required to make any Nonrecoverable Servicing Advances.

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Servicing Fee: With respect to each Mortgage Loan and for any calendar month, an amount equal to one month's interest (or in the event of any payment of interest which accompanies a Principal Prepayment in Full made by the Mortgagor during such calendar month, interest for the number of days covered by

such payment of interest) at the Servicing Fee Rate on the applicable Stated Principal Balance on such Mortgage Loan at the end of the related Due Period. Such fee shall be payable monthly, and shall be pro rated for any portion of a month during which the Mortgage Loan is serviced by the Servicer under this Agreement. The Servicing Fee is payable solely from, the interest portion (including recoveries with respect to interest from Liquidation Proceeds, Insurance Proceeds, Condemnation Proceeds and proceeds received with respect to REO Properties, to the extent permitted by Section 3.11) of such Scheduled Payment collected by the Servicer, or as otherwise provided under Section 3.11.

**Servicing Fee Rate:** With respect to each Mortgage Loan, 0.50% per annum.

**Servicing File:** With respect to each Mortgage Loan, the file retained by the Servicer consisting of originals or copies of all documents in the Mortgage File which are not delivered to the Trustee in the Custodial File and copies of each of the other Mortgage Loan documents required to be delivered by the related Originator pursuant to the terms of the related Mortgage Loan Purchase Agreement.

**Servicing Officer:** Any officer of the Servicer involved in, or responsible for, the administration and servicing of the Mortgage Loans whose name and facsimile signature appear on a list of servicing officers furnished to the Trustee by the Servicer on the Closing Date pursuant to this Agreement, as such list may from time to time be amended.

**Servicing Transfer Date:** With respect to each Mortgage Loan, the date on which Countrywide commenced servicing such Mortgage Loan, as set forth on the Mortgage Loan Schedule.

**SIB Mortgage:** SIB Mortgage Corp., a New Jersey corporation.

**SIB Mortgage Assignment Agreement:** The Assignment and Recognition Agreement, dated as of February 25, 2004, by and among the Unaffiliated Seller, the Depositor and SIB Mortgage, and each other Assignment and Recognition Agreement by and among the Unaffiliated Seller, the Depositor and SIB Mortgage in connection with any Subsequent Transfer of SIB Mortgage Loans.

**SIB Mortgage Loan:** A Mortgage Loan which was acquired from SIB Mortgage by the Unaffiliated Seller pursuant to the SIB Mortgage Purchase Agreement, and which has been acquired by the Trust Fund.

**SIB Mortgage Purchase Agreement:** The Mortgage Loan Purchase and Warranties Agreement, dated as of July 11, 2002, as amended to date, by and between the Unaffiliated Seller and SIB Mortgage.

**Similar Law:** As defined in Section 5.02(b).

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**Specified Subordinated Amount:** With respect to any Distribution Date prior to the Stepdown Date, an amount equal to 1.35% of the Maximum Pool Principal Balance; and with respect to any Distribution Date on and after the Stepdown Date, an amount equal to 2.70% of the Current Maximum Amount for that Distribution Date subject to a minimum amount equal to 0.50% of the Maximum Pool Principal Balance; provided, however, that if, on any Distribution Date, a Trigger Event has occurred, the Specified Subordinated Amount shall not be reduced to the applicable percentage of the Current Maximum Amount, but instead remain the same as the prior period's Specified Subordinated Amount until the Distribution Date on which a Trigger Event is no longer occurring. When the Class Certificate Balance of each Class of Offered Certificates has been reduced to zero, the Specified Subordinated Amount shall thereafter equal zero.

**Standard & Poor's:** Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc. If Standard & Poor's is designated as a Rating Agency in the Preliminary Statement, for purposes of Section 10.05(b) the address for notices to Standard & Poor's shall be Standard & Poor's, 55 Water Street, New York, New York 10041, Attention: Residential Mortgage Surveillance Group - CDC Mortgage Capital Trust 2004-HE1, or such other address as Standard & Poor's may hereafter furnish to the Depositor and the Servicer.

**Startup Day:** For each REMIC created hereunder, the Closing Date.

**Stated Principal Balance:** As to each Mortgage Loan, (i) the principal balance of the Mortgage Loan at the Cut-off Date after giving effect to payments of principal due on or before such date, to the extent actually received, minus (ii) all amounts previously remitted to the Trustee with respect to the related Mortgage Loan representing payments or recoveries of principal, including Advances in respect of Scheduled Payments of principal. For purposes of any Distribution Date, the Stated Principal Balance of any Mortgage Loan will give effect to any Scheduled Payments of principal received by the Servicer on or prior to the related Determination Date or advanced by the Servicer prior to the related Remittance Date and any unscheduled principal payments and other unscheduled principal collections received during the related Prepayment Period.

Stepdown Date: The later to occur of (i) the earlier to occur of (a) the Distribution Date in March 2007 and (b) the Distribution Date following the Distribution Date on which the aggregate Class Certificate Balance of the Class A Certificates have been reduced to zero and (ii) the first Distribution Date on which the Senior Enhancement Percentage (calculated for this purpose only after taking into account scheduled and unscheduled payments of principal on the Mortgage Loans on the last day of the related Due Period but prior to any applications of Principal Distribution Amount to the Offered Certificates on the applicable Distribution Date) is greater than or equal to the Senior Specified Enhancement Percentage.

Subordinated Amount: As of any Distribution Date, the excess, if any, of (a) the Current Maximum Amount for that Distribution Date on such Distribution Date over (b) the aggregate of the Class Certificate Balances of the Offered Certificates as of such Distribution Date plus the Class Certificate Balances of the Class P Certificates (after giving effect to the payment of the Principal Remittance Amount on such Certificates on such Distribution Date).

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Subordinated Certificates: As specified in the Preliminary Statement.

Subordination Deficiency: With respect to any Distribution Date, the excess, if any, of (a) the Specified Subordinated Amount applicable to such Distribution Date over (b) the Subordinated Amount applicable to such Distribution Date.

Subordination Reduction Amount: With respect to any Distribution Date on or after the Stepdown Date on which no Trigger Event exists, an amount equal to the lesser of (a) the Excess Subordinated Amount and (b) the Total Monthly Excess Spread.

Subservicer: As defined in Section 3.02(a).

Subservicing Account: As defined in Section 3.08.

Subservicing Agreement: As defined in Section 3.02.

Subsequent Cut-off Date: As to any Subsequent Mortgage Loans, the date specified in the Addition Notice delivered in connection therewith, which date shall be the close of business on the first day of the month in which such Subsequent Mortgage Loans will be conveyed to the Trust Fund.

Subsequent Mortgage Loans: The Mortgage Loans hereafter transferred and assigned to the Trust Fund pursuant to Section 2.01(c), each of which shall have been purchased by the Unaffiliated Seller under a Mortgage Loan Purchase Agreement.

Subsequent Transfer: The transfer and assignment by the Depositor to the Trust of the Subsequent Mortgage Loans pursuant to the terms hereof.

Subsequent Transfer Agreement: A subsequent transfer agreement in substantially the form of Exhibit L.

Subsequent Transfer Date: The Business Day on which a Subsequent Transfer occurs.

Substitute Mortgage Loan: A Mortgage Loan substituted by the Unaffiliated Seller or an Originator for a Deleted Mortgage Loan in accordance with the terms of this Agreement or the related Mortgage Loan Purchase Agreement, as applicable, which must, on the date of such substitution, as confirmed in a Request for Release, substantially in the form of Exhibit K, (i) have a Stated Principal Balance, after deduction of the principal portion of the Scheduled Payment due in the month of substitution, not in excess of, and not more than 10% less than, the Stated Principal Balance of the Deleted Mortgage Loan; (ii) be accruing interest at a rate no lower than and not more than 1% per annum higher than, that of the Deleted Mortgage Loan; (iii) have a Loan-to-Value Ratio no higher than that of the Deleted Mortgage Loan; (iv) have a remaining term to maturity no greater than (and not more than one year less than that of) the Deleted Mortgage Loan; and (v) comply with each representation and warranty set forth in Sections 3.01(f), 3.01(h), 3.01(n), 3.01(p) and 3.03 of the Unaffiliated Seller's Agreement, each representation and warranty set forth in the applicable Mortgage Loan Purchase Agreement and each of the requirements set forth in Sections 2.01(c) hereof.

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Substitution Adjustment Amount: The meaning ascribed to such term pursuant to Section 2.03.

Tax Service Contract: As defined in Section 3.09(a).

Tolerance Page 3750: The display page currently so designated on the Bridge Tolerance Service (or such other page as may replace that page on that service for displaying comparable rates or prices).

Termination Price: As defined in Section 9.01.

Total Monthly Excess Spread: As to any Distribution Date, an amount equal to the excess if any, of (i) the interest collected (prior to the Remittance Date) or advanced on the Mortgage Loans for Due Dates during the related Due Period (net of Expense Fees, Premium Amount and Reimbursement Amounts, if any) over (ii) the sum of the interest payable to the Classes of LIBOR Certificates on such Distribution Date.

Transfer: Any direct or indirect transfer or sale of any Ownership Interest in a Residual Certificate.

Transfer Affidavit: As defined in Section 5.02(b).

Transferor Certificate: As defined in Section 5.02(b).

Trigger Event: The occurrence of either a Delinquency Trigger Event or a Loss Trigger Event.

Trust Fund: The corpus of the trust created hereunder consisting of (i) the Mortgage Loans and all interest and principal received on or with respect thereto after the related Cut-off Date, other than such amounts which were due on the Mortgage Loans on or before the related Cut-off Date; (ii) each Account, and all amounts deposited therein pursuant to the applicable provisions of this Agreement; (iii) property that secured a Mortgage Loan and has been acquired by foreclosure, deed-in-lieu of foreclosure or otherwise; (iv) all rights of the Depositor against the Unaffiliated Seller under the Unaffiliated Seller's Agreement; (v) all rights of the Depositor against each Originator under the related Assignment and Recognition Agreement and the related Mortgage Loan Purchase Agreement; (vi) the Certificate Insurance Policy; (vii) the Cap Agreements, for the benefit of the Holders of the Offered Certificates (other than the Class A-1 Certificateholders); and (viii) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing.

Trustee: Deutsche Bank National Trust Company and its successors and, if a successor trustee is appointed hereunder, such successor.

Trustee Fee: As to any Distribution Date, an amount equal to the sum of (a) the product of one-twelfth of the Trustee Fee Rate times the sum of (i) the aggregate Stated Principal Balances of the Mortgage Loans at the end of the prior Due Period, and (ii) the amount on deposit in the Pre-Funding Accounts at the end of such prior Due Period and (b) any reasonable

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compensation and expenses of a separate trustee or co-trustee to be paid pursuant to Section 8.10(d).

Trustee Fee Rate: With respect to each Mortgage Loan, 0.0035% per annum.

Unaffiliated Seller's Agreement: The Unaffiliated Seller's Agreement, dated as of the date hereof, among the Unaffiliated Seller and the Depositor relating to the sale of the Mortgage Loans from the Unaffiliated Seller to the Depositor.

Unpaid Interest Amounts: As of any Distribution Date and any Class of Certificates, the sum of (a) the excess of (i) the sum of the Accrued Certificate Interest for such Distribution Date and any portion of such Accrued Certificate Interest from prior Distribution Dates remaining unpaid over (ii) the amount in respect of interest on such Class of Certificates actually distributed on that Distribution Date and (b) 30 days' interest on such excess at the applicable Pass-Through Rate (to the extent permitted by applicable law).

Unpaid Realized Loss Amount: With respect to any Class of Subordinated Certificates and as to any Distribution Date, is the excess of (i) Applied Realized Loss Amounts with respect to such Class over (ii) the sum of all distributions in reduction of such Applied Realized Loss Amounts on all previous Distribution Dates. Any amounts distributed to a Class of Subordinated Certificates in respect of any Unpaid Realized Loss Amount will not be applied to reduce the Class Certificate Balance of such Class.

Upper Tier Regular Interest: As described in the Preliminary Statement.

Upper Tier REMIC: As described in the Preliminary Statement.

U.S. Person: Shall mean (i) a citizen or resident of the United States; (ii) a corporation (or entity treated as a corporation for tax purposes) created or organized in the United States or under the laws of the United States or of any state thereof, including, for this purpose, the District of Columbia; (iii)

a partnership (or entity treated as a partnership for tax purposes) organized in the United States or under the laws of the United States or of any state thereof, including, for this purpose, the District of Columbia (unless provided otherwise by future Treasury regulations); (iv) an estate whose income is includible in gross income for United States income tax purposes regardless of its source; or (v) a trust, if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. Persons have authority to control all substantial decisions of the trust. Notwithstanding the last clause of the preceding sentence, to the extent provided in Treasury regulations, certain trusts in existence on August 20, 1996, and treated as U.S. Persons prior to such date, may elect to continue to be U.S. Persons.

Voting Rights: The portion of the voting rights of all of the Certificates which is allocated to any Certificate. As of any date of determination, (a) 1% of all Voting Rights shall be allocated to the Class X Certificates, if any (such Voting Rights to be allocated among the Holders of Certificates of each such Class in accordance with their respective Percentage Interests), (b) 1% of all Voting Rights shall be allocated to the Class P Certificates, if any, and (c) the remaining Voting Rights shall be allocated among Holders of the remaining Classes of Certificates in proportion to the Certificate Balances of their respective Certificates on such date.

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WAC Cap: With respect to the Mortgage Loans as of any Distribution Date, the product of (i) the weighted average of the Adjusted Net Mortgage Rates then in effect on the beginning of the related Due Period on the Mortgage Loans, in the case of the Class A-1 Certificates, minus the Premium Rate and (ii) a fraction, the numerator of which is 30 and the denominator of which is the actual number of days in the Interest Accrual Period related to such Distribution Date.

## ARTICLE II

### CONVEYANCE OF MORTGAGE LOANS; REPRESENTATIONS AND WARRANTIES

#### Section 2.01 Conveyance of Mortgage Loans.

(a) The Depositor, concurrently with the execution and delivery hereof, hereby sells, transfers, assigns, sets over and otherwise conveys to the Trustee for the benefit of the Certificateholders, without recourse, all the right, title and interest of the Depositor in and to the Trust Fund and the Trustee, on behalf of the Trust, hereby accepts the Trust Fund, other than any Subsequent Mortgage Loans, which will be so sold, transferred, assigned, set-over and conveyed on the related Subsequent Transfer Date. The Mortgage Loans permitted by the terms of this Agreement to be included in the Trust Fund are limited to (i) the Initial Mortgage Loans (which the Depositor acquired pursuant to the Unaffiliated Seller's Agreement, which contains, among other representations and warranties, a representation and warranty of the Unaffiliated Seller that no Mortgage Loan is a "High-Cost Home Loan" as defined in the New Jersey Home Ownership Act effective November 27, 2003 or in the New Mexico Home Loan Protection Act effective January 1, 2004), (ii) Subsequent Mortgage Loans (which the Depositor is required hereunder to have acquired pursuant to Subsequent Transfer Agreements, each of which shall contain, among other representations and warranties, a representation and warranty of the Unaffiliated Seller that no Mortgage Loan is a "High-Cost Home Loan" as defined in the New Jersey Home Ownership Act effective November 27, 2003 or in the New Mexico Home Loan Protection Act effective January 1, 2004) and (iii) Substitute Mortgage Loans (which, by definition as set forth herein and referred to in the Unaffiliated Seller's Agreement and Subsequent Transfer Agreements, are required to conform to, among other representations and warranties, the representation and warranty of the Unaffiliated Seller that no Subsequent Mortgage Loan is a "High-Cost Home Loan" as defined in the New Jersey Home Ownership Act effective November 27, 2003 or in the New Mexico Home Loan Protection Act effective January 1, 2004, it is agreed and understood by the parties hereto that it is not intended that any Mortgage Loan be included in the Trust that is a "High-Cost Home Loan" as defined in the New Jersey Home Ownership Act effective November 27, 2003 or in the New Mexico Home Loan Protection Act effective January 1, 2004.

(b) In connection with the transfer and assignment of each Mortgage Loan, the Unaffiliated Seller has delivered or caused to be delivered to the Trustee for the benefit of the Certificateholders the following documents or instruments with respect to each Mortgage Loan so assigned (to the extent such documents or instruments are required to be delivered by the related Originator under each Mortgage Loan Purchase Agreement):

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(i) the original Mortgage Note bearing all intervening endorsements evidencing a complete chain of assignment from the originator to the related Originator, endorsed "Pay to the order of \_\_\_\_\_, without



recourse" and signed in the name of the related Originator by an authorized officer. To the extent that there is no room on the face of the Mortgage Notes for endorsements, the endorsement may be contained on an allonge, if state law so allows and the Trustee is so advised by the related Originator that state law so allows. If the Mortgage Loan was acquired by an Originator in a merger, the endorsement must be by "[related Originator], successor by merger to [name of predecessor]". If the Mortgage Loan was acquired or originated by the related Originator while doing business under another name, the endorsement must be by "[related Originator], formerly known as [previous name]";

(ii) the original of any guarantee executed in connection with the Mortgage Note;

(iii) the original Mortgage with evidence of recording thereon. If in connection with any Mortgage Loan, the original Mortgage with evidence of recording thereon cannot be delivered on or prior to the related Delivery Date because of a delay caused by the public recording office where such Mortgage has been delivered for recordation or because such Mortgage has been lost or because such public recording office retains the original recorded Mortgage, then the related Originator, as required by the terms of the related Mortgage Loan Purchase Agreement, will be required to deliver to the Trustee a photocopy of such Mortgage and (i) the original recorded Mortgage or a copy of such Mortgage certified by such public recording office to be a true and complete copy of the original recorded Mortgage promptly upon receipt thereof by the related Originator (but in any event within 360 days from the related Delivery Date); or (ii) in the case of a Mortgage where a public recording office retains the original recorded Mortgage or in the case where a Mortgage is lost after recordation in a public recording office, a copy of such Mortgage certified by such public recording office to be a true and complete copy of the original recorded Mortgage;

(iv) the originals of all assumption, modification, consolidation or extension agreements, if any, with evidence of recording thereon;

(v) the original Assignment of Mortgage for each Mortgage Loan endorsed in blank, in form and substance acceptable for recording (except with respect to MERS Designated Loans);

(vi) the originals of all intervening assignments of mortgage, evidencing a complete chain of assignment from the originator (or MERS with respect to each MERS Designated Mortgage Loan) to the related Originator, with evidence of recording thereon or if any such intervening assignment has not been returned from the applicable recording office or has been lost or if such public recording office retains the original recorded assignments of mortgage;

(vii) the original or duplicate lender's title policy and all riders thereto or, if such original is unavailable, either an original title binder or an original or copy of the

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title commitment, and if copies then certified to be true and complete by the title company; and

(viii) the security agreement, chattel mortgage or equivalent document executed in connection with the Mortgage, if any.

If any Mortgage has been recorded in the name of Mortgage Electronic Registration System, Inc. ("MERS") or its designee, no Assignment of Mortgage in favor of the Trustee will be required to be prepared or delivered and instead, the Servicer shall take all reasonable actions as are necessary at the expense of the applicable Originator to the extent permitted under the related Purchase Agreement and otherwise at the expense of the Depositor to cause the Trust to be shown as the owner of the related Mortgage Loan on the records of MERS for the purpose of the system of recording transfers of beneficial ownership of mortgages maintained by MERS.

From time to time, the Servicer shall forward to the Trustee additional original documents, additional documents evidencing an assumption, modification, consolidation or extension of a Mortgage Loan approved by the Servicer, in accordance with the terms of this Agreement. All such mortgage documents held by the Trustee as to each Mortgage Loan shall constitute the "Custodial File".

On or prior to the related Delivery Date, the Unaffiliated Seller shall deliver, or cause the related Originator to deliver, to the Trustee Assignments of Mortgage, in blank, for each Mortgage Loan. If an Assignment of Mortgage is required to be recorded pursuant to the terms hereof, the Trustee shall promptly forward such Assignment of Mortgage to the Servicer for recording. No later than thirty (30) Business Days following the date of receipt by the Servicer of all necessary recording information for a Mortgage, the Servicer shall promptly submit or cause to be submitted for recording, at the expense of the

Unaffiliated Seller (the Unaffiliated Seller to seek reimbursement from the related Originator under the applicable Mortgage Loan Purchase Agreement) in the appropriate public office for real property records, each Assignment of Mortgage referred to in Section 2.01(b)(v). Notwithstanding the foregoing, however, for administrative convenience and facilitation of servicing and to reduce closing costs, the Assignment of Mortgage shall not be required to be completed and submitted for recording with respect to any MERS Designated Mortgage Loan or any Mortgage Loan (other than any Mortgage Loan where the Mortgaged Property is located in any state where recordation is required by any Rating Agency to obtain the initial ratings on the Certificates, which states as of the date hereof, are Florida and Maryland) until the earliest to occur of (i) direction by the Certificate Insurer or (ii) upon a determination by the Servicer that recordation is necessary for the enforcement of rights under, or satisfaction or assignment of, the related Mortgage, at which time, the Servicer shall record any such Assignment of Mortgage in accordance with the terms hereof. If any Assignment of Mortgage is required to be recorded pursuant to the terms hereof, the Mortgage shall be assigned from the related Originator, to "Deutsche Bank National Trust Company, as trustee under the Pooling and Servicing Agreement dated as of February 1, 2004, CDC Mortgage Capital Trust 2004-HE1." In the event that any such assignment is lost or returned unrecorded because of a defect therein, the Unaffiliated Seller shall cause the related Originator to promptly prepare a substitute assignment to cure such defect and thereafter cause each such assignment to be duly recorded. In the event the Unaffiliated Seller does not pay or

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otherwise reimburse the Servicer for any of the foregoing costs of recording any such Assignment of Mortgage, the Servicer shall be entitled to be reimbursed from the Trust Fund from amounts on deposit in the Collection Account. In the event the related Originator fails to reimburse the Unaffiliated Seller for the recording costs described above, upon receipt of written direction from the Unaffiliated Seller, the Trustee shall assign its rights under the applicable Mortgage Loan Purchase Agreement solely with respect to payment of such expenses to the Unaffiliated Seller.

The Unaffiliated Seller shall use commercially reasonable efforts to assist the Servicer in causing the related Originator to deliver (at the expense of such Originator pursuant to the related Mortgage Loan Purchase Agreement) to the Servicer copies of all trailing documents required to be included in the Custodial File at the same time the originals or certified copies thereof are delivered to the Trustee, such documents, including, but not limited to, the mortgagee policy of title insurance and any mortgage loan documents upon return from the recording office. The Unaffiliated Seller shall use commercially reasonable efforts to assist the Servicer in seeking reimbursement from the related Originator pursuant to the related Mortgage Loan Purchase Agreement for any fees or costs incurred by the Servicer in obtaining such documents.

On or prior to the Closing Date, the Unaffiliated Seller shall deliver to the Trustee and the Servicer a copy of the Data Tape Information in electronic, machine readable medium in a form mutually acceptable to the Trustee and the Servicer. Within ten days of the Closing Date, the Unaffiliated Seller shall deliver a copy of the complete Mortgage Loan Schedule to the Trustee and the Servicer.

In the event that such original or copy of any document submitted for recordation to the appropriate public recording office is not so delivered to the Trustee within 90 days following the related Delivery Date, and in the event that the Originator does not cure such failure within 30 days of discovery or receipt of written notification of such failure from the Depositor, the Trustee or the Certificate Insurer, the Trustee shall notify the related Originator to repurchase the Mortgage Loan pursuant to the related Mortgage Loan Purchase Agreement, upon the request of the Depositor, the Trustee or the Certificate Insurer, at the Repurchase Price and in the manner specified in Section 2.03. The foregoing repurchase provision shall not apply in the event that the related Originator cannot deliver such original or copy of any document submitted for recordation to the appropriate public recording office within the specified period due to a delay caused by the recording office in the applicable jurisdiction; provided that the related Originator shall instead be required to deliver a recording receipt of such recording office or, if such recording receipt is not available, an officer's certificate of a servicing officer of the Originator confirming that such document has been accepted for recording.

(c) Purchase and Sale of Subsequent Mortgage Loans.

(i) Subject to the satisfaction of the conditions set forth in paragraph (ii) below, and upon the Trustee's receipt of a Subsequent Transfer Agreement executed by all other parties thereto, in consideration of the Trustee's delivery on the related Subsequent Transfer Dates to or upon the order of the Depositor of all or a portion of the balance of funds in the related Pre-Funding Accounts, the Depositor shall on any

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Subsequent Transfer Date sell, transfer, assign, set over and convey to the Trustee without recourse but subject to terms and provisions of this Agreement, all of the right, title and interest of the Depositor in and to the Group I Subsequent Mortgage Loans, Group II Subsequent Mortgage Loans or the Group III Subsequent Mortgage Loans, as applicable, including the outstanding principal of and interest due on such Subsequent Mortgage Loans, and all other related assets included or to be included in the Trust Fund with respect thereto.

The amount released from the Group I Pre-Funding Account with respect to a transfer of Group I Subsequent Mortgage Loans, Group II Pre-Funding Account with respect to a transfer of Group II Subsequent Mortgage Loans, or Group III Pre-Funding Account with respect to a transfer of Group III Subsequent Mortgage Loans, shall be one-hundred percent (100%) of the aggregate Stated Principal Balances as of the related Subsequent Cut-off Date of the Subsequent Mortgage Loans so transferred.

(ii) The Subsequent Mortgage Loans and the other property and rights related thereto described in paragraph (a) above shall be transferred by the Depositor to the Trust Fund only upon the satisfaction of each of the following conditions on or prior to the related Subsequent Transfer Date:

(a) the Unaffiliated Seller shall have provided the Depositor, the Trustee, the Rating Agencies and the Certificate Insurer with a timely Addition Notice, which shall include a Mortgage Loan Schedule, listing the Subsequent Mortgage Loans and shall have provided any other information reasonably requested by any of the foregoing with respect to the Subsequent Mortgage Loans;

(b) the Servicer shall have deposited in the Collection Account all collections of (x) principal in respect of the Subsequent Mortgage Loans received and due after the related Subsequent Cut-off Date and (y) interest due on the Subsequent Mortgage Loans after the related Subsequent Cut-off Date;

(c) as of each Subsequent Transfer Date, the Unaffiliated Seller was not insolvent nor will be made insolvent by such transfer nor is the Unaffiliated Seller aware of any pending insolvency;

(d) such addition will not result in a "prohibited transaction" (as defined in the REMIC Provisions) for any REMIC held by the Trust Fund, and will not cause any REMIC held by the Trust Fund to cease to qualify as a REMIC, as evidenced by an Opinion of Counsel with respect to such matters (which may be a blanket opinion dated the Closing Date);

(e) the Pre-Funding Period shall not have terminated;

(f) the Unaffiliated Seller shall have delivered to the Trustee an executed Assignment and Recognition Agreement with respect to each related Originator of Subsequent Mortgage Loans to be added to the Trust Fund on such Subsequent Transfer Date (which Assignment and Recognition Agreement shall

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include a representation and warranty from the related Originator that none of the Subsequent Mortgage Loans is a High Cost Loan, none of the Subsequent Mortgage Loans is covered by the Home Ownership and Equity Protection Act of 1994 and none of the Subsequent Mortgage Loans is in violation of any comparable state law);

(g) the Unaffiliated Seller shall have delivered to the Trustee an Officer's Certificate confirming the satisfaction of each condition precedent specified in this paragraph (ii), and the Opinion of Counsel referenced in clause (d);

(h) the Unaffiliated Seller and the Depositor shall have delivered to the Trustee an executed copy of a Subsequent Transfer Agreement, substantially in the form of Exhibit L hereto; and

(i) the Unaffiliated Seller shall have obtained the consent of the Certificate Insurer.

(iii) The obligation of the Trust Fund to purchase the Subsequent Mortgage Loans on a Subsequent Transfer Date is subject to the requirements that, following the purchase of such Subsequent Mortgage Loans, with respect to the entire mortgage loan pool:

(A) no more than 3.00% may be second lien mortgage loans;

(B) no more than 33.00% and no less than 26.00% may be Fixed Rate Mortgage Loans;

- (C) the weighted average original term to maturity may not exceed 360 months;
- (D) the weighted average gross Mortgage Rate must not be less than 7.40%, or more than 7.65%;
- (E) the weighted average LTV must not exceed 82.50%, and no more than 46.00% of the Mortgage Loans may have LTVs in excess of 80.00%;
- (F) no Mortgage Loan may have a Stated Principal Balance in excess of \$1,000,000 as of the related Cut-off Date;
- (G) at least 75.00% of the Mortgage Loans must have prepayment penalties;
- (H) the weighted average Gross Margin for the Adjustable Rate Mortgage Loans must be at least 5.93%;
- (I) the weighted average credit score (FICO Score) must be at least 615, and none of the Mortgage Loans may have credit scores below 500;

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- (J) no Mortgage Loan originated on or after October 1, 2002 but before or on March 7, 2003 will be secured by property located in the State of Georgia and no mortgage loan originated on or after March 7, 2003 is a "high cost home loan" as defined under the Georgia Fair Lending Act;
- (K) any Mortgage Loan originated on or after November 27, 2003, which is secured by an owner-occupied property located in the State of New Jersey, will be a purchase money home loan, and no Mortgage Loan originated on or after November 27, 2003, which is secured by owner-occupied property located in the State of New Jersey, will be a "covered" loan, "high cost" loan or a home improvement loan or be secured by manufactured housing;
- (L) the weighted average Stated Documentation and No Ratio Documentation percentage must not exceed 50.00%; and
- (M) all of the Group I Subsequent Mortgage Loans will conform with Freddie Mac Guidelines and none of the Group II Subsequent Mortgage Loans will be second-lien mortgage loans.

Any of the requirements set forth in clauses (ii) and (iii) above may be waived or modified in any respect with the consent of the Certificate Insurer and the Rating Agencies.

(iv) In connection with the transfer and assignment of the Subsequent Mortgage Loans, the Unaffiliated Seller shall satisfy the document delivery requirements set forth in Section 2.01(b).

#### Section 2.02 Acceptance by the Trustee of the Mortgage Loans.

The Trustee shall acknowledge, on each Delivery Date, receipt of the documents identified in the Initial Certification in the form annexed hereto as Exhibit F, and declares that it holds and will hold such documents and the other documents delivered to it pursuant to Section 2.01, and that it holds or will hold such other assets as are included in the Trust Fund, in trust for the exclusive use and benefit of all present and future Certificateholders and the Certificate Insurer. The Trustee acknowledges that it will maintain possession of the related Mortgage Notes in the State of California, unless otherwise permitted by the Rating Agencies and the Certificate Insurer.

In connection with each Delivery, the Trustee shall deliver via facsimile (with original to follow the next Business Day) to the Depositor, the Unaffiliated Seller, the Servicer and the Certificate Insurer an Initial Certification on or prior to the related Delivery Date, certifying receipt of the related Mortgage Notes and Assignments of Mortgage for each related Mortgage Loan. The Trustee shall not be responsible to verify the validity, sufficiency or genuineness of any document in any Custodial File.

Within 120 days after the related Delivery Date, the Trustee shall ascertain that all documents required to be reviewed by it are in its possession, and shall deliver to the Depositor, the Unaffiliated Seller, the Servicer and the Certificate Insurer a Final Certification to the effect

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that, as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or any Mortgage Loan specifically identified in

such certification as an exception and not covered by such certification): (i) all documents required to be reviewed by it are in its possession; (ii) such documents have been reviewed by it and appear regular on their face and relate to such Mortgage Loan; (iii) based on its examination and only as to the foregoing documents, the information set forth in items (1), (2) and (18) of the Mortgage Loan Schedule and items (1), (9) and (17) of the Data Tape Information respecting such Mortgage Loan is correct; (iv) each Mortgage Note has been endorsed as provided in Section 2.01 of this Agreement; and (v) with respect to each MERS Designated Loan, the Trustee, on behalf of the Trust Fund, is the beneficial owner of such MERS Designated Loan on the MERS System. The Trustee shall not be responsible to verify the validity, sufficiency or genuineness of any document in any Custodial File. Upon receipt of such Final Certification, if the Depositor, the Unaffiliated Seller or the Certificate Insurer determines that any noncompliance identified by the Trustee is a breach of a representation or warranty relating to such Mortgage Loan, such party shall give written notice to the Trustee thereof.

The Trustee shall retain possession and custody of each Custodial File in accordance with and subject to the terms and conditions set forth herein. The Servicer shall promptly deliver to the Trustee, upon the execution or receipt thereof, the originals of such other documents or instruments constituting the Custodial File as come into the possession of the Servicer from time to time.

Section 2.03 Representations, Warranties and Covenants of the Unaffiliated Seller and the Servicer.

(a) The Servicer hereby makes the representations and warranties set forth in (i) Schedule II hereto to the Depositor, the Unaffiliated Seller, the Certificate Insurer and the Trustee and (ii) Schedule IIA hereto to the Unaffiliated Seller and the Certificate Insurer, in each case, as of the Closing Date, and with respect to Subsequent Mortgage Loans, as of the related Subsequent Transfer Date; provided, however, that in the case of clause (ii), the Servicer only makes representations and warranties with respect to those Mortgage Loans on Schedule IA hereto for which the Servicing Transfer Date has occurred prior to the Closing Date or the related Subsequent Transfer Date, as applicable.

(b) CDC Mortgage Capital Inc., in its capacity as the Unaffiliated Seller, hereby makes the representations and warranties set forth in Schedule III hereto to the Depositor, the Trustee and the Certificate Insurer, as of the Closing Date.

(c) It is understood and agreed by the Servicer and the Unaffiliated Seller that the representations and warranties set forth in Section 2.03 shall survive the transfer of the Mortgage Loans to the Trust Fund, and shall inure to the benefit of the Trust Fund notwithstanding any restrictive or qualified endorsement on any Mortgage Note or Assignment of Mortgage or the examination or failure to examine any Mortgage File. Upon discovery by any of the Depositor, the Unaffiliated Seller, the Certificate Insurer, the Trustee or the Servicer of a breach by the Unaffiliated Seller of any of the foregoing representations or any of the representations and warranties made pursuant to Sections 3.01(f), 3.01(h), 3.01(n), 3.01(p) or 3.03 of the Unaffiliated Seller's Agreement or by any Originator of the representations and

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warranties made pursuant to the related Assignment and Recognition Agreement, the party discovering such breach shall give prompt written notice to the others.

(d) Within 90 days of the earlier of either discovery by or notice to the Unaffiliated Seller of any breach of a representation or warranty set forth in Section 3.01(f), 3.01(h), 3.01(n), 3.01(p) or 3.03 of the Unaffiliated Seller's Agreement that materially and adversely affects the value of the Mortgage Loans or the interest of the Trustee, the Certificate Insurer or the Certificateholders therein, the Unaffiliated Seller shall use its best efforts to cure such breach in all material respects and, if such breach cannot be remedied, the Unaffiliated Seller shall, (i) if such 90-day period expires prior to the second anniversary of the related Delivery Date, remove such Mortgage Loan from the Trust Fund and substitute in its place a Substitute Mortgage Loan, in the manner and subject to the conditions set forth in this Section 2.03; or (ii) repurchase such Mortgage Loan at the Repurchase Price; provided, however, that any such substitution pursuant to (i) above shall not be effected prior to the delivery to the Trustee of the Opinion of Counsel required by Section 2.05, if any, and a Request for Release substantially in the form of Exhibit K, and the Mortgage File for any such Substitute Mortgage Loan.

With respect to any Substitute Mortgage Loan or Loans, the Unaffiliated Seller shall deliver to the Trustee for the benefit of the Certificateholders the Mortgage Note, the Mortgage, the related Assignment of the Mortgage, and such other documents and agreements as are required by Section 2.01, with the

Mortgage Note endorsed and the Mortgage assigned as required by Section 2.01. No substitution is permitted to be made in any calendar month after the Determination Date for such month. Scheduled Payments due with respect to Substitute Mortgage Loans in the Due Period of substitution shall not be part of the Trust Fund and will be retained by the related Originator on the next succeeding Distribution Date. For the Due Period of substitution, distributions to Certificateholders will include the Scheduled Payment due on any Deleted Mortgage Loan for such Due Period and thereafter the related Originator shall be entitled to retain all amounts received in respect of such Deleted Mortgage Loan.

For any month in which the Unaffiliated Seller substitutes one or more Substitute Mortgage Loans for one or more Deleted Mortgage Loans, the Servicer will determine the amount (if any) by which the aggregate principal balance of all such Substitute Mortgage Loans as of the date of substitution is less than the aggregate Stated Principal Balance of all such Deleted Mortgage Loans (after application of the scheduled principal portion of the Scheduled Payments due in the Due Period of substitution). The Unaffiliated Seller shall deposit the amount of such shortage (the "Substitution Adjustment Amount") plus, an amount equal to the aggregate of any unreimbursed Advances and accrued and unpaid Servicing Fees with respect to such Deleted Mortgage Loans into the Collection Account on or before the Remittance Date for the Distribution Date in the month succeeding the calendar month during which the related Mortgage Loan became required to be purchased or replaced hereunder.

Upon discovery that any document does not comply with the requirements set forth in clauses (i) through (iv) of the Trustee's review of the Custodial Files pursuant to Section 2.02 or receipt of written notice of a breach of a representation and warranty, the Trustee shall in turn promptly notify the applicable Originator (with a copy to the Servicer, the Certificate Insurer and the Unaffiliated Seller) in writing of such non-compliance or breach and request that

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the related Originator cure such non-compliance or breach within the time period set forth in the applicable Mortgage Loan Purchase Agreement (but in any event, within 60 days from the date the related Originator is notified of such non-compliance or breach) and if the related Originator does not cure such non-compliance or breach in all material respects during such period, the Trustee shall notify such Originator to repurchase such Mortgage Loan from the Trust Fund at the Repurchase Price. In the event the Trustee receives written notice of a breach by any Originator of a representation and warranty that is subject to an automatic sixty-day repurchase obligation pursuant to Section 9.03 of the related Mortgage Loan Purchase Agreement, which representations and warranties relate to Prepayment Fees, Predatory Lending Regulations, Single Premium Credit Insurance, the Georgia Fair Lending Act, the Fair Credit Reporting Act, New York State Banking Law or failure of a Mortgage Loan to constitute a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Code, the Trustee shall notify such Originator to repurchase the Mortgage Loan at the Repurchase Price within sixty (60) days of such Originator's receipt of such notice.

(e) Upon delivery of the Final Certification with respect to each Mortgage Loan, the Trustee will notify the related Originator within 5 Business Days of such delivery of any missing documents from the Custodial File and if the related Originator does not deliver such missing documents within 60 days from the date the related Originator is notified of such noncompliance or breach, the Trustee shall notify such Originator to repurchase such Mortgage Loan from the Trust Fund at the Repurchase Price.

(f) Based solely on information received with respect to any Substitute Mortgage Loan from the Unaffiliated Seller or the related Originator, as applicable, the Servicer shall amend the Mortgage Loan Schedule to reflect the removal of such Deleted Mortgage Loan and the substitution of the Substitute Mortgage Loan or Loans and the Servicer shall deliver the amended Mortgage Loan Schedule to the Trustee. Upon such substitution, the Substitute Mortgage Loan or Loans shall be subject to the terms of this Agreement in all respects, and the Unaffiliated Seller shall be deemed to have made with respect to such Substitute Mortgage Loan or Loans, as of the date of substitution, the representations and warranties made pursuant to Sections 3.01(f), 3.01(h), 3.01(n), 3.01(p) and 3.03 of the Unaffiliated Seller's Agreement with respect to such Mortgage Loan. Upon any such substitution and the deposit to the Collection Account of the amount required to be deposited therein in connection with such substitution as described in the following paragraph, the Trustee shall release the Mortgage File relating to such Deleted Mortgage Loan to the Unaffiliated Seller or the related Originator, as applicable, and shall execute and deliver at the Unaffiliated Seller's or related Originator's direction, as applicable, such instruments of transfer or assignment prepared by such party, in each case without recourse, as shall be necessary to vest title in the Unaffiliated Seller or the related Originator, or its designee, as applicable, the Trustee's interest in any Deleted Mortgage Loan substituted for pursuant to this Section 2.03.

(g) In the event that the Unaffiliated Seller or the related Originator, as applicable, shall have repurchased a Mortgage Loan, the Repurchase Price therefor shall be deposited in the Collection Account pursuant to Section 3.10 on or before the Remittance Date for the Distribution Date in the month following the month during which the Unaffiliated Seller or the related Originator, as applicable, became obligated hereunder to repurchase or replace such Mortgage Loan and upon such deposit of the Repurchase Price, the delivery of the Opinion

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of Counsel required by Section 2.05 and receipt of a Request for Release in the form of Exhibit K hereto, the Trustee shall release the related Custodial File to such Person as directed by the Servicer, and the Trustee shall execute and deliver at such Person's direction such instruments of transfer or assignment prepared by such Person, in each case without recourse, as shall be necessary to transfer title from the Trustee. It is understood and agreed that the obligation under this Agreement of any Person to cure, repurchase or replace any Mortgage Loan as to which a breach has occurred and is continuing shall constitute the sole remedy against such Persons respecting such breach available to Certificateholders, the Depositor, the Unaffiliated Seller, the Certificate Insurer or the Trustee on their behalf. In the event such required repurchase or replacement does not occur, the Trustee shall take such actions as directed upon written direction from the Depositor or the Certificate Insurer and the provision of reasonable indemnity satisfactory to the Trustee in accordance with Sections 6.03 and 8.02.

(h) If the Unaffiliated Seller is required to repurchase or replace a Mortgage Loan pursuant to the terms hereof, upon receipt by the Trustee of written direction from the Unaffiliated Seller and either the related Repurchase Price or Substitute Mortgage Loan, as applicable, the Trustee shall assign to the Unaffiliated Seller its rights under the related Mortgage Loan Purchase Agreement solely with respect to such Mortgage Loan by an assignment in form and substance mutually satisfactory to the Unaffiliated Seller and the Trustee.

(i) The representations and warranties made pursuant to this Section 2.03 shall survive delivery of the respective Custodial Files to the Trustee.

#### Section 2.04 The Depositor and the Mortgage Loans.

The Depositor hereby represents and warrants to the Trustee and to the Certificate Insurer with respect to each Mortgage Loan as of the date hereof or such other date set forth herein that as of the related Delivery Date, and following the transfer of the Mortgage Loans to it by the Unaffiliated Seller, the Depositor had good title to the Mortgage Loans and the Mortgage Notes were subject to no offsets, defenses or counterclaims.

The Depositor hereby assigns, transfers and conveys to the Trustee all of its rights with respect to the Initial Mortgage Loans and shall, on each subsequent Transfer Date, convey all of its right, title and interest with respect to the related subsequent Mortgage Loans.

#### Section 2.05 Delivery of Opinion of Counsel in Connection with Substitutions and Non-Qualified Mortgages.

Notwithstanding any contrary provision of this Agreement, no substitution pursuant to Section 2.03 shall be made more than 30 days after the related Delivery Date unless the Unaffiliated Seller delivers, or causes the related Originator to deliver, as applicable, to the Trustee an Opinion of Counsel, at the expense of the Unaffiliated Seller or the related Originator, as applicable, addressed to the Trustee, to the effect that such substitution will not (i) result in the imposition of the tax on "prohibited transactions" on the Trust Fund or contributions after the Startup Day, as defined in Sections 860F(a)(2) and 860G(d) of the Code, respectively, or (ii) cause the Trust Fund to fail to qualify as one or more REMICs at any time that any Certificates are outstanding.

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#### Section 2.06 Execution and Delivery of Certificates.

The Trustee acknowledges the transfer and assignment to it of the Trust Fund and, concurrently with such transfer and assignment, has executed and delivered to or upon the order of the Depositor, the Certificates in authorized denominations evidencing directly or indirectly the entire ownership of the Trust Fund. The Trustee agrees to hold the Trust Fund and exercise the rights referred to above for the benefit of all present and future Holders of the Certificates, and for the benefit of the Certificate Insurer.

#### Section 2.07 REMIC Matters.

The Preliminary Statement sets forth the designations for federal income tax purposes of all interests created hereby. The "Startup Day" for

purposes of the REMIC Provisions shall be the Closing Date. The "latest possible maturity date" is June 25, 2034, which is the sixth Distribution Date following the latest Mortgage Loan maturity date.

Section 2.08 Representations and Warranties of the Depositor.

The Depositor hereby represents, warrants and covenants to the Trustee, the Servicer and to the Certificate Insurer that as of the date of this Agreement or as of such date specifically provided herein:

(a) The Depositor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;

(b) The Depositor has the corporate power and authority to convey the Mortgage Loans and to execute, deliver and perform, and to enter into and consummate the transactions contemplated by, this Agreement;

(c) This Agreement has been duly and validly authorized, executed and delivered by the Depositor, all requisite corporate action having been taken, and, assuming the due authorization, execution and delivery hereof by the other parties hereto, constitutes or will constitute the legal, valid and binding agreement of the Depositor, enforceable against the Depositor in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally, and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law);

(d) No consent, approval, authorization or order of or registration or filing with, or notice to, any governmental authority or court is required for the execution, delivery and performance of or compliance by the Depositor with this Agreement or the consummation by the Depositor of any of the transactions contemplated hereby, except as have been made on or prior to the Closing Date;

(e) None of the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby or thereby, or the fulfillment of or compliance with the terms and conditions of this Agreement, (i) conflicts or will conflict with or results or will result in a breach of, or constitutes or will constitute a default or results or will result in an acceleration

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under (A) the charter or by-laws of the Depositor, or (B) of any term, condition or provision of any material indenture, deed of trust, contract or other agreement or instrument to which the Depositor or any of its subsidiaries is a party or by which it or any of its subsidiaries is bound; (ii) results or will result in a violation of any law, rule, regulation, order, judgment or decree applicable to the Depositor or any court or governmental authority having jurisdiction over the Depositor or its subsidiaries; or (iii) results in the creation or imposition of any lien, charge or encumbrance which would have a material adverse effect upon the Mortgage Loans or any documents or instruments evidencing or securing the Mortgage Loans;

(f) There are no actions, suits or proceedings before or against or investigations of, the Depositor pending, or to the knowledge of the Depositor, threatened, before any court, administrative agency or other tribunal, and no notice of any such action, which, in the Depositor's reasonable judgment, might materially and adversely affect the performance by the Depositor of its obligations under this Agreement, or the validity or enforceability of this Agreement;

(g) The Depositor is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or governmental agency that may materially and adversely affect its performance hereunder; and

(h) Immediately prior to the transfer and assignment by the Depositor to the Trustee, the Depositor had, or, with respect to the subsequent Mortgage Loans, will have, good title to, and was, or will be, the sole owner of each Mortgage Loan, free of any interest of any other Person, and the Depositor has transferred, or shall transfer, all right, title and interest in each Mortgage Loan to the Trustee. The transfer of the Mortgage Note and the Mortgage as and in the manner contemplated by this Agreement is sufficient either (i) fully to transfer to the Trustee, for the benefit of the Certificateholders and for the benefit of the Certificate Insurer, all right, title, and interest of the Depositor thereto as note holder and mortgagee or (ii) to grant to the Trustee, for the benefit of the Certificateholders and for the benefit of the Certificate Insurer, the security interest referred to in Section 10.04.

It is understood and agreed that the representations, warranties and covenants set forth in this Section 2.08 shall survive delivery of the respective Custodial Files to the Trustee or to a custodian, as the case may be, and shall inure to the benefit of the Trustee.



ADMINISTRATION AND SERVICING  
OF MORTGAGE LOANS

Section 3.01 Servicer to Service Mortgage Loans.

(a) For and on behalf of the Certificateholders, and for the benefit of the Certificate Insurer, the Servicer shall service and administer the Mortgage Loans in accordance with the terms of this Agreement and the respective Mortgage Loans and, to the extent consistent with such terms, in the same manner in which it services and administers similar mortgage loans

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for its own portfolio, giving due consideration to customary and usual standards of practice of mortgage lenders and loan servicers administering similar mortgage loans but without regard to:

(i) any relationship that the Servicer, any Subservicer or any Affiliate of the Servicer or any Subservicer may have with the related Mortgagor;

(ii) the ownership or non-ownership of any Certificate by the Servicer or any Affiliate of the Servicer;

(iii) the Servicer's obligation to make P&I Advances or Servicing Advances; or

(iv) the Servicer's or any Subservicer's right to receive compensation for its services hereunder or with respect to any particular transaction.

To the extent consistent with the foregoing, the Servicer shall seek to maximize the timely and complete recovery of principal and interest on the Mortgage Notes. Subject only to the above-described servicing standards and the terms of this Agreement and of the respective Mortgage Loans, the Servicer shall have full power and authority, acting alone or through Subservicers as provided in Section 3.02, to do or cause to be done any and all things in connection with such servicing and administration which it may deem necessary or desirable. Without limiting the generality of the foregoing, the Servicer in its own name or in the name of a Subservicer is hereby authorized and empowered by the Trustee when the Servicer believes it appropriate in its best judgment in accordance with the servicing standards set forth above, to execute and deliver any and all instruments of satisfaction or cancellation, or of partial or full release or discharge, and all other comparable instruments, with respect to the Mortgage Loans and the Mortgaged Properties and to institute foreclosure proceedings or obtain a deed-in-lieu of foreclosure so as to convert the ownership of such properties, and to hold or cause to be held title to such properties, on behalf of the Trustee. The Servicer shall service and administer the Mortgage Loans in accordance with applicable state and federal law and shall provide to the Mortgagors any reports required to be provided to them thereby. The Servicer shall also comply in the performance of this Agreement with all reasonable rules and requirements of each insurer under any standard hazard insurance policy. Subject to Section 3.15, the Trustee shall execute, at the written request of the Servicer, and furnish to the Servicer and any Subservicer such documents as are necessary or appropriate to enable the Servicer or any Subservicer to carry out their servicing and administrative duties hereunder, and the Trustee hereby grants to the Servicer, and this Agreement shall constitute, a power of attorney to carry out such duties including a power of attorney to take title to Mortgaged Properties after foreclosure on behalf of the Trustee. The Trustee shall execute a separate power of attorney in favor of the Servicer for the purposes described herein to the extent necessary or desirable to enable the Servicer to perform its duties hereunder. The Trustee shall not be liable for the actions of the Servicer or any Subservicers under such powers of attorney.

(b) Subject to Section 3.09(b), in accordance with the standards of the preceding paragraph, the Servicer shall advance or cause to be advanced funds as necessary for the purpose of effecting the timely payment of taxes and assessments on the Mortgaged Properties, which advances shall be Servicing Advances reimbursable in the first instance from

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related collections from the Mortgagors pursuant to Section 3.09(b), and further as provided in Section 3.11. Any cost incurred by the Servicer or by Subservicers in effecting the timely payment of taxes and assessments on a Mortgaged Property shall not be added to the unpaid principal balance of the related Mortgage Loan, notwithstanding that the terms of such Mortgage Loan so permit.

(c) Notwithstanding anything in this Agreement to the contrary, the Servicer may not make any future advances with respect to a Mortgage Loan

(except as provided in Section 4.01) and the Servicer shall not (i) permit any modification with respect to any Mortgage Loan that would change the Mortgage Rate, reduce or increase the principal balance (except for reductions resulting from actual payments of principal) or change the final maturity date on such Mortgage Loan (except for a reduction of interest payments resulting from the application of the Servicemembers Relief Act or any similar state statutes) or (ii) permit any modification, waiver or amendment of any term of any Mortgage Loan that would both (A) effect an exchange or reissuance of such Mortgage Loan under Section 1001 of the Code (or final, temporary or proposed Treasury regulations promulgated thereunder) and (B) cause any REMIC to fail to qualify as a REMIC under the Code or the imposition of any tax on "prohibited transactions" or "contributions after the startup day" under the REMIC Provisions, or (iii) except as provided in Section 3.07(a), waive any Prepayment Charges.

(d) The Servicer may delegate its responsibilities under this Agreement; provided, however, that no such delegation shall release the Servicer from the responsibilities or liabilities arising under this Agreement.

#### Section 3.02 Subservicing Agreements Between the Servicer and Subservicers.

(a) Subject to the consent of the Certificate Insurer (so long as no Certificate Insurer Default has occurred and is continuing), which consent shall not be unreasonably withheld, the Servicer may enter into subservicing agreements with Subservicers (each, a "Subservicer"), for the servicing and administration of the Mortgage Loans.

Unless otherwise approved by the Certificate Insurer (so long as no Certificate Insurer Default has occurred and is continuing), each Subservicer shall be (i) authorized to transact business in the state or states in which the related Mortgaged Properties it is to service are situated, if and to the extent required by applicable law to enable the Subservicer to perform its obligations hereunder and under the Subservicing Agreement, (ii) an institution approved as a mortgage loan originator by the Federal Housing Administration or an institution that has deposit accounts insured by the FDIC and (iii) a Freddie Mac or Fannie Mae approved mortgage servicer. Each Subservicing Agreement must impose on the Subservicer requirements conforming to the provisions set forth in Section 3.08 and provide for servicing of the Mortgage Loans consistent with the terms of this Agreement. The Servicer will examine each Subservicing Agreement and will be familiar with the terms thereof. The terms of any Subservicing Agreement will not be inconsistent with any of the provisions of this Agreement. The Servicer and the Subservicers may enter into and make amendments to the Subservicing Agreements or enter into different forms of Subservicing Agreements; provided, however, that any such amendments or different forms shall be consistent with and not violate the provisions of this Agreement, and that no such amendment or different form shall be made or entered into

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which could be reasonably expected to be materially adverse to the interests of the Trustee, without the consent of the Trustee. Any variation without the consent of the Trustee from the provisions set forth in Section 3.08 relating to insurance or priority requirements of Subservicing Accounts, or credits and charges to the Subservicing Accounts or the timing and amount of remittances by the Subservicers to the Servicer, are conclusively deemed to be inconsistent with this Agreement and therefore prohibited. The Servicer shall deliver to the Trustee, the Unaffiliated Seller, the Certificate Insurer and the Depositor copies of all Subservicing Agreements, and any amendments or modifications thereof, promptly upon the Servicer's execution and delivery of such instruments.

(b) As part of its servicing activities hereunder, the Servicer (except as otherwise provided in the last sentence of this paragraph), for the benefit of the Trustee, shall enforce the obligations of each Subservicer under the related Subservicing Agreement, including, without limitation, any obligation to make advances in respect of delinquent payments as required by a Subservicing Agreement. Such enforcement, including, without limitation, the legal prosecution of claims, termination of Subservicing Agreements, and the pursuit of other appropriate remedies, shall be in such form and carried out to such an extent and at such time as the Servicer, in its good faith business judgment, would require were it the owner of the related Mortgage Loans. The Servicer shall pay the costs of such enforcement at its own expense, and shall be reimbursed therefor only (i) from a general recovery resulting from such enforcement, to the extent, if any, that such recovery exceeds all amounts due in respect of the related Mortgage Loans or (ii) from a specific recovery of costs, expenses or attorneys' fees against the party against whom such enforcement is directed.

#### Section 3.03 Successor Subservicers.

The Servicer shall be entitled to terminate any Subservicing Agreement and the rights and obligations of any Subservicer pursuant to any Subservicing Agreement in accordance with the terms and conditions of such Subservicing

Agreement. In the event of termination of any Subservicer, all servicing obligations of such Subservicer shall be assumed simultaneously by the Servicer without any act or deed on the part of such Subservicer or the Servicer, and the Servicer either shall service directly the related Mortgage Loans or shall enter into a Subservicing Agreement with a successor Subservicer which qualifies under Section 3.02.

Any Subservicing Agreement shall include the provision that such agreement may be immediately terminated by the Depositor or the Trustee without fee, in accordance with the terms of this Agreement, in the event that the Servicer shall, for any reason, no longer be the Servicer (including termination due to an Event of Default).

#### Section 3.04 Liability of the Servicer.

Notwithstanding any Subservicing Agreement, any of the provisions of this Agreement relating to agreements or arrangements between the Servicer and a Subservicer or reference to actions taken through a Subservicer or otherwise, the Servicer shall remain obligated and primarily liable to the Trustee for the servicing and administering of the Mortgage Loans in accordance with the provisions of Section 3.01 without diminution of such obligation or liability by virtue of such Subservicing Agreements or arrangements or by virtue of indemnification from

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the Subservicer and to the same extent and under the same terms and conditions as if the Servicer alone were servicing and administering the Mortgage Loans. The Servicer shall be entitled to enter into any agreement with a Subservicer for indemnification of the Servicer by such Subservicer and nothing contained in this Agreement shall be deemed to limit or modify such indemnification.

#### Section 3.05 No Contractual Relationship Between Subservicers and the Trustee.

Any Subservicing Agreement that may be entered into and any transactions or services relating to the Mortgage Loans involving a Subservicer in its capacity as such shall be deemed to be between the Subservicer and the Servicer alone, and the Trustee (or any successor Servicer) shall not be deemed a party thereto and shall have no claims, rights, obligations, duties or liabilities with respect to the Subservicer except as set forth in Section 3.06. The Servicer shall be solely liable for all fees owed by it to any Subservicer, irrespective of whether the Servicer's compensation pursuant to this Agreement is sufficient to pay such fees.

#### Section 3.06 Assumption or Termination of Subservicing Agreements by Trustee.

In the event the Servicer at any time shall for any reason no longer be the Servicer (including by reason of the occurrence of a Event of Default), the Trustee or its designee shall thereupon assume all of the rights and obligations of the Servicer under each Subservicing Agreement that the Servicer may have entered into, with copies thereof provided to the Trustee prior to the Trustee assuming such rights and obligations, unless the Trustee elects to terminate any Subservicing Agreement in accordance with its terms as provided in Section 3.03.

Upon such assumption, the Trustee, its designee or the successor servicer shall be deemed, subject to Section 3.03, to have assumed all of the Servicer's interest therein and to have replaced the Servicer as a party to each Subservicing Agreement to the same extent as if each Subservicing Agreement had been assigned to the assuming party, except that (i) the Servicer shall not thereby be relieved of any liability or obligations under any Subservicing Agreement that arose before it ceased to be the Servicer and (ii) none of the Depositor, the Trustee, their designees or any successor Servicer shall be deemed to have assumed any liability or obligation of the Servicer that arose before it ceased to be the Servicer.

The Servicer at its expense shall, upon request of the Trustee, deliver to the assuming party all documents and records relating to each Subservicing Agreement and the Mortgage Loans then being serviced and an accounting of amounts collected and held by or on behalf of it, and otherwise use its best efforts to effect the orderly and efficient transfer of the Subservicing Agreements to the assuming party.

#### Section 3.07 Collection of Certain Mortgage Loan Payments; Establishment of Certain Accounts.

(a) The Servicer shall make reasonable efforts to collect all payments called for under the terms and provisions of the Mortgage Loans, and shall, to the extent such procedures shall be consistent with this Agreement and the terms and provisions of any

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applicable Insurance Policies, follow such collection procedures as it would follow with respect to mortgage loans comparable to the Mortgage Loans and held for its own account. Consistent with the foregoing, the Servicer may (i) waive any late payment charge or, if applicable, any penalty interest, or (ii) extend the due dates for the Scheduled Payments due on a Mortgage Note for a period of not greater than 180 days; provided that any extension pursuant to clause (ii) above shall not affect the amortization schedule of any Mortgage Loan for purposes of any computation hereunder, except as provided below. In the event of any such arrangement pursuant to clause (ii) above, the Servicer shall make timely advances on such Mortgage Loan during such extension pursuant to Section 4.01 and in accordance with the amortization schedule of such Mortgage Loan without modification thereof by reason of such arrangements, subject to Section 4.01(d) pursuant to which the Servicer shall not be required to make any such advances that are Nonrecoverable P&I Advances. Notwithstanding the foregoing, the Servicer may not waive, in whole or in part, a Prepayment Charge, except under the following circumstances: (i) such waiver relates to a default or a reasonably foreseeable default and would, in the reasonable judgment of the Servicer, maximize recovery of total proceeds taking into account the value of such Prepayment Charge and the related Mortgage Loan, and doing so is standard and customary in servicing mortgage loans similar to the Mortgage Loans (including any waiver of a Prepayment Charge in connection with a refinancing of a Mortgage Loan that is related to a default or a reasonably foreseeable default), and in no event will the Servicer waive a Prepayment Charge in connection with a refinancing of a Mortgage Loan that is not related to a default or a reasonably foreseeable default or (ii) such Prepayment Charge is not permitted to be collected by applicable law. If a Prepayment Charge is waived other than as permitted by the prior sentence, then the Servicer is required to pay the amount of such waived Prepayment Charge, for the benefit of the Holders of the Class P Certificates, by depositing such amount into the Collection Account together with and at the time that the amount prepaid on the related Mortgage Loan is required to be deposited into the Collection Account. Notwithstanding any provision in this Agreement to the contrary, in the event the Prepayment Charge payable under the terms of the Mortgage Note is less than the amount of the Prepayment Charge set forth in the Mortgage Loan Schedule or other information provided to the Servicer, the Servicer shall not have any liability or obligation with respect to such difference, and in addition shall not have any liability or obligation to pay the amount of any uncollected Prepayment Charge if the failure to collect such amount is the direct result of inaccurate or incomplete information on the Mortgage Loan Schedule.

(b) (i) The Trustee shall establish and maintain the Excess Reserve Fund Account, on behalf of the Class X Certificateholders to receive any Basis Risk Payment and any Interest Rate Cap Payments and, to secure their limited recourse obligation to pay to the LIBOR Certificateholders Basis Risk Carry Forward Amounts.

(ii) On each Distribution Date, the Trustee shall deposit the amount of any Basis Risk Payment made for the benefit of the Certificateholders and any Interest Rate Cap Payment made for the benefit of the Offered Certificates for such date into the Excess Reserve Fund Account.

(c) (i) On each Distribution Date on which there exists a Basis Risk Carry Forward Amount on any Class of Certificates, the Trustee shall (1) withdraw from the Distribution Account and deposit in the Excess Reserve Fund Account, as set forth in Section

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4.02(a) (iii) (N), the lesser of (a) the sum of (x) the Class X Distributable Amount (without regard to the reduction in the definition thereof with respect to the Basis Risk Payment) (to the extent remaining after the distributions specified in Sections 4.02(a) (iii) (A)-(M), and (y) each Interest Rate Cap Payment, if any, with respect to such Distribution Date, and (b) the Basis Risk Carry Forward Amount and (2) withdraw from the Excess Reserve Fund Account amounts necessary to pay to such Class or Classes of Certificates the Basis Risk Carry Forward Amount. Such payments shall be allocated to those Classes on a pro rata basis based upon the amount of Basis Risk Carry Forward Amount owed to each such Class and shall be paid in the priority set forth in Section 4.02(a) (iii) (O).

(ii) The Trustee shall account for the Excess Reserve Fund Account as an outside reserve fund within the meaning of Treasury Regulation 1.860G-2(h) and not as an asset of any REMIC created pursuant to this Agreement. The beneficial owner of the Excess Reserve Fund Account is the Class X Certificateholder. For all federal tax purposes, amounts transferred by the Upper Tier REMIC to the Excess Reserve Fund Account shall be treated as distributions by the Trustee to the Class X Certificateholder.

(iii) Any Basis Risk Carry Forward Amounts paid by the Trustee to the LIBOR Certificateholders shall be accounted for by the Trustee as amounts paid first to the Holders of the Class X Certificate and then to the respective Class or Classes of LIBOR Certificates. In addition, the Trustee shall account for the LIBOR Certificateholders' rights to receive payments of Basis Risk Carry

Forward Amounts as rights in a limited recourse interest rate cap contract written by the Class X Certificateholders in favor of the LIBOR Certificateholders.

(iv) Notwithstanding any provision contained in this Agreement, the Trustee shall not be required to make any payments from the Excess Reserve Fund Account except as expressly set forth in this Section 3.07(c).

(d) The Trustee shall establish and maintain the Distribution Account on behalf of the Certificateholders. The Trustee shall, promptly upon receipt, deposit in the Distribution Account and retain therein the following:

(i) the aggregate amount remitted by the Servicer to the Trustee pursuant to Section 3.11;

(ii) any amount deposited by the Servicer pursuant to Section 3.10 in connection with any losses on Permitted Investments; and

(iii) any other amounts deposited hereunder which are required to be deposited in the Distribution Account.

In the event that the Servicer shall remit any amount not required to be remitted, it may at any time direct the Trustee in writing to withdraw such amount from the Distribution Account, any provision herein to the contrary notwithstanding. Such direction may be accomplished by delivering notice to the Trustee which describes the amounts deposited in error in the Distribution Account. All funds deposited in the Distribution Account shall be held by the Trustee in trust for the Certificateholders until disbursed in accordance with this Agreement or

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withdrawn in accordance with Section 4.02. In no event shall the Trustee incur liability for withdrawals from the Distribution Account at the direction of the Servicer.

(e) The Trustee shall establish and maintain the Capitalized Interest Account, on behalf of the Certificateholders. On the Closing Date, the Trustee shall deposit \$759,988 into the Capitalized Interest Account from the proceeds of the sale of the Offered Certificates. Withdrawals from the Capitalized Interest Account shall be made in accordance with Sections 4.02(c) and (d). The Trustee shall account for the Capitalized Interest Account as an outside reserve fund within the meaning of Treasury Regulation 1.860G-2(h) and not as an asset of any REMIC created pursuant to this Agreement. The beneficial owner of the Capitalized Interest Account shall be the Unaffiliated Seller.

(f) The Trustee shall establish and maintain the Pre-Funding Accounts on behalf of the Certificateholders. On the Closing Date, the Trustee shall deposit the Group I Initial Pre-Funded Amount into the Group I Pre-Funding Account, the Group II Initial Pre-Funded Amount into the Group II Pre-Funding Account and the Group III Initial Pre-Funded Amount into the Group III Pre-Funding Account, in each case from the proceeds of the sale of the Offered Certificates. Withdrawals from the Pre-Funding Accounts shall be made in accordance with Sections 4.02(e) and (f).

(g) The Servicer or the Trustee (if directed in writing by the Servicer) may invest the funds in the Accounts with respect to the Collection Account and the Distribution Account or by the Unaffiliated Seller, with respect to the Pre-Funding Accounts and the Capitalized Interest Account in each case, in Permitted Investments, which directions shall be in accordance with Section 3.12. Amounts on deposit in the Excess Reserve Fund Account shall not be invested.

(h) The Servicer shall give prior written notice to the Trustee, each Rating Agency and the Depositor of any proposed change of the location of the Collection Account.

(i) In order to comply with its duties under the U.S. Patriot Act, the Trustee shall obtain and verify certain information and documentation from the owners of the accounts that the Trustee establishes pursuant to this Agreement including, but not limited to, each account owner's name, address and other identifying information.

#### Section 3.08 Subservicing Accounts.

In those cases where a Subservicer is servicing a Mortgage Loan pursuant to a Subservicing Agreement, the Subservicer will be required to establish and maintain one or more accounts (collectively, the "Subservicing Account"). The Subservicing Account shall be an Eligible Account and shall otherwise be acceptable to the Servicer. The Subservicer shall deposit in the clearing account (which account must be an Eligible Account) in which it customarily deposits payments and collections on mortgage loans in connection with its mortgage loan servicing activities on a daily basis, and in no event more than one Business Day after the Subservicer's receipt thereof, all proceeds

of Mortgage Loans received by the Subservicer less its servicing compensation to the extent permitted by the Subservicing Agreement, and shall thereafter deposit such amounts in the Subservicing Account, in no event

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more than two Business Days after the deposit of such funds into the clearing account. The Subservicer shall thereafter deposit such proceeds in the Collection Account or remit such proceeds to the Servicer for deposit in the Collection Account not later than two Business Days after the deposit of such amounts in the Subservicing Account. For purposes of this Agreement, the Servicer shall be deemed to have received payments on the Mortgage Loans when the Subservicer receives such payments.

#### Section 3.09 Collection of Taxes, Assessments and Similar Items; Escrow Accounts.

(a) The Servicer shall ensure that each of the Mortgage Loans shall be covered by a paid-in-full, life-of-the-loan tax service contract with a nationally recognized provider acceptable to the Servicer (each, a "Tax Service Contract"). Each Tax Service Contract shall be assigned to the Trustee, or its designee, at the Servicer's expense in the event that the Servicer is terminated as Servicer of the related Mortgage Loan.

(b) To the extent that the services described in this paragraph (b) are not otherwise provided pursuant to the Tax Service Contracts described in paragraph (a) hereof, the Servicer undertakes to perform such functions. The Servicer shall establish and maintain, or cause to be established and maintained, one or more accounts (the "Escrow Accounts"), which shall be Eligible Accounts. The Servicer shall deposit in the clearing account (which account must be an Eligible Account) in which it customarily deposits payments and collections on mortgage loans in connection with its mortgage loan servicing activities on a daily basis, and in no event more than one Business Day after the Servicer's receipt thereof, all collections from the Mortgagors (or related advances from Subservicers) for the payment of taxes, assessments, hazard insurance premiums and comparable items for the account of the Mortgagors ("Escrow Payments") collected on account of the Mortgage Loans and shall thereafter deposit such Escrow Payments in the Escrow Accounts, in no event more than two Business Days after the deposit of such funds in the clearing account, for the purpose of effecting the payment of any such items as required under the terms of this Agreement. Withdrawals of amounts from an Escrow Account may be made only to (i) effect payment of taxes, assessments, hazard insurance premiums, and comparable items; (ii) reimburse the Servicer (or a Subservicer to the extent provided in the related Subservicing Agreement) out of related collections for any advances made pursuant to Section 3.01 (with respect to taxes and assessments) and Section 3.13 (with respect to hazard insurance); (iii) refund to Mortgagors any sums as may be determined to be overages; (iv) pay interest, if required and as described below, to Mortgagors on balances in the Escrow Account, and the Servicer shall be entitled to withdraw from the Escrow Account any interest earned and not required to be paid to Mortgagors; (v) clear and terminate the Escrow Account at the termination of the Servicer's obligations and responsibilities in respect of the Mortgage Loans under this Agreement; or (vi) recover amounts deposited in error. As part of its servicing duties, the Servicer or Subservicers shall pay to the Mortgagors interest on funds in Escrow Accounts, to the extent required by law and, to the extent that interest earned on funds in the Escrow Accounts is insufficient, to pay such interest from its or their own funds, without any reimbursement therefor. To the extent that a Mortgage does not provide for Escrow Payments, the Servicer shall determine whether any such payments are made by the Mortgagor in a manner and at a time that avoids the loss of the Mortgaged Property due to a tax sale or the foreclosure of a tax lien. The Servicer assumes full responsibility for the payment of all such bills within such time and shall

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effect payments of all such bills irrespective of the Mortgagor's faithful performance in the payment of same or the making of the Escrow Payments and shall make advances from its own funds to effect such payments; provided, however, that such advances are deemed to be Servicing Advances.

#### Section 3.10 Collection Account.

(a) On behalf of the Trustee, the Servicer shall establish and maintain, or cause to be established and maintained, one or more Eligible Accounts (such account or accounts, the "Collection Account"), held in trust for the benefit of the Trustee entitled "Deutsche Bank National Trust Company on behalf of CDC Mortgage Capital Trust 2004-HE1". On behalf of the Trustee, the Servicer shall deposit or cause to be deposited in the clearing account (which account must be an Eligible Account) in which it customarily deposits payments and collections on mortgage loans in connection with its mortgage loan servicing activities on a daily basis, and in no event more than one Business Day after the Servicer's receipt thereof, and shall thereafter deposit in the Collection Account, in no event more than two Business Days after the deposit of such funds

into the clearing account, as and when received or as otherwise required hereunder, the following payments and collections received or made by it subsequent to the related Cut-off Date (other than in respect of principal or interest on the related Mortgage Loans due on or before the related Cut-off Date, and except for \$69,940.29 in interest, which is being retained by the Unaffiliated Seller), or payments (other than Principal Prepayments) received by it on or prior to the related Cut-off Date but allocable to a Due Period subsequent thereto:

- (i) all payments on account of principal, including Principal Prepayments, on the Mortgage Loans;
- (ii) all payments on account of interest (net of the related Servicing Fee) on each Mortgage Loan;
- (iii) all Insurance Proceeds to the extent such Insurance Proceeds are not to be applied to the restoration of the related Mortgaged Property or released to the related Mortgagor in accordance with the express requirements of law or in accordance with prudent and customary servicing practices, Condemnation Proceeds and Liquidation Proceeds;
- (iv) any amounts required to be deposited pursuant to Section 3.12 in connection with any losses realized on Permitted Investments with respect to funds held in the Collection Account;
- (v) any amounts required to be deposited by the Servicer pursuant to the second paragraph of Section 3.13(a) in respect of any blanket policy deductibles;
- (vi) all proceeds of any Mortgage Loan repurchased or purchased in accordance with this Agreement; and
- (vii) all Prepayment Charges collected by the Servicer.

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The foregoing requirements for deposit in the Collection Accounts shall be exclusive, it being understood and agreed that, without limiting the generality of the foregoing, payments in the nature of late payment charges, NSF fees, reconveyance fees, assumption fees and other similar fees and charges need not be deposited by the Servicer in the Collection Account and shall, upon collection, belong to the Servicer as additional compensation for its servicing activities. In the event the Servicer shall deposit in the Collection Account any amount not required to be deposited therein, it may at any time withdraw such amount from the Collection Account, any provision herein to the contrary notwithstanding.

(b) Funds in the Collection Account may be invested in Permitted Investments in accordance with the provisions set forth in Section 3.12. The Servicer shall give notice to the Trustee and the Depositor of the location of the Collection Account maintained by it when established and prior to any change thereof.

#### Section 3.11 Withdrawals from the Collection Account.

(a) The Servicer shall, from time to time, make withdrawals from the Collection Account for any of the following purposes or as described in Section 4.01:

- (i) On or prior to the Remittance Date, to remit to the Trustee the Interest Remittance Amount and the Principal Remittance Amount in respect of the related Distribution Date together with all amounts representing Prepayment Charges from the Mortgage Loans received during the related Prepayment Period;
- (ii) to reimburse the Servicer for unreimbursed P&I Advances, but only to the extent of amounts received which represent Late Collections (net of the related Servicing Fees) of Scheduled Payments on Mortgage Loans with respect to which such P&I Advances were made in accordance with the provisions of Section 4.01;
- (iii) to pay the Servicer or any Subservicer (a) any unpaid Servicing Fees or (b) any unreimbursed Servicing Advances with respect to each Mortgage Loan, but only to the extent of any Late Collections or other amounts as may be collected by the Servicer from the related Mortgagor, or otherwise received with respect to such Mortgage Loan (or the related REO Property);
- (iv) to pay to the Servicer as servicing compensation (in addition to the Servicing Fee) on the Remittance Date any interest or investment income earned on funds deposited in the Collection Account;
- (v) to pay to the Unaffiliated Seller or the related Originator, as applicable, with respect to each Mortgage Loan that has previously been

purchased or replaced by the Unaffiliated Seller or such Originator, as applicable, pursuant to this Agreement, all amounts received thereon subsequent to the date of purchase or substitution, as the case may be;

(vi) to reimburse the Servicer for (a) any P&I Advance or Servicing Advance previously made which the Servicer has determined to be a Nonrecoverable P&I Advance or Nonrecoverable Servicing Advance in accordance with the provisions of Section 4.01

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and (b) any unpaid Servicing Fees to the extent not recoverable from Late Collections or other amounts received with respect to the related Mortgage Loan under Section 3.11(a)(iii); provided, that this clause (b) shall only apply with respect to Servicing Fees to second lien Mortgage Loans;

(vii) to pay, or to reimburse the Servicer for advances in respect of, expenses incurred in connection with any Mortgage Loan pursuant to Section 3.15;

(viii) to reimburse the Servicer, the Depositor or the Trustee for expenses incurred by or reimbursable to the Servicer, the Depositor or the Trustee, as the case may be, pursuant to Section 6.03;

(ix) to reimburse the Servicer, the Unaffiliated Seller, the Depositor, the Certificate Insurer or the Trustee, as the case may be, for expenses reasonably incurred in respect of the breach or defect giving rise to the repurchase obligation under Section 2.03 of this Agreement that were included in the Repurchase Price of the Mortgage Loan, including any expenses arising out of the enforcement of the repurchase obligation to the extent not otherwise paid pursuant to the terms hereof;

(x) to withdraw any amounts deposited in the Collection Account in error; and

(xi) to clear and terminate the Collection Account upon termination of this Agreement.

(b) The Servicer shall keep and maintain separate accounting, on a Mortgage Loan by Mortgage Loan basis, for the purpose of justifying any withdrawal from the Collection Account, to the extent held by or on behalf of it, pursuant to subclauses (a)(ii), (iii), (v), (vi), (vii), (viii) and (ix) above. The Servicer shall provide written notification to the Trustee, on or prior to the next succeeding Remittance Date, upon making any withdrawals from the Collection Account pursuant to subclause (a)(vii) above.

#### Section 3.12 Investment of Funds in the Accounts.

(a) The Servicer may direct the investment of funds in the Collection Account and may direct the Trustee to invest funds in the Distribution Account, and the Unaffiliated Seller may direct the Trustee to invest the funds in the Pre-Funding Accounts and the Capitalized Interest Account (each of such Accounts, for purposes of this Section 3.12, an "Investment Account"), in one or more Permitted Investments bearing interest or sold at a discount, and maturing, unless payable on demand no later than the Business Day immediately preceding the date on which such funds are required to be withdrawn from such account pursuant to this Agreement. All such investment directions shall be in writing and if the Trustee does not receive such written instructions no investment shall be made. All such Permitted Investments shall be held to maturity, unless payable on demand. Any investment of funds in an Investment Account shall be made in the name of the Trustee. The Trustee shall be entitled to sole possession (except with respect to investment direction of funds held in the related Account and any income and gain realized thereon) over each such investment, and any certificate or other instrument evidencing any such investment shall be delivered directly to the Trustee or its agent, together with any document of transfer necessary to transfer title to such investment to the Trustee. In the

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event amounts on deposit in an Investment Account are at any time invested in a Permitted Investment payable on demand, the Trustee may:

- (x) consistent with any notice required to be given thereunder, demand that payment thereon be made on the last day such Permitted Investment may otherwise mature hereunder in an amount equal to the lesser of (1) all amounts then payable thereunder and (2) the amount required to be withdrawn on such date; and
- (y) demand payment of all amounts due thereunder that such Permitted Investment would not constitute a Permitted Investment in respect of funds thereafter on deposit in the Investment Account.



(b) (i) (i) All income and gain realized from the investment of funds deposited in the Collection Account and the Distribution Account held by or on behalf of the Servicer, shall be for the benefit of the Servicer and shall be subject to its withdrawal in the manner set forth in Section 3.11 in the case of income in the Collection Account, and on each Distribution Date, the Trustee shall withdraw from the Distribution Account, and remit to the Servicer all amounts in respect of such income and gain in the Distribution Account. Whether in regard to the Collection Account or the Distribution Account, the Servicer shall deposit in the Collection Account or the Distribution Account, as applicable, the amount of any loss of principal incurred in respect of any such Permitted Investment directed by the Servicer made with funds in such accounts immediately upon realization of such loss.

(ii) All income and gain realized from the investment of funds deposited in the Pre-Funding Accounts and the Capitalized Interest Account held by or on behalf of the Unaffiliated Seller shall be retained in such Investment Account, subject to withdrawal as provided in Section 4.02. Whether in regard to the Pre-Funding Accounts or the Capitalized Interest Account, the Unaffiliated Seller shall deposit in the Pre-Funding Accounts or the Capitalized Interest Account, as applicable, the amount of any loss of principal incurred in respect of any such Permitted Investment made with funds in such accounts immediately upon realization of such loss.

(c) Except as otherwise expressly provided in this Agreement, if any default occurs in the making of a payment due under any Permitted Investment, or if a default occurs in any other performance required under any Permitted Investment, the Trustee shall take such action as may be appropriate to enforce such payment or performance, including the institution and prosecution of appropriate proceedings. The Trustee shall not be liable for the amount of any loss incurred in respect of any investment or lack of investment of funds held in any Investment Account or the Distribution Account if made in accordance with this Section 3.12.

(d) The Trustee or its Affiliates are permitted to receive additional compensation that could be deemed to be in the Trustee's economic self-interest for (i) serving as investment adviser, administrator, shareholder, servicing agent, custodian or sub-custodian with respect to certain of the Permitted Investments, (ii) using Affiliates to effect transactions in certain Permitted Investments and (iii) effecting transactions in certain Permitted Investments.

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Such compensation shall not be considered an amount that is reimbursable or payable pursuant to this Agreement.

Section 3.13 Maintenance of Hazard Insurance and Errors and Omissions and Fidelity Coverage.

(a) The Servicer shall cause to be maintained for each Mortgage Loan fire insurance with extended coverage on the related Mortgaged Property in an amount which is at least equal to the least of (i) the outstanding principal balance of such Mortgage Loan, (ii) the amount necessary to fully compensate for any damage or loss to the improvements that are a part of such property on a replacement cost basis and (iii) the maximum insurable value of the improvements which are a part of such Mortgaged Property, in each case in an amount not less than such amount as is necessary to avoid the application of any coinsurance clause contained in the related hazard insurance policy. The Servicer shall also cause to be maintained fire insurance with extended coverage on each REO Property in an amount which is at least equal to the lesser of (i) the maximum insurable value of the improvements which are a part of such property and (ii) the outstanding principal balance of the related Mortgage Loan at the time it became an REO Property, plus accrued interest at the Mortgage Rate and related Servicing Advances. The Servicer will comply in the performance of this Agreement with all reasonable rules and requirements of each insurer under any such hazard policies. Any amounts to be collected by the Servicer under any such policies (other than amounts to be applied to the restoration or repair of the property subject to the related Mortgage or amounts to be released to the Mortgagor in accordance with the procedures that the Servicer would follow in servicing loans held for its own account, subject to the terms and conditions of the related Mortgage and Mortgage Note) shall be deposited in the Collection Account, subject to withdrawal pursuant to Section 3.11. Any cost incurred by the Servicer in maintaining any such insurance shall not, for the purpose of calculating distributions to the Trustee, be added to the unpaid principal balance of the related Mortgage Loan, notwithstanding that the terms of such Mortgage Loan so permit. It is understood and agreed that no earthquake or other additional insurance is to be required of any Mortgagor other than pursuant to such applicable laws and regulations as shall at any time be in force and as shall require such additional insurance. If the Mortgaged Property or REO Property is at any time in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards and flood insurance has been made available, the Servicer will cause to be maintained a flood insurance policy in respect thereof. Such flood insurance shall be in an amount equal to the lesser of (i) the unpaid principal balance of the related

Mortgage Loan and (ii) the maximum amount of such insurance available for the related Mortgaged Property under the national flood insurance program (assuming that the area in which such Mortgaged Property is located is participating in such program).

In the event that the Servicer shall obtain and maintain a blanket policy with an insurer having a General Policy Rating of A:X or better in Best's (or such other rating that is comparable to such rating) insuring against hazard losses on all of the Mortgage Loans, it shall conclusively be deemed to have satisfied its obligations as set forth in the first two sentences of this Section 3.13, it being understood and agreed that such policy may contain a deductible clause, in which case the Servicer shall, in the event that there shall not have been maintained on the related Mortgaged Property or REO Property a policy complying with the first two sentences of this Section 3.13, and there shall have been one or more losses which would have been

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covered by such policy, deposit to the Collection Account from its own funds the amount not otherwise payable under the blanket policy because of such deductible clause. In connection with its activities as administrator and servicer of the Mortgage Loans, the Servicer agrees to prepare and present, on behalf of itself, the Trustee claims under any such blanket policy in a timely fashion in accordance with the terms of such policy.

(b) The Servicer shall keep in force during the term of this Agreement a policy or policies of insurance covering errors and omissions for failure in the performance of the Servicer's obligations under this Agreement, which policy or policies shall be in such form and amount that would meet the requirements of Fannie Mae or Freddie Mac if it were the purchaser of the Mortgage Loans, unless the Servicer has obtained a waiver of such requirements from Fannie Mae or Freddie Mac. The Servicer shall also maintain a fidelity bond in the form and amount that would meet the requirements of Fannie Mae or Freddie Mac, unless the Servicer has obtained a waiver of such requirements from Fannie Mae or Freddie Mac. The Servicer shall provide the Trustee with copies of any such insurance policies and fidelity bond. The Servicer shall be deemed to have complied with this provision if an Affiliate of the Servicer has such errors and omissions and fidelity bond coverage and, by the terms of such insurance policy or fidelity bond, the coverage afforded thereunder extends to the Servicer. Any such errors and omissions policy and fidelity bond shall by its terms not be cancelable without thirty days' prior written notice to the Trustee. The Servicer shall also cause each Subservicer to maintain a policy of insurance covering errors and omissions and a fidelity bond which would meet such requirements.

#### Section 3.14 Enforcement of Due-On-Sale Clauses Assumption Agreements.

The Servicer will, to the extent it has knowledge of any conveyance or prospective conveyance of any Mortgaged Property by any Mortgagor (whether by absolute conveyance or by contract of sale, and whether or not the Mortgagor remains or is to remain liable under the Mortgage Note and/or the Mortgage), exercise its rights to accelerate the maturity of such Mortgage Loan under the "due-on-sale" clause, if any, applicable thereto; provided, however, that the Servicer shall not be required to take such action if, in its sole business judgment, the Servicer believes it is not in the best interests of the Trust Fund and shall not exercise any such rights if prohibited by law from doing so. If the Servicer reasonably believes it is unable under applicable law to enforce such "due-on-sale" clause or if any of the other conditions set forth in the proviso to the preceding sentence apply, the Servicer will enter into an assumption and modification agreement from or with the person to whom such property has been conveyed or is proposed to be conveyed, pursuant to which such person becomes liable under the Mortgage Note and, to the extent permitted by applicable state law, the Mortgagor remains liable thereon. The Servicer is also authorized to enter into a substitution of liability agreement with such person, pursuant to which the original Mortgagor is released from liability and such person is substituted as the Mortgagor and becomes liable under the Mortgage Note; provided that no such substitution shall be effective unless such person satisfies the underwriting criteria of the Servicer, has a credit risk rating at least equal to that of the original Mortgagor and such substitution is in the best interest of the Certificateholders as determined by the Servicer. In connection with any assumption, modification or substitution, the Servicer shall apply such underwriting standards and follow such practices and procedures as shall be normal and usual in its general mortgage servicing activities and as it applies to other mortgage loans owned solely

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by it. The Servicer shall not take or enter into any assumption and modification agreement, however, unless (to the extent practicable in the circumstances) it shall have received confirmation, in writing, of the continued effectiveness of any applicable hazard insurance policy, or a new policy meeting the requirements of this Section is obtained. Any fee collected by the Servicer in respect of an assumption or substitution of liability agreement will be retained by the Servicer as additional servicing compensation. In connection with any such

assumption, no material term of the Mortgage Note (including, but not limited to, the related Mortgage Rate and the amount of the Scheduled Payment) may be amended or modified, except as otherwise required pursuant to the terms thereof. The Servicer shall notify the Trustee that any such substitution, modification or assumption agreement has been completed by forwarding to the Trustee the executed original of such substitution or assumption agreement, which document shall be added to the related Mortgage File and shall, for all purposes, be considered a part of such Mortgage File to the same extent as all other documents and instruments constituting a part thereof.

Notwithstanding the foregoing paragraph or any other provision of this Agreement, the Servicer shall not be deemed to be in default, breach or any other violation of its obligations hereunder by reason of any assumption of a Mortgage Loan by operation of law or by the terms of the Mortgage Note or any assumption which the Servicer may be restricted by law from preventing, for any reason whatsoever. For purposes of this Section 3.14, the term "assumption" is deemed to also include a sale (of the Mortgaged Property) subject to the Mortgage that is not accompanied by an assumption or substitution of liability agreement.

#### Section 3.15 Realization Upon Defaulted Mortgage Loans.

The Servicer shall use its best efforts, consistent with customary servicing practices as described in Section 3.01, to foreclose upon or otherwise comparably convert (which may include an acquisition of REO Property) the ownership of properties securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments pursuant to Section 3.07, and which are not released from this Agreement pursuant to any other provision hereof. The Servicer shall use reasonable efforts to realize upon such defaulted Mortgage Loans in such manner as will maximize the receipt of principal and interest by the Trustee, taking into account, among other things, the timing of foreclosure proceedings. The foregoing is subject to the provisions that, in any case in which Mortgaged Property shall have suffered damage from an uninsured cause, the Servicer shall not be required to expend its own funds toward the restoration of such property unless it shall determine in its sole discretion (i) that such restoration will increase the net proceeds of liquidation of the related Mortgage Loan to the Trustee, after reimbursement to itself for such expenses, and (ii) that such expenses will be recoverable by the Servicer through Insurance Proceeds, Condemnation Proceeds or Liquidation Proceeds from the related Mortgaged Property, as contemplated in Section 3.11. The Servicer shall be responsible for all other costs and expenses incurred by it in any such proceedings; provided, however, that it shall be entitled to reimbursement thereof from the related property, as contemplated in Section 3.11.

The proceeds of any liquidation or REO Disposition, as well as any recovery resulting from a partial collection of Insurance Proceeds, Condemnation Proceeds or Liquidation Proceeds or any income from an REO Property, will be applied in the following order of priority:

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first, to reimburse the Servicer or any Subservicer for any related unreimbursed Servicing Advances, pursuant to Section 3.11 or 3.17; second, to accrued and unpaid interest on the Mortgage Loan or REO Imputed Interest, at the Mortgage Rate, to the date of the liquidation or REO Disposition, or to the Due Date prior to the Remittance Date on which such amounts are to be distributed if not in connection with a liquidation or REO Disposition; third, to reimburse the Servicer for any related unreimbursed P&I Advances, pursuant to Section 3.11; and fourth, as a recovery of principal of the Mortgage Loan. If the amount of the recovery so allocated to interest is less than a full recovery thereof, that amount will be allocated as follows: first, to unpaid Servicing Fees; and second, as interest at the Mortgage Rate (net of the Servicing Fee Rate). The portion of the recovery so allocated to unpaid Servicing Fees shall be reimbursed to the Servicer or any Subservicer pursuant to Section 3.11 or 3.17. The portions of the recovery so allocated to interest at the Mortgage Rate (net of the Servicing Fee Rate) and to principal of the Mortgage Loan shall be applied as follows: first, to reimburse the Servicer or any Subservicer for any related unreimbursed Servicing Advances in accordance with Section 3.11 or 3.17, and second, to the Trustee in accordance with the provisions of Section 4.02, subject to the last paragraph of Section 3.17 with respect to certain excess recoveries from an REO Disposition.

Notwithstanding anything to the contrary contained herein, in connection with a foreclosure or acceptance of a deed in lieu of foreclosure, in the event the Servicer has received actual notice of, or has actual knowledge of the presence of, hazardous or toxic substances or wastes on the related Mortgaged Property, or if the Trustee otherwise requests, the Servicer shall cause an environmental inspection or review of such Mortgaged Property to be conducted by a qualified inspector. Upon completion of the inspection, the Servicer shall promptly provide the Trustee with a written report of the environmental inspection.

After reviewing the environmental inspection report, the Servicer shall

determine how to proceed with respect to the Mortgaged Property. In the event (a) the environmental inspection report indicates that the Mortgaged Property is contaminated by hazardous or toxic substances or wastes and (b) the Servicer determines to proceed with foreclosure or acceptance of a deed in lieu of foreclosure, the Servicer shall be reimbursed for all reasonable costs associated with such foreclosure or acceptance of a deed in lieu of foreclosure and any related environmental clean-up costs, as applicable, from the related Liquidation Proceeds, or if the Liquidation Proceeds are insufficient to fully reimburse the Servicer, the Servicer shall be entitled to be reimbursed from amounts in the Collection Account pursuant to Section 3.11 hereof. In the event the Servicer determines not to proceed with foreclosure or acceptance of a deed in lieu of foreclosure, the Servicer shall be reimbursed from general collections for all Servicing Advances made with respect to the related Mortgaged Property from the Collection Account pursuant to Section 3.11 hereof.

#### Section 3.16 Release of Mortgage Files.

(a) Upon the payment in full of any Mortgage Loan, or the receipt by the Servicer of a notification that payment in full shall be escrowed in a manner customary for such purposes, the Servicer will, within five (5) Business Days of the payment in full, notify the Trustee by a certification (which certification shall include a statement to the effect that all amounts received or to be received in connection with such payment which are required to be deposited in the Collection Account pursuant to Section 3.10 have been or will be so deposited)

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of a Servicing Officer and shall request delivery to it of the Custodial File. Upon receipt of such certification and Request for Release, the Trustee shall promptly release the related Custodial File to the Servicer within five (5) Business Days. No expenses incurred in connection with any instrument of satisfaction or deed of reconveyance shall be chargeable to the Collection Account.

(b) From time to time and as appropriate for the servicing or foreclosure of any Mortgage Loan, including, for this purpose, collection under any Insurance Policy relating to the Mortgage Loans, the Trustee shall, upon request of the Servicer and delivery to the Trustee, of a Request for Release, release the related Custodial File to the Servicer, and the Trustee shall, at the direction of the Servicer, execute such documents as shall be necessary to the prosecution of any such proceedings and the Servicer shall retain the Mortgage File in trust for the benefit of the Trustee. Such Request for Release shall obligate the Servicer to return each and every document previously requested from the Custodial File to the Trustee when the need therefor by the Servicer no longer exists, unless the Mortgage Loan has been liquidated and the Liquidation Proceeds relating to the Mortgage Loan have been deposited in the Collection Account or the Mortgage File or such document has been delivered to an attorney, or to a public trustee or other public official as required by law, for purposes of initiating or pursuing legal action or other proceedings for the foreclosure of the Mortgaged Property either judicially or non-judicially, and the Servicer has delivered to the Trustee a certificate of a Servicing Officer certifying as to the name and address of the Person to which such Mortgage File or such document was delivered and the purpose or purposes of such delivery. Upon receipt of a certificate of a Servicing Officer stating that such Mortgage Loan was liquidated and that all amounts received or to be received in connection with such liquidation that are required to be deposited into the Collection Account have been so deposited, or that such Mortgage Loan has become an REO Property, a copy of the Request for Release of documents shall be released by the Trustee to the Servicer or its designee.

Upon written certification of a Servicing Officer, the Trustee shall execute and deliver to the Servicer any court pleadings, requests for trustee's sale or other documents reasonably necessary to the foreclosure or trustee's sale in respect of a Mortgaged Property or to any legal action brought to obtain judgment against any Mortgagor on the Mortgage Note or Mortgage or to obtain a deficiency judgment, or to enforce any other remedies or rights provided by the Mortgage Note or Mortgage or otherwise available at law or in equity, or shall exercise and deliver to the Servicer a power of attorney sufficient to authorize the Servicer to execute such documents on its behalf. Each such certification shall include a request that such pleadings or documents be executed by the Trustee and a statement as to the reason such documents or pleadings are required and that the execution and delivery thereof by the Trustee will not invalidate or otherwise affect the lien of the Mortgage, except for the termination of such a lien upon completion of the foreclosure or trustee's sale.

Upon receipt of a Request for Release under this Section 3.16, the Trustee shall deliver the related Custodial File to the Servicer by regular mail, unless the Servicer requests that the Trustee deliver such Custodial File to the Servicer by overnight courier (in which case such delivery shall be at the Servicer's expense). To the extent that the Servicer requires an overnight courier for such delivery and incurs the related expense due to the Servicer not having previously received copies of the documents required to be delivered to the Servicer hereunder, the Unaffiliated Seller shall use commercially

related Originator pursuant to the related Mortgage Loan Purchase Agreement to reimburse the Servicer for such expense.

Section 3.17 Title, Conservation and Disposition of REO Property.

(a) This Section shall apply only to REO Properties acquired for the account of the Trustee and shall not apply to any REO Property relating to a Mortgage Loan which was purchased or repurchased from the Trustee pursuant to any provision hereof. In the event that title to any such REO Property is acquired, the Servicer shall cause the deed or certificate of sale to be issued in the name of the Trustee, on behalf of the Certificateholders.

(b) The Servicer shall manage, conserve, protect and operate each REO Property for the Trustee solely for the purpose of its prompt disposition and sale. The Servicer, either itself or through an agent selected by the Servicer, shall manage, conserve, protect and operate the REO Property in the same manner that it manages, conserves, protects and operates other foreclosed property for its own account, and in the same manner that similar property in the same locality as the REO Property is managed. The Servicer shall attempt to sell the same (and may temporarily rent the same for a period not greater than one year, except as otherwise provided below) on such terms and conditions as the Servicer deems to be in the best interest of the Trustee. The Servicer shall notify the Trustee from time to time as to the status of each REO Property.

(c) [Reserved].

(d) [Reserved].

(e) The Servicer shall segregate and hold all funds collected and received in connection with the operation of any REO Property separate and apart from its own funds and general assets and shall deposit such funds in the Collection Account.

(f) The Servicer shall deposit net of reimbursement to the Servicer for any related outstanding P&I Advances, Servicing Advances and unpaid Servicing Fees provided in Section 3.11 hereof, or cause to be deposited, on a daily basis in the Collection Account all revenues received with respect to the related REO Property and shall withdraw therefrom funds necessary for the proper operation, management and maintenance of the REO Property.

(g) The Servicer, upon an REO Disposition, shall be entitled to reimbursement for any related unreimbursed P&I Advances and Servicing Advances as well as any unpaid Servicing Fees from proceeds received in connection with the REO Disposition, as further provided in Section 3.11.

(h) Any net proceeds from a REO Disposition which are in excess of the applicable Stated Principal Balance plus all unpaid REO Imputed Interest thereon through the date of the REO Disposition shall be retained by the Servicer as additional servicing compensation.

(i) The Servicer shall use its reasonable best efforts to sell, or cause the Subservicer to sell, any REO Property as soon as possible, but in no event later than the

conclusion of the third calendar year beginning after the year of its acquisition by the REMIC unless (i) the Servicer applies for an extension of such period from the Internal Revenue Service pursuant to the REMIC Provisions and Code Section 856(e)(3), in which event such REO Property shall be sold within the applicable extension period, or (ii) the Servicer obtains for the Trustee an Opinion of Counsel, addressed to the Depositor, the Trustee and the Servicer, to the effect that the holding by the REMIC of such REO Property subsequent to such period will not result in the imposition of taxes on "prohibited transactions" as defined in Section 860F of the Code or cause the REMIC to fail to qualify as a REMIC under the REMIC Provisions or comparable provisions of relevant state laws at any time. The Servicer shall manage, conserve, protect and operate each REO Property for the Trustee solely for the purpose of its prompt disposition and sale in a manner which does not cause such REO Property to fail to qualify as "foreclosure property" within the meaning of Section 860G(a)(8) or result in the receipt by the REMIC of any "income from non-permitted assets" within the meaning of Section 860F(a)(2)(B) of the Code or any "net income from foreclosure property" which is subject to taxation under Section 860G(a)(1) of the Code. Pursuant to its efforts to sell such REO Property, the Servicer shall either itself or through an agent selected by the Servicer protect and conserve such REO Property in the same manner and to such extent as is customary in the locality where such REO Property is located and may, incident to its conservation and protection of the interests of the Trustee on behalf of the Certificateholders, rent the same, or any part thereof, as the

Servicer deems to be in the best interest of the Trustee on behalf of the Certificateholders for the period prior to the sale of such REO Property; provided, however, that any rent received or accrued with respect to such REO Property qualifies as "rents from real property" as defined in Section 856(d) of the Code.

#### Section 3.18 Notification of Adjustments.

With respect to each Adjustable Rate Mortgage Loan, the Servicer shall adjust the Mortgage Rate on the related Adjustment Date and shall adjust the Scheduled Payment on the related mortgage payment adjustment date, if applicable, in compliance with the requirements of applicable law and the related Mortgage and Mortgage Note. The Servicer shall execute and deliver any and all necessary notices required under applicable law and the terms of the related Mortgage Note and Mortgage regarding the Mortgage Rate and Scheduled Payment adjustments. The Servicer shall promptly, upon written request therefor, deliver to the Trustee such notifications and any additional applicable data regarding such adjustments and the methods used to calculate and implement such adjustments. Upon the discovery by the Servicer or the receipt of notice from the Trustee that the Servicer has failed to adjust a Mortgage Rate or Scheduled Payment in accordance with the terms of the related Mortgage Note, the Servicer shall deposit in the Collection Account from its own funds the amount of any interest loss caused as such interest loss occurs.

#### Section 3.19 Access to Certain Documentation and Information Regarding the Mortgage Loans.

The Servicer shall provide, or cause the Subservicer to provide, to the Depositor, the Unaffiliated Seller, the Certificate Insurer, the Trustee, the OTS or the FDIC and the examiners and supervisory agents thereof access to the documentation regarding the Mortgage Loans in its possession. Such access shall be afforded without charge, but only upon reasonable

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and prior written request and during normal business hours at the offices of the Servicer or any Subservicer. Nothing in this Section shall derogate from the obligation of any such party to observe any applicable law prohibiting disclosure of information regarding the Mortgages and the failure of any such party to provide access as provided in this Section as a result of such obligation shall not constitute a breach of this Section.

#### Section 3.20 Documents, Records and Funds in Possession of the Servicer to be Held for the Trustee.

The Servicer shall account fully to the Trustee for any funds received by the Servicer or which otherwise are collected by the Servicer as Liquidation Proceeds, Condemnation Proceeds or Insurance Proceeds in respect of any Mortgage Loan. All Mortgage Files and funds collected or held by, or under the control of, the Servicer in respect of any Mortgage Loans, whether from the collection of principal and interest payments or from Liquidation Proceeds, including, but not limited to, any funds on deposit in the Collection Account, shall be held by the Servicer for and on behalf of the Trustee and shall be and remain the sole and exclusive property of the Trustee, subject to the applicable provisions of this Agreement. The Servicer also agrees that it shall not create, incur or subject any Mortgage File or any funds that are deposited in any Account, or any funds that otherwise are or may become due or payable to the Trustee for the benefit of the Certificateholders, to any claim, lien, security interest, judgment, levy, writ of attachment or other encumbrance, or assert by legal action or otherwise any claim or right of setoff against any Mortgage File or any funds collected on, or in connection with, a Mortgage Loan, except, however, that the Servicer shall be entitled to set off against and deduct from any such funds any amounts that are properly due and payable to the Servicer under this Agreement.

#### Section 3.21 Servicing Compensation.

(a) As compensation for its activities hereunder, the Servicer shall, with respect to each Mortgage Loan, be entitled to retain from deposits to the Collection Account and from Liquidation Proceeds, Condemnation Proceeds, Insurance Proceeds and REO Proceeds related to such Mortgage Loan, the Servicing Fee with respect to each Mortgage Loan (less any portion of such amounts retained by any Subservicer). In addition, the Servicer shall be entitled to recover unpaid Servicing Fees out of related late collections and as otherwise permitted under Section 3.11. The right to receive the Servicing Fee may not be transferred in whole or in part except in connection with the transfer of all of the Servicer's responsibilities and obligations under this Agreement; provided, however, that the Servicer may pay from the Servicing Fee any amounts due to a Subservicer pursuant to a Subservicing Agreement entered into under Section 3.02.

(b) Additional servicing compensation in the form of assumption or modification fees, late payment charges, NSF fees, reconveyance fees and other similar fees and charges (other than Prepayment Charges) shall be retained by

the Servicer only to the extent such fees or charges are received by the Servicer. The Servicer shall also be entitled pursuant to Section 3.11(a)(iv) to withdraw from the Collection Account and the Distribution Account, as additional servicing compensation, interest or other income earned on deposits therein.

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(c) The Servicer shall be required to pay all expenses incurred by it in connection with its servicing activities hereunder (including payment of premiums for any blanket policy insuring against hazard losses pursuant to Section 3.13, servicing compensation of the Subservicer to the extent not retained by it and the fees and expenses of independent accountants and any agents appointed by the Servicer), and shall not be entitled to reimbursement therefor except as specifically provided in Section 3.11.

#### Section 3.22 Annual Statement as to Compliance.

The Servicer will deliver or cause to be delivered to the Depositor, the Rating Agencies, the Unaffiliated Seller, the Certificate Insurer, and the Trustee on or before March 15th of each calendar year, commencing in 2005, an Officer's Certificate stating, as to each signatory thereof, that (i) a review of the activities of the Servicer during the preceding calendar year and of performance under this Agreement has been made under such officer's supervision, and (ii) to the best of such officer's knowledge, based on such review, the Servicer has fulfilled all of its obligations under this Agreement throughout such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to such officers and the nature and status thereof.

#### Section 3.23 Annual Independent Public Accountants' Servicing Statement; Financial Statements.

(a) Not later than March 15th of each calendar year commencing in 2005, the Servicer, at its expense, shall cause a nationally recognized firm of independent certified public accountants to furnish to the Depositor, the Unaffiliated Seller, the Certificate Insurer, the Rating Agencies and the Trustee a report stating that (i) it has obtained a letter of representation regarding certain matters from the management of the Servicer which includes an assertion that the Servicer has complied with certain minimum residential mortgage loan servicing standards, identified in the Uniform Single Attestation Program for Mortgage Bankers established by the Mortgage Bankers Association of America, with respect to the servicing of residential mortgage loans during the most recently completed calendar year and (ii) on the basis of an examination conducted by such firm in accordance with standards established by the American Institute of Certified Public Accountants, such representation is fairly stated in all material respects, subject to such exceptions and other qualifications that may be appropriate. In rendering its report such firm may rely, as to matters relating to the direct servicing of residential mortgage loans by Subservicers, upon comparable reports of firms of independent certified public accountants rendered on the basis of examinations conducted in accordance with the same standards (rendered within one year of such report) with respect to those Subservicers.

(b) As soon as available, and in any event within 90 days after the close of each fiscal year of the Servicer, the Servicer, at its expense, shall cause the audited balance sheets of the Servicer, as of the end of such fiscal year and the audited statements of income, changes in equity and cash flows of the Servicer, for such fiscal year, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the preceding fiscal year, prepared in accordance with generally accepted accounting principles, consistently applied, and accompanied by the certificate of the nationally recognized firm of independent certified public accountants to be delivered to the Certificate Insurer.

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#### Section 3.24 Trustee to Act as Servicer.

In the event that the Servicer shall for any reason no longer be the Servicer hereunder (including by reason of an Event of Default), except as provided under Section 7.02, the Trustee or its successor shall thereupon assume all of the rights and obligations of the Servicer hereunder arising thereafter (except that the Trustee shall not be (i) liable for losses of the Servicer pursuant to Section 3.10 or any acts or omissions of the predecessor Servicer hereunder, (ii) obligated to make Advances if it is prohibited from doing so by applicable law, (iii) obligated to effectuate repurchases or substitutions of Mortgage Loans hereunder, including, but not limited to, repurchases or substitutions pursuant to Section 2.03, (iv) responsible for expenses of the predecessor Servicer pursuant to Section 2.03 or (v) deemed to have made any representations and warranties of the Servicer hereunder). Any such assumption shall be subject to Section 7.02.

Every subservicing agreement entered into by the Servicer shall contain

a provision giving the successor Servicer the option to terminate such agreement in the event a successor Servicer is appointed.

If the Servicer shall for any reason no longer be the Servicer (including by reason of any Event of Default), the Trustee (or any other successor Servicer) may, at its option, succeed to any rights and obligations of the Servicer under any subservicing agreement in accordance with the terms thereof; provided that the Trustee (or any other successor Servicer) shall not incur any liability or have any obligations in its capacity as successor Servicer under a subservicing agreement arising prior to the date of such succession unless it expressly elects to succeed to the rights and obligations of the Servicer thereunder; and the Servicer shall not thereby be relieved of any liability or obligations under the subservicing agreement arising prior to the date of such succession.

The Servicer shall, upon request of the Trustee, but at the expense of the Servicer, deliver to the assuming party all documents and records relating to each subservicing agreement (if any) and the Mortgage Loans then being serviced thereunder and an accounting of amounts collected and held by it and otherwise use its best efforts to effect the orderly and efficient transfer of the subservicing agreement to the assuming party.

#### Section 3.25 Compensating Interest.

The Servicer shall remit to the Trustee on each Remittance Date an amount from its own funds equal to the Compensating Interest payable by the Servicer for the related Distribution Date.

#### Section 3.26 Credit Reporting; Gramm-Leach-Bliley Act.

(a) With respect to each Mortgage Loan, the Servicer agrees to fully furnish, in accordance with the Fair Credit Reporting Act and its implementing regulations, accurate and complete information (i.e., favorable and unfavorable) on its borrower credit files to Equifax, Experian, and Trans Union Credit Information Company (three of the credit repositories), on a monthly basis.

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(b) The Servicer shall comply with Title V of the Gramm-Leach-Bliley Act of 1999 and all applicable regulations promulgated thereunder, relating to the Mortgage Loans and the related borrowers and shall provide all required notices thereunder.

#### Section 3.27 Advance Facilities.

With the prior written consent of the Certificate Insurer, the Servicer is hereby authorized to enter into a financing or other facility (an "Advance Facility") under which (1) the Servicer sells, assigns or pledges to another Person (an "Advancing Person") the Servicer's rights under this Agreement to be reimbursed for any Advances and/or (2) an Advancing Person agrees to fund some or all P&I Advances or Servicing Advances required to be made by the Servicer pursuant to this Agreement. Except as provided in the preceding sentence, no consent of any party is required before the Servicer may enter into an Advance Facility. Notwithstanding the existence of any Advance Facility under which an Advancing Person agrees to fund P&I Advances and/or Servicing Advances on the Servicer's behalf, the Servicer shall remain obligated pursuant to this Agreement to make P&I Advances and Servicing Advances pursuant to and as required by this Agreement, and shall not be relieved of such obligations by virtue of such Advance Facility.

Reimbursement amounts ("Advance Reimbursement Amounts") shall consist solely of amounts in respect of P&I Advances and/or Servicing Advances made with respect to the Mortgage Loans for which the Servicer would be permitted to reimburse itself in accordance with this Agreement, assuming the Servicer had made the related P&I Advance(s) and/or Servicing Advance(s).

The Servicer shall maintain and provide to any successor Servicer a detailed accounting on a loan-by-loan basis as to amounts advanced by, pledged or assigned to, and reimbursed to any Advancing Person. The successor Servicer shall be entitled to rely on any such information provided by the predecessor Servicer, and the successor Servicer shall not be liable for any errors in such information.

An Advancing Person who purchases or receives an assignment or pledge of the rights to be reimbursed for P&I Advances and/or Servicing Advances, and/or whose obligations hereunder are limited to the funding of P&I Advances and/or Servicing Advances shall not be required to meet the criteria for qualification of a subservicer set forth in this Agreement.

The documentation establishing any Advance Facility shall require that Advance Reimbursement Amounts distributed with respect to each Mortgage Loan be allocated to outstanding unreimbursed P&I Advances or Servicing Advances (as the case may be) made with respect to that Mortgage Loan on a "first-in, first out" (FIFO) basis. Such documentation shall also require the Servicer to provide to



the related Advancing Person or its designee loan-by-loan information with respect to each Advance Reimbursement Amount distributed to such Advancing Person or to a trustee or custodian (an "Advance Facility Trustee") on each Distribution Date, to enable the Advancing Person or Advance Facility Trustee to make the FIFO allocation of each Advance Reimbursement Amount with respect to each Mortgage Loan. The Servicer shall remain entitled to be reimbursed pursuant to the Advance Facility by the Advancing Person or Advance Facility Trustee for all P&I Advances and Servicing Advances

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funded by the Servicer to the extent the related rights to be reimbursed therefor have not been sold, assigned or pledged to an Advancing Person.

Any amendment to this Section 3.27 or to any other provision of this Agreement that may be necessary or appropriate to effect the terms of an Advance Facility as described generally in this Section 3.27, including amendments to add provisions relating to a successor Servicer, may be entered into by the Trustee, the Depositor, the Unaffiliated Seller and the Servicer without the consent of any Certificateholder, but with the consent of the Certificate Insurer, notwithstanding anything to the contrary in this Agreement. Prior to entering into an Advance Facility, the Servicer shall notify the lender under such facility in writing that: (a) the Advances financed by and/or pledged to the lender are obligations owed to the Servicer on a non-recourse basis payable only from the cash flows and proceeds received under this Agreement for reimbursement of such Advances only to the extent provided herein, and the Trustee is not otherwise obligated or liable to repay any Advances financed by the lender; (b) the Servicer will be responsible for remitting to the lender the applicable amounts collected by it as reimbursement for Advances funded by the lender, subject to the restrictions and priorities created in this Agreement; (c) the Trustee shall not have any responsibility to track or monitor the administration of the financing arrangement between the Servicer and the lender; (d) if the Servicer is replaced by a successor servicer, the lender shall continue to be entitled to receive reimbursements as provided in clause (a) above but shall have no further right to make advances with respect to the transaction subject to this Agreement; and (e) (i) the pledge, if any, of Servicer's rights to the lender under the facility conveys no rights (such as a right to fees after the removal of the Servicer or the right to become a substitute servicer) under this Agreement, or against the Trust Fund, any investor in or guarantor of securities issued hereunder, or any person other than the Servicer, (ii) the Servicer is only pledging assets and rights that it owns and any purported pledge of any assets or rights that are not property of the Servicer shall be of force and effect and will not be deemed to create any additional rights or assets of either the lender or the Servicer and (iii) the lender shall take such steps as are reasonably necessary to confirm to a successor servicer that it has no rights in any collateral due or payable on or after the date of servicing transfer other than the Servicer's rights to reimbursement of Advances (to be repaid pursuant to the terms of this Agreement) for Advances made prior to such servicing transfer.

#### ARTICLE IV

##### DISTRIBUTIONS AND ADVANCES BY THE SERVICER

###### Section 4.01 Advances.

(a) The amount of P&I Advances to be made by the Servicer for any Remittance Date shall equal, subject to Section 4.01(c), the sum of (i) with respect to the Mortgage Loans, the aggregate amount of Scheduled Payments (with each interest portion thereof net of the related Servicing Fee), due on the Due Date immediately preceding such Remittance Date in respect of such Mortgage Loans, which Scheduled Payments were not received as of the related Determination Date, plus (ii) with respect to each REO Property, which REO Property was acquired during or prior to the related Prepayment Period and as to which such REO Property an REO Disposition did not occur during the related Prepayment Period, an

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amount equal to the excess, if any, of the Scheduled Payments (with each interest portion thereof net of the related Servicing Fee) that would have been due on the related Due Date in respect of the related Mortgage Loans, over the net income from such REO Property transferred to the Collection Account for distribution on such Remittance Date.

(b) On the Remittance Date, the Servicer shall remit in immediately available funds to the Trustee an amount equal to the aggregate amount of P&I Advances, if any, to be made in respect of the Mortgage Loans and REO Properties for the related Remittance Date either (i) from its own funds, (ii) from the Collection Account, to the extent of funds held therein for future distribution (in which case, it will cause to be made an appropriate entry in the records of Collection Account that Amounts Held For Future Distribution have been, as

permitted by this Section 4.01, used by the Servicer in discharge of any such P&I Advance) or (iii) in the form of any combination of (i) and (ii) aggregating the total amount of P&I Advances to be made by the Servicer with respect to the Mortgage Loans and REO Properties. Any Amounts Held For Future Distribution and so used shall be appropriately reflected in the Servicer's records and replaced by the Servicer by deposit in the Collection Account on or before any future Remittance Date to the extent required.

(c) The obligation of the Servicer to make such P&I Advances is mandatory, notwithstanding any other provision of this Agreement but subject to (d) below, and, with respect to any Mortgage Loan or REO Property, shall continue until a Final Recovery Determination in connection therewith or the removal thereof from coverage under this Agreement, except as otherwise provided in this Section.

(d) Notwithstanding anything herein to the contrary, no P&I Advance or Servicing Advance shall be required to be made hereunder by the Servicer if such P&I Advance or Servicing Advance would, if made, constitute a Nonrecoverable P&I Advance or Nonrecoverable Servicing Advance. The determination by the Servicer that it has made a Nonrecoverable P&I Advance or a Nonrecoverable Servicing Advance or that any proposed P&I Advance or Servicing Advance, if made, would constitute a Nonrecoverable P&I Advance or a Nonrecoverable Servicing Advance, respectively, shall be evidenced by an Officers' Certificate of the Servicer delivered to the Trustee.

(e) Except as otherwise provided herein, the Servicer shall be entitled to reimbursement pursuant to Section 3.11 hereof for P&I Advances and Servicing Advances from recoveries from the related Mortgagor or from all Liquidation Proceeds and other payments or recoveries (including Insurance Proceeds and Condemnation Proceeds) with respect to the related Mortgage Loan.

#### Section 4.02 Priorities of Distribution.

(a) On each Distribution Date, the Trustee will make the disbursements and transfers from amounts then on deposit in the Distribution Account in the following order of priority and to the extent of the Available Funds remaining:

(i) from the Interest Remittance Amount, in the following order of priority:

(A) to the Certificate Insurer, the Premium Amount for such Distribution Date;

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(B) concurrently, with equal priority of payment:

(1) payable solely from the Group I Interest Remittance Amount for that Distribution Date, to the Holders of the Class A-1 Certificates, the Accrued Certificate Interest and any Unpaid Interest Amounts for the Class A-1 Certificates, and to the extent that the Group I Interest Remittance Amount is less than the Accrued Certificate Interest and any Unpaid Interest Amounts for the Class A-1 Certificates, payable from the Class A-1 Certificates' pro rata portion of any Group II Interest Remittance Amount or Group III Interest Remittance Amount for that Distribution Date remaining after payment of the Accrued Certificate Interest, any Unpaid Interest Amounts and related administrative fees with respect to the Class A-2 Certificates or the Group III Class A Sequential Certificates, as applicable, to the Holders of the Class A-1 Certificates, the unpaid portion of the Accrued Certificate Interest and any Unpaid Interest Amounts for the Class A-1 Certificates;

(2) payable solely from the Group II Interest Remittance Amount for that Distribution Date, to the Holders of the Class A-2 Certificates, the Accrued Certificate Interest and any Unpaid Interest Amounts for the Class A-2 Certificates, and to the extent that the Group II Interest Remittance Amount is less than the Accrued Certificate Interest and any Unpaid Interest Amounts for the Class A-2 Certificates, payable from the Class A-2 Certificates' pro rata portion of any Group I Interest Remittance Amount or Group III Interest Remittance Amount for that Distribution Date remaining after payment of the Accrued Certificate Interest, any Unpaid Interest Amounts and related administrative fees with respect to the Class A-1 Certificates or the Group III Class A Sequential Certificates, as applicable, to the Holders of the Class A-2 Certificates the unpaid portion of the Accrued Certificate Interest and any Unpaid Interest Amounts for the Class A-2 Certificates; and

(3) payable solely from the Group III Interest Remittance Amount

for that Distribution Date, to the Holders of the Group III Class A Sequential Certificates, pro rata, the Accrued Certificate Interest and any Unpaid Interest Amounts for the Group III Class A Sequential Certificates, and to the extent that the Group III Interest Remittance Amount is less than the Accrued Certificate Interest and any Unpaid Interest Amounts for the Group III Class A Sequential Certificates, payable from the Group III Class A Sequential Certificates' pro rata portion of any Group I Interest Remittance Amount or Group II Interest Remittance Amount for that Distribution Date remaining after payment of the Accrued Certificate Interest, any Unpaid Interest Amounts and related

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administrative fees with respect to the Class A-1 Certificates or the Class A-2 Certificates, as applicable, to the Holders of each class of the Group III Class A Sequential Certificates, pro rata, the unpaid portion of the Accrued Certificate Interest and any Unpaid Interest Amounts for the Group III Class A Sequential Certificates;

- (C) payable from any remaining Interest Remittance Amounts, to the Certificate Insurer, any Reimbursement Amount then owing to it on account of a prior draw relating to interest on the Class A-1 Certificates;
- (D) payable from any remaining Interest Remittance Amounts, to the Class M-1 Certificates, the Accrued Certificate Interest for such Class on such Distribution Date;
- (E) payable from any remaining Interest Remittance Amounts, to the Class M-2 Certificates, the Accrued Certificate Interest for such class on such Distribution Date;
- (F) payable from any remaining Interest Remittance Amounts, to the Class M-3 Certificates, the Accrued Certificate Interest for such Class on such Distribution Date;
- (G) payable from any remaining Interest Remittance Amounts, to the Class B-1 Certificates, the Accrued Certificate Interest for such Class on such Distribution Date;
- (H) payable from any remaining Interest Remittance Amounts, to the Class B-2 Certificates, the Accrued Certificate Interest for such Class on such Distribution Date; and
- (I) payable from any remaining Interest Remittance Amounts, to the Class B-3 Certificates, the Accrued Certificate Interest for such Class on such Distribution Date;

(ii) (x) on each Distribution Date (A) before the related Stepdown Date or (B) with respect to which a Trigger Event is in effect, to the Holders of the Class or Classes of Offered Certificates then entitled to distributions of principal as set forth below, and to the Certificate Insurer, from the amounts remaining on deposit in the Distribution Account after making distributions pursuant to clause (i) above, an amount equal to the Principal Distribution Amount in the following order of priority:

- (A) concurrently, with equal priority of payment:
  - (1) to the Holders of the Class A-1 Certificates, the Group I Allocation Percentage of the Principal Distribution Amount, until the Certificate Balance of the Class A-1 Certificates has been reduced to zero;
  - (2) to the Holders of the Class A-2 Certificates, the Group II Allocation Percentage of the Principal Distribution Amount, until the Certificate Balance of the Class A-2 Certificates has been reduced to zero ;
  - (3) to the Holders of the Group III Class A Sequential Certificates, the Group III Allocation Percentage of the Principal Distribution Amount, first to the Class A-3 Certificates until those Certificates are reduced to zero and then to the Class A-4 Certificates until those Certificates are reduced to zero;
- (B) to the Certificate Insurer, the amount of any Reimbursement Amount then owing to the Certificate Insurer on account of a prior draw relating to principal on the Class A-1 Certificates;

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(C) concurrently, with equal priority of payment:

(1) if the Class Certificate Balance of the Class A-1 Certificates has been reduced to zero, then to the Holders of the Class A-2 Certificates and the Group III Class A Sequential Certificates pro rata, the amount of any remaining Principal Distribution Amount, until the Class Certificate Balance of each Class of the Class A Certificates has been reduced to zero, such amount to be allocated pro rata to the Class A-2, and Group III Class A Sequential Certificates, with amounts allocated to the Group III Class A Sequential Certificates further allocated first to the Class A-3 Certificates until those Certificates are reduced to zero and then to the Class A-4 Certificates until those Certificates are reduced to zero; provided, however, that on and after the Distribution Date on which the aggregate Class Certificate Balances of the Subordinated Certificates and the Class X Certificates have been reduced to zero, any principal distributions allocated to the Group III Class A Sequential Certificates shall be allocated pro rata among the Class A-3 and Class A-4 Certificates, based on their respective Class Certificate Balances, and distributed concurrently to the Class A-3 and Class A-4 Certificates; or

(2) if the Class Certificate Balance of the Class A-2 Certificates has been reduced to zero, then to the Holders of the Class A-1 Certificates and the Group III Class A Sequential Certificates pro rata, the amount of any remaining Principal Distribution Amount, until the Class Certificate Balance of each Class of the Class A Certificates has been reduced to zero, such amount to be allocated pro rata to the Class A-1, and Group III Class A Sequential Certificates, with amounts allocated to the Group III Class A Sequential Certificates further allocated first to the Class A-3 Certificates until those Certificates are reduced to zero and then to the Class A-4 Certificates until those Certificates are reduced to zero; provided, however, that on and after the Distribution Date on which the aggregate Class Certificate Balances of the Subordinated Certificates and the Class X Certificates have been reduced to zero, any principal distributions allocated to the Group III Class A

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Sequential Certificates shall be allocated pro rata among the Class A-3 and Class A-4 Certificates, based on their respective Class Certificate Balances, and distributed concurrently to the Class A-3 and Class A-4 Certificates; or

(3) if the Class Certificate Balance of each Class of the Group III Class A Sequential Certificates has been reduced to zero, then to the Holders of the Class A-1 Certificates and the Class A-2 Certificates pro rata, the amount of any remaining Principal Distribution Amount, until the Class Certificate Balance of each Class of the Class A Certificates has been reduced to zero, such amount to be allocated pro rata to the Class A-1, and Class A-2 Certificates;

(D) sequentially, to the Class M-1, Class M-2, Class M-3, Class B-1, Class B-2 and Class B-3 Certificates, in that order, until the respective Class Certificate Balances are reduced to zero;

(y) on each Distribution Date (1) on and after the related Stepdown Date and (2) as long as a Trigger Event is not in effect, to the Holders of the related Class or Classes of Offered Certificates then entitled to distribution of principal, from amounts remaining on deposit in the Distribution Account after making distributions pursuant to clause (i) above, an amount equal to, in the aggregate, the Principal Distribution Amount in the following amounts and order of priority:

(A) concurrently, with equal priority of payment:

- (1) to the Holders of the Class A-1 Certificates, the Group I Allocation Percentage of the lesser of the Principal Distribution Amount and the Class A Principal Distribution Amount, until the Class Certificate Balance of the Class A-1 Certificates has been reduced to zero;
- (2) to the Holders of the Class A-2 Certificates, the Group II Allocation Percentage of the lesser of the Principal Distribution Amount and the Class A Principal Distribution Amount, until the Class Certificate Balance of the Class A-2 Certificates has been reduced to zero; and
- (3) to the Holders of the Group III Class A Sequential Certificates, the Group III Allocation Percentage of the lesser of the Principal Distribution Amount and the Class A Principal Distribution Amount, until the Class Certificate Balance of each Class of Group III Class A Sequential

Certificates has been reduced to zero, with amounts allocated to the Group III Class A Sequential Certificates further allocated first to the Class A-3 Certificates until those Certificates are reduced to zero and then to the Class A-4 Certificates until those Certificates are reduced to zero;

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(B) to the Certificate Insurer, the amount of any Reimbursement Amount then owing to the Certificate Insurer on account of a prior draw relating to principal on the Class A-1 Certificates;

(C) concurrently, with equal priority of payment:

(1) if the Class Certificate Balance of the Class A-1 Certificates has been reduced to zero, then to the Holders of the Class A-2 Certificates and the Group III Class A Sequential Certificates pro rata, any remaining amounts allocable but not required to be distributed pursuant to clauses (A) (1) or (B) above, until the Class Certificate Balance of each Class of the Class A Certificates has been reduced to zero, such amount to be allocated pro rata to the Class A-2, and Group III Class A Sequential Certificates, with amounts allocated to the Group III Class A Sequential Certificates further allocated first to the Class A-3 Certificates until those Certificates are reduced to zero and then to the Class A-4 Certificates until those Certificates are reduced to zero; or

(2) if the Class Certificate Balance of the Class A-2 Certificates has been reduced to zero, then to the Holders of the Class A-1 Certificates and the Group III Class A Sequential Certificates pro rata, any remaining amounts allocable but not required to be distributed pursuant to clauses (A) (2) or (B) above, until the Class Certificate Balance of each Class of the Class A Certificates has been reduced to zero, such amount to be allocated pro rata to the Class A-1, and Group III Class A Sequential Certificates, with amounts allocated to the Group III Class A Sequential Certificates further allocated first to the Class A-3 Certificates until those Certificates are reduced to zero and then to the Class A-4 Certificates until those Certificates are reduced to zero; or

(3) if the Class Certificate Balance of each Class of the Group III Class A Sequential Certificates has been reduced to zero, then to the Holders of the Class A-1 Certificates and the Class A-2 Certificates pro rata, any remaining amounts allocable but not required to be distributed pursuant to clauses (A) (3) or (B) above, until the Class Certificate Balance of each Class of the Class A Certificates has been reduced to zero, such amount to be allocated pro rata to the Class A-1, and Class A-2 Certificates;

(D) to the Class M-1 Certificates, the lesser of the remaining Principal Distribution Amount and the Class M-1 Principal Distribution Amount, until the Class Certificate Balance thereof has been reduced to zero;

(E) to the Class M-2 Certificates, the lesser of the remaining Principal Distribution Amount and the Class M-2 Principal Distribution Amount, until the Class Certificate Balance thereof has been reduced to zero;

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(F) to the Class M-3 Certificates, the lesser of the remaining Principal Distribution Amount and the Class M-3 Principal Distribution Amount, until the Class Certificate Balance thereof has been reduced to zero;

(G) to the Class B-1 Certificates, the lesser of the remaining Principal Distribution Amount and the Class B-1 Principal Distribution Amount, until the Class Certificate Balance thereof has been reduced to zero;

(H) to the Class B-2 Certificates, the lesser of the remaining Principal Distribution Amount and the Class B-2 Principal Distribution Amount, until the Class Certificate Balance thereof has been reduced to zero; and

(I) to the Class B-3 Certificates, the lesser of the remaining Principal Distribution Amount and the Class B-3 Principal Distribution Amount, until the Class Certificate Balance thereof has been reduced to zero;

(iii) any amount remaining in the Distribution Account after the

distributions in clauses (i) and (ii) above, plus as specifically indicated below, from amounts on deposit in the Excess Reserve Fund Account, shall be distributed in the following order of priority:

- (A) to the Certificate Insurer, to the extent of any remaining Reimbursement Amount then owing to it;
- (B) to the Holders of the Class M-1 Certificates, any Unpaid Interest Amounts for such Class;
- (C) to the Holders of the Class M-1 Certificates, any Unpaid Realized Loss Amount for such Class;
- (D) to the Holders of the Class M-2 Certificates, any Unpaid Interest Amounts for such Class;
- (E) to the Holders of the Class M-2 Certificates, any Unpaid Realized Loss Amount for such Class;
- (F) to the Holders of the Class M-3 Certificates, any Unpaid Interest Amounts for such Class;
- (G) to the Holders of the Class M-3 Certificates, any Unpaid Realized Loss Amount for such Class;
- (H) to the Holders of the Class B-1 Certificates, any Unpaid Interest Amounts for such Class;
- (I) to the Holders of the Class B-1 Certificates, any Unpaid Realized Loss Amount for such Class;

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- (J) to the Holders of the Class B-2 Certificates, any Unpaid Interest Amounts for such Class;
- (K) to the Holders of the Class B-2 Certificates, any Unpaid Realized Loss Amount for such Class;
- (L) to the Holders of the Class B-3 Certificates, any Unpaid Interest Amounts for such Class;
- (M) to the Holders of the Class B-3 Certificates, any Unpaid Realized Loss Amount for such Class;
- (N) to the Excess Reserve Fund Account, the amount of any Basis Risk Payment for such Distribution Date;
- (O) (i) from any Group II/Group III Class A Interest Rate Cap Payment on deposit in the Excess Reserve Fund Account with respect to that Distribution Date, an amount equal to any unpaid remaining Basis Risk Carry Forward Amount with respect to the Class A-2 and Group III Class A Sequential Certificates for that Distribution Date, allocated (a) first, between the Class A-2, Class A-3 and Class A-4 Certificates pro rata, based upon their respective Class Certificate Balances and (b) second, any remaining amounts to the Class A-2, Class A-3 and Class A-4 Certificates, pro rata, based on any Basis Risk Carry Forward Amounts remaining unpaid, in order to reimburse such unpaid amounts, (ii) from any Class M Interest Rate Cap Payment on deposit in the Excess Reserve Fund Account with respect to that Distribution Date, an amount equal to any unpaid remaining Basis Risk Carry Forward Amount with respect to the Class M Certificates for that Distribution Date, allocated (a) first, among the Class M-1, Class M-2 and Class M-3 Certificates pro rata, based upon their respective Class Certificate Balances and (b) second, any remaining amounts to the Class M-1, Class M-2 and Class M-3 Certificates, pro rata, based on any Basis Risk Carry Forward Amounts remaining unpaid, in order to reimburse such unpaid amounts, and (iii) from any Class B Interest Rate Cap Payment on deposit in the Excess Reserve Fund Account with respect to that Distribution Date, an amount equal to any unpaid remaining Basis Risk Carry Forward Amount with respect to the Class B Certificates for that Distribution Date, allocated (a) first, among the Class B-1, Class B-2 and Class B-3 Certificates pro rata, based upon their respective Class Certificate Balances and (b) second, any remaining amounts to the Class B-1, Class B-2 and Class B-3 Certificates, pro rata, based on any Basis Risk Carry Forward Amounts remaining unpaid, in order to reimburse such unpaid amounts;
- (P) from amounts on deposit in the Excess Reserve Fund Account (not including any Interest Rate Cap Payments included in that account) with respect to such Distribution Date, an amount equal to any Basis Risk

Carry Forward Amount for such Distribution Date in the same order and priority in which Accrued Certificate Interest is allocated among those Classes of Certificates;

- (Q) to the Holders of the Class P Certificates, the outstanding principal balance thereof, if any, and to the Holders of the Class X Certificates, the remainder of the Class X Distributable Amount not distributed pursuant to Sections 4.02(a)(iii)(A)-(P) (to the extent stated in clause (i) of the definition of Class X Distributable Amount, as interest, and to the extent stated in clause (ii) of the definition of Class X Distributable Amount, as principal); and
- (R) to the Holders of the Class R Certificates, any remaining amount.

In furtherance of the foregoing, any amounts payable to the Class A-1, Class A-2, or Group III Class A Sequential Certificates from remaining Interest Remittance Amounts on mortgage loans included in loan groups not related to such Class of Certificates, will be distributed pro rata among such non-related Class A Certificates based on the remaining Accrued Certificate Interest for such Class of Class A Certificates (after taking into account payments of Accrued Certificate Interest from Interest Remittance Amount from the related loan group) over the total amount of remaining Accrued Certificate Interest for all such non-related Class of Class A Certificates (after taking into account payments of Accrued Certificate Interest from Interest Remittance Amount from the related loan groups).

(b) On each Distribution Date, all amounts representing Prepayment Charges from the Mortgage Loans received during the related Prepayment Period will be distributed to the Holders of the Class P Certificates.

(c) On the March 2004, April 2004 and May 2004 Distribution Dates, the Trustee shall transfer from the Capitalized Interest Account to the Distribution Account the Capitalized Interest Requirement, if any, for such Distribution Date.

(d) On the Distribution Date following either the final Subsequent Transfer Date or May 24, 2004, whichever date is earlier, any amounts remaining in the Capitalized Interest Account and all Pre-Funding Earnings in the Pre-Funding Accounts, after taking into account the transfers in respect of the Distribution Date described in clause (c) above, shall be paid by the Trustee to the Unaffiliated Seller.

(e) On each Subsequent Transfer Date, the Unaffiliated Seller shall instruct in writing the Trustee to withdraw from related Pre-Funding Account an amount equal to 100% of the aggregate Stated Principal Balances as of the related Subsequent Cut-off Date of the Subsequent Mortgage Loans sold to the Trust Fund on such Subsequent Transfer Date and pay such amount to or upon the order of the Unaffiliated Seller upon satisfaction of the conditions set forth in Section 2.01(c) with respect to such transfer. The Trustee may conclusively rely on such written instructions from the Unaffiliated Seller.

(f) If the Pre-Funding Amount available in any Pre-Funding Account (exclusive of Pre-Funding Earnings) has been reduced to \$100,000 or less by the close of

business on April 1, 2004 then, on the April 26, 2004 Distribution Date, after giving effect to any reductions in such Pre-Funding Amount on such date, the Trustee shall withdraw from the related Pre-Funding Account on such date and deposit in the Distribution Account the amount on deposit in such Pre-Funding Account other than any Pre-Funding Earnings; if the Pre-Funding Amount available in such Pre-Funding Account has not been reduced to zero by the close of business on May 24, 2004, the Trustee shall withdraw from such Pre-Funding Account the amount on deposit therein, other than the Pre-Funding Earnings, and deposit such amount on the May 25, 2004 Distribution Date into the Distribution Account. Any amount deposited into the Distribution Account pursuant to the preceding sentence from the Group I Pre-Funding Account shall be distributed first, to the Holders of the Class A-1 Certificates until those certificates are reduced to zero, second, pro rata based on their relative Class Certificate Balances immediately prior to the related Distribution Date, to the Holders of the Class A-2 Certificates and the Group III Class A Sequential Certificates until those Certificates are reduced to zero and third, pro rata based on their relative Class Certificate Balances immediately prior to the related Distribution Date, to the Holders of the Class M Certificates and the Class B Certificates, as a separate payment of principal, on the related Distribution Date. Any amount deposited into the Distribution Account pursuant to the preceding sentence from the Group II Pre-Funding Account shall be distributed first, to the Holders of the Class A-2 Certificates until those Certificates are

reduced to zero, second, pro rata based on their relative Class Certificate Balances immediately prior to the related Distribution Date, to the Holders of the Class A-1 Certificates and the Group III Class A Sequential Certificates until those certificates are reduced to zero and third, pro rata based on their relative Class Certificate Balances immediately prior to the related Distribution Date, to the Holders of the Class M Certificates and Class B Certificates, as a separate payment of principal, on the related Distribution Date. Any amount deposited into the Distribution Account pursuant to the preceding sentence from the Group III Pre-Funding Account shall be distributed first, to the Holders of the Group III Class A Sequential Certificates until those Certificates are reduced to zero, second, to the Holders of the Class A-4 Certificates until those Certificates are reduced to zero, third, pro rata based on their relative Class Certificate Balances immediately prior to the related Distribution Date, to the Holders of the Class A-1 Certificates and the Class A-2 Certificates until those Certificates are reduced to zero and fourth, pro rata based on their relative Class Certificate Balances immediately prior to the related Distribution Date, to the Holders of the Class M Certificates and Class B Certificates.

(g) On any Distribution Date, any Relief Act Shortfalls and Net Prepayment Interest Shortfalls for such Distribution Date will be allocated as a reduction in the following order:

(1) First, to the amount of interest payable to the Class X Certificates; and

(2) Second, pro rata, as a reduction of the Accrued Certificate Interest for the Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class B-1, Class B-2 and Class B-3 Certificates, based on the amount of interest to which such Classes would otherwise be entitled.

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#### Section 4.03 Monthly Statements to Certificateholders.

(a) Not later than each Distribution Date, the Trustee shall make available to each Certificateholder, the Servicer, the Depositor, the Unaffiliated Seller, the Certificate Insurer and each Rating Agency a statement setting forth with respect to the related distribution:

(i) the amount thereof allocable to principal, separately identifying the aggregate amount of any Principal Prepayments and Liquidation Proceeds included therein;

(ii) the amount thereof allocable to interest, any Unpaid Interest Amounts included in such distribution and any remaining Unpaid Interest Amounts after giving effect to such distribution, any Basis Risk Carry Forward Amount for such Distribution Date and the amount of all Basis Risk Carry Forward Amount covered by withdrawals from the Excess Reserve Fund Account on such Distribution Date;

(iii) if the distribution to the Holders of such Class of Certificates is less than the full amount that would be distributable to such Holders if there were sufficient funds available therefor, the amount of the shortfall and the allocation thereof as between principal and interest, including any Basis Risk Carry Forward Amount not covered by amounts in the Excess Reserve Fund Account;

(iv) the Class Certificate Balance of each Class of Certificates after giving effect to the distribution of principal on such Distribution Date;

(v) the Pool Stated Principal Balance for the following Distribution Date;

(vi) the amount of the Servicing Fees paid to or retained by the Servicer or Subservicer (with respect to the Subservicers, in the aggregate) with respect to such Distribution Date;

(vii) the Pass-Through Rate for each such Class of Certificates with respect to such Distribution Date;

(viii) the amount of Advances included in the distribution on such Distribution Date and the aggregate amount of Advances reported by the Servicer as outstanding as of the close of business on such Distribution Date;

(ix) the number and aggregate Scheduled Principal Balances of Mortgage Loans (1) as to which the Scheduled Payment is delinquent 31 to 60 days, 61 to 90 days and 91 or more days, (2) that have become REO Property, (3) that are in foreclosure and (4) that are in bankruptcy, in each case as of the close of business on the last Business Day of the immediately preceding month;



(x) with respect to any Mortgage Loan that became an REO Property during the preceding calendar month, the loan number and Stated Principal Balance of such Mortgage Loan as of the close of business on the Determination Date preceding such Distribution Date and the date of acquisition thereof;

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(xi) the total number and principal balance of any REO Properties (and market value, if available) as of the close of business on the Determination Date preceding such Distribution Date;

(xii) whether a Trigger Event has occurred and is continuing (including the calculation of thereof and the aggregate outstanding balance of all 60+ Day Delinquent Loans);

(xiii) the amount on deposit in the Excess Reserve Fund Account (after giving effect to distributions on such Distribution Date);

(xiv) the aggregate amount of Applied Realized Loss Amounts incurred during the preceding calendar month and aggregate Applied Realized Loss Amounts through such Distribution Date;

(xv) the amount of any Net Monthly Excess Cash Flow on such Distribution Date and the allocation thereof to the Certificateholders with respect to Applied Realized Loss Amounts and Unpaid Interest Amounts;

(xvi) the Subordinated Amount and Required Subordinated Amount;

(xvii) the Interest Remittance Amount, the Principal Remittance Amount and the Prepayment Charges remitted by Servicer with respect to that Distribution Date;

(xviii) the Pre-Funded Amount as of the end of the prior Due Period;

(xix) the amount of any principal prepayment on the Certificates resulting from the application of unused moneys in the Pre-Funding Accounts;

(xx) the Class A-1 Deficiency and the Insured Payment for such Distribution Date;

(xxi) the Reimbursement Amount immediately prior to such Distribution Date, and the amount of any payments to the Certificate Insurer on account thereof on such Distribution Date; and

(xxii) the Group II/Group III Class A Interest Rate Cap Payment, if any, the Class M Interest Rate Cap Payment, if any, and the Class B Interest Rate Cap Payment, if any, for such Distribution Date.

(b) The Trustee's responsibility for providing the above statement is limited to the availability, timeliness and accuracy of the information derived from the Servicer pursuant to Section 4.03(d) below or, in the case of the Reimbursement Amount, from the Certificate Insurer. The Trustee will provide the above statement via the Trustee's internet website, except that the Trustee shall deliver a hard copy of such statement to the Certificate Insurer on each Distribution Date. The Trustee's website will initially be located at <https://www.corporatetrust.db.com> and assistance in using the website can be obtained by calling

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the Trustee's investor relations desk at 1-800-735-7777. A paper copy of the statement will also be made available upon request.

(c) Within a reasonable period of time after the end of each calendar year, the Trustee shall cause to be furnished to each Person who at any time during the calendar year was a Certificateholder, a statement containing the information set forth in clauses (a) (i), (a) (ii) and (a) (vii) of this Section 4.03 aggregated for such calendar year or applicable portion thereof during which such Person was a Certificateholder. Such obligation of the Trustee shall be deemed to have been satisfied to the extent that substantially comparable information shall be provided by the Trustee pursuant to any requirements of the Code as from time to time in effect.

(d) Not later than the Determination Date, the Servicer shall furnish to the Trustee a monthly remittance advice statement containing such information as shall be reasonably requested by the Trustee to provide the reports required by Section 4.03(a) as to the accompanying remittance and the period ending on the close of business on the last Business Day of the immediately preceding month.

The Servicer shall furnish to the Trustee an individual loan accounting

report, as of the last Business Day of each month, to document Mortgage Loan payment activity on an individual Mortgage Loan basis. With respect to each month, the corresponding individual loan accounting report (in electronic format) shall be received by the Trustee no later than the related Determination Date, which report shall contain the following:

(i) with respect to each Scheduled Payment, the amount of such remittance allocable to principal (including a separate breakdown of any Principal Prepayment, including the date of such prepayment, and any Prepayment Charges, along with a detailed report of interest on principal prepayment amounts remitted in accordance with Section 3.25);

(ii) with respect to each Scheduled Payment, the amount of such remittance allocable to interest and assumption fees;

(iii) the amount of servicing compensation received by the Servicer during the prior distribution period;

(iv) the individual and aggregate Stated Principal Balance of the Mortgage Loans (combined and for each of the Group I, Group II and Group III Mortgage Loans);

(v) the individual and aggregate Scheduled Principal Balances of the Mortgage Loans (combined and for each of the Group I, Group II and Group III Mortgage Loans);

(vi) the aggregate of any expenses reimbursed to the Servicer during the prior distribution period pursuant to Section 3.05 and 3.11;

(vii) the number and aggregate Scheduled Principal Balances of Group I Mortgage Loans (a) as to which the Scheduled Payment is delinquent (1) 31 to 60 days,

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(2) 61 to 90 days and (3) 91 days or more; (b) as to which foreclosure has commenced; (c) as to which REO Property has been acquired and (d) that are in bankruptcy;

(viii) the number and aggregate Scheduled Principal Balances of Group II Mortgage Loans (a) as to which the Scheduled Payment is delinquent (1) 31 to 60 days, (2) 61 to 90 days and (3) 91 days or more; (b) as to which foreclosure has commenced; (c) as to which REO Property has been acquired and (d) that are in bankruptcy; and

(ix) the number and aggregate Scheduled Principal Balances of Group III Mortgage Loans (a) as to which the Scheduled Payment is delinquent (1) 31 to 60 days, (2) 61 to 90 days and (3) 91 days or more; (b) as to which foreclosure has commenced; (c) as to which REO Property has been acquired and (d) that are in bankruptcy.

#### Section 4.04 Certain Matters Relating to the Determination of LIBOR.

LIBOR shall be calculated in accordance with the definition of LIBOR. Until all of the LIBOR Certificates are paid in full, the Trustee will at all times retain at least four Reference Banks for the purpose of determining LIBOR with respect to each Interest Determination Date. The Trustee, after consultation with the Depositor, initially shall designate the Reference Banks. Each "Reference Bank" shall be a leading bank engaged in transactions in Eurodollar deposits in the international Eurocurrency market, shall not control, be controlled by, or be under common control with, the Trustee and shall have an established place of business in London. If any such Reference Bank should be unwilling or unable to act as such or if the Trustee should terminate a Reference Bank, the Trustee, after consultation with the Depositor, shall promptly appoint or cause to be appointed another Reference Bank. The Trustee shall have no liability or responsibility to any Person for (i) the selection of any Reference Bank for purposes of determining LIBOR or (ii) any inability to retain at least four Reference Banks which is caused by circumstances beyond its reasonable control.

The Pass-Through Rate for each Class of LIBOR Certificates for each Interest Accrual Period shall be determined by the Trustee on each LIBOR Determination Date so long as the LIBOR Certificates are outstanding on the basis of LIBOR and the respective formulae appearing in footnotes corresponding to the LIBOR Certificates in the table relating to the Certificates in the Preliminary Statement. The Trustee shall not have any liability or responsibility to any Person for its inability, following a good-faith reasonable effort, to obtain quotations from the Reference Banks or to determine the arithmetic mean referred to in the definition of LIBOR, all as provided for in this Section 4.04 and the definition of LIBOR. The establishment of LIBOR and each Pass-Through Rate for the LIBOR Certificates by the Trustee shall (in the absence of manifest error) be final, conclusive and binding upon each Holder of a Certificate and the Trustee.

(a) Within two (2) days following each Remittance Date, the Trustee shall determine with respect to the immediately following Distribution Date, the amount to be on deposit in the Distribution Account on such Distribution Date as a result of the (i) Servicer's remittance of the Interest Remittance Amount and the Principal Remittance Amount on the

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related Remittance Date, and (ii) any transfers to the Distribution Account made from the Capitalized Interest Account and/or the Pre-Funding Accounts relating to such Distribution Date pursuant to Section 4.02 hereof, excluding the amount of any Insured Payment.

(b) If on any Distribution Date there is a Class A-1 Deficiency, the Trustee shall complete a Notice in the form of Exhibit A to the Certificate Insurance Policy and submit such notice to the Certificate Insurer no later than 12:00 noon New York City time on the second Business Day preceding such Distribution Date as a claim for an Insured Payment in an amount equal to such Class A-1 Deficiency.

(c) The Trustee shall establish a separate Eligible Account for the benefit of Holders of the Class A-1 Certificates and the Certificate Insurer, referred to herein as the "Insurance Payment Account," over which the Trustee shall have exclusive control and sole right of withdrawal. The Trustee shall deposit upon receipt any amount paid under the Certificate Insurance Policy in the Insurance Payment Account and distribute such amount only for purposes of payment to the Class A-1 Certificateholders of the Insured Amount and such amount may not be applied to satisfy any costs, expenses or liabilities of the Servicer, the Trustee or the Trust Fund. Amounts paid under the Certificate Insurance Policy, to the extent needed to pay the Insured Amount, shall be transferred to the Distribution Account on the related Distribution Date and disbursed by the Trustee to the Class A-1 Certificateholders in accordance with Section 4.02. It shall not be necessary for such payments to be made by checks or wire transfers separate from the checks or wire transfers used to pay other distributions to the Class A-1 Certificateholders with other funds available to make such payment. However, the amount of any payment of principal or of interest on the Class A-1 Certificates to be paid from funds transferred from the Insurance Payment Account shall be noted as provided in paragraph (d) below in the Certificate Register and in the statement to be furnished to Holders of such Certificates pursuant to Section 4.03(a). Funds held in the Insurance Payment Account shall not be invested. Any funds remaining in the Insurance Payment Account on the first Business Day following a Distribution Date shall be returned to the Certificate Insurer pursuant to the written instructions of the Certificate Insurer by the end of such Business Day.

(d) The Trustee shall keep a complete and accurate record of the amount of interest and principal paid in respect of any Class A-1 Certificate from moneys received under the Certificate Insurance Policy. The Certificate Insurer shall have the right to inspect such records at reasonable times during normal business hours upon one Business Day's prior notice to the Trustee.

(e) In the event that the Trustee has received a certified copy of an order of the appropriate court that any Insured Payment has been voided in whole or in part as a preference payment under applicable bankruptcy law, the Trustee shall so notify the Certificate Insurer, shall comply with the provisions of the Certificate Insurance Policy to obtain payment by the Certificate Insurer of such voided Insured Payment, and shall, at the time it provides notice to the Certificate Insurer, notify, by mail to the Class A-1 Certificateholders of the affected Certificates that, in the event any Class A-1 Certificateholder's Insured Payment is so recovered, such Class A-1 Certificateholder will be entitled to payment pursuant to the Certificate Insurance Policy, a copy of which shall be made available through the Trustee, the Certificate Insurer or the Certificate Insurer's fiscal agent, if any, and the Trustee shall furnish to

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the Certificate Insurer or its fiscal agent, if any, its records evidencing the payments which have been made by the Trustee and subsequently recovered from the Class A-1 Certificateholders, and dates on which such payments were made.

(f) The Trustee shall promptly notify the Certificate Insurer of any proceeding or the institution of any action, of which a Responsible Officer of the Trustee has actual knowledge, seeking the avoidance as a preferential transfer under applicable bankruptcy, insolvency, receivership or similar law (a "Preference Claim") of any distribution made with respect to the Class A-1 Certificates. Each Class A-1 Certificateholder, by its purchase of Class A-1 Certificates, the Servicer and the Trustee agree that the Certificate Insurer (so long as no Certificate Insurer Default exists) may at any time during the continuation of any proceeding relating to a Preference Claim direct all matters relating to such Preference Claim, including, without limitation, (i) the direction of any appeal of any order relating to such Preference Claim and (ii)

the posting of any surety, supersedes or performance bond pending any such appeal. In addition and without limitation of the foregoing, the Certificate Insurer shall be subrogated to, and each Class A-1 Certificateholder, the Servicer and the Trustee hereby delegate and assign to the Certificate Insurer, to the fullest extent permitted by law, the rights of the Trustee, the Servicer and each Class A-1 Certificateholder in the conduct of any such Preference Claim, including, without limitation, all rights of any party to any adversary proceeding or action with respect to any court order issued in connection with any such Preference Claim.

(g) The Trustee shall, upon retirement of the Class A-1 Certificates, furnish to the Certificate Insurer a notice of such retirement, and, upon retirement of the Class A-1 Certificates and the expiration of the term of the Certificate Insurance Policy, surrender the Certificate Insurance Policy to the Certificate Insurer for cancellation.

#### Section 4.06 Effect of Payments by the Certificate Insurer; Subrogation.

Anything herein to the contrary notwithstanding, any payment with respect to principal of or interest on the Class A-1 Certificates which is made with moneys received pursuant to the terms of the Certificate Insurance Policy shall not be considered payment of the Class A-1 Certificates from the Trust Fund. The Depositor, the Servicer and the Trustee acknowledge, and each Holder by its acceptance of a Class A-1 Certificate agrees, that without the need for any further action on the part of the Certificate Insurer, the Depositor, the Servicer, the Trustee or the Certificate Registrar (a) to the extent the Certificate Insurer makes payments, directly or indirectly, on account of principal of or interest on the Class A-1 Certificates to the Holders of such Class A-1 Certificates, the Certificate Insurer will be fully subrogated to, and each Class A-1 Certificateholder, the Servicer and the Trustee hereby delegate and assign to the Certificate Insurer, to the fullest extent permitted by law, the rights of such Holders to receive such principal and interest from the Trust Fund, including, without limitation, any amounts due to the Class A-1 Certificateholders in respect of securities law violations arising from the offer and sale of the Class A-1 Certificates, and (b) the Certificate Insurer shall be paid such amounts from the sources and in the manner provided herein for the payment of such amounts and as provided in the Insurance and Indemnity Agreement. The Trustee and the Servicer shall cooperate in all respects with any reasonable request by the Certificate Insurer for action to preserve or enforce the Certificate Insurer's rights or interests under this Agreement without limiting the rights or affecting the interests of the Holders as otherwise set forth herein.

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#### Section 4.07 Allocation of Applied Realized Loss Amounts.

Any Applied Realized Loss Amounts will be allocated to the most junior Class of Subordinated Certificates then outstanding in reduction of the Class Certificate Balance thereof.

### ARTICLE V

#### THE CERTIFICATES

##### Section 5.01 The Certificates.

The Certificates shall be substantially in the forms attached hereto as exhibits. The Certificates shall be issuable in registered form, in the minimum denominations, integral multiples in excess thereof (except that one Certificate in each Class may be issued in a different amount which must be in excess of the applicable minimum denomination) and aggregate denominations per Class set forth in the Preliminary Statement.

The Depositor hereby directs the Trustee to register the Class X and the Class P Certificates initially to "CDC Mortgage Capital Inc." and then on the Closing Date as follows: "Deutsche Bank National Trust Company, as Indenture Trustee on behalf of the Noteholders of the CDC Mortgage Capital Inc. NIM Trust 2004-HE1N", and to deliver such Class X and Class P Certificates on the NIM Closing Date to Deutsche Bank National Trust Company, as trustee of the NIM Trust.

Subject to Section 9.02 respecting the final distribution on the Certificates, on each Distribution Date the Trustee shall make distributions to each Certificateholder of record on the preceding Record Date either (x) by wire transfer in immediately available funds to the account of such holder at a bank or other entity having appropriate facilities therefor, if such Holder has so notified the Trustee at least five Business Days prior to the related Record Date or (y) by check mailed by first class mail to such Certificateholder at the address of such holder appearing in the Certificate Register.

The Certificates shall be executed by manual or facsimile signature on behalf of the Trustee by an authorized officer. Certificates bearing the manual

or facsimile signatures of individuals who were, at the time such signatures were affixed, authorized to sign on behalf of the Trustee shall bind the Trustee, notwithstanding that such individuals or any of them have ceased to be so authorized prior to the countersignature and delivery of any such Certificates or did not hold such offices at the date of such Certificate. No Certificate shall be entitled to any benefit under this Agreement, or be valid for any purpose, unless countersigned by the Trustee by manual signature, and such countersignature upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly executed and delivered hereunder. All Certificates shall be dated the date of their countersignature. On the Closing Date, the Trustee shall countersign the Certificates to be issued at the direction of the Depositor, or any affiliate thereof.

The Depositor shall provide, or cause to be provided, to the Trustee on a continuous basis, an adequate inventory of Certificates to facilitate transfers.

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#### Section 5.02 Certificate Register; Registration of Transfer and Exchange of Certificates.

(a) The Trustee shall maintain, or cause to be maintained in accordance with the provisions of Section 5.06, a Certificate Register for the Trust Fund in which, subject to the provisions of subsections (b) and (c) below and to such reasonable regulations as it may prescribe, the Trustee shall provide for the registration of Certificates and of transfers and exchanges of Certificates as herein provided. Upon surrender for registration of transfer of any Certificate, the Trustee shall execute and deliver, in the name of the designated transferee or transferees, one or more new Certificates of the same Class and aggregate Percentage Interest.

At the option of a Certificateholder, Certificates may be exchanged for other Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest upon surrender of the Certificates to be exchanged at the office or agency of the Trustee. Whenever any Certificates are so surrendered for exchange, the Trustee shall execute, authenticate, and deliver the Certificates which the Certificateholder making the exchange is entitled to receive. Every Certificate presented or surrendered for registration of transfer or exchange shall be accompanied by a written instrument of transfer in form satisfactory to the Trustee duly executed by the holder thereof or his attorney duly authorized in writing.

No service charge to the Certificateholders shall be made for any registration of transfer or exchange of Certificates, but payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Certificates may be required.

All Certificates surrendered for registration of transfer or exchange shall be cancelled and subsequently destroyed by the Trustee in accordance with the Trustee's customary procedures.

(b) No transfer of a Private Certificate shall be made unless such transfer is made pursuant to an effective registration statement under the Securities Act and any applicable state securities laws or is exempt from the registration requirements under said Act and such state securities laws. Except with respect to (i) the initial transfer of the Class X and Class P Certificates to the NIMs Trust on the Closing Date or (ii) a transfer of the Class X or Class P Certificates from the NIMs Trust to the Depositor, Unaffiliated Seller or an Affiliate of the Depositor or the Unaffiliated Seller, in the event that a transfer is to be made in reliance upon an exemption from the Securities Act and such laws, in order to assure compliance with the Securities Act and such laws, the Certificateholder desiring to effect such transfer shall certify to the Trustee in writing the facts surrounding the transfer in substantially the form set forth in Exhibit I (the "Transferor Certificate") and either (i) there shall be delivered to the Trustee a letter in substantially the form of Exhibit J (the "Rule 144A Letter") or (ii) there shall be delivered to the Trustee at the expense of the transferor an Opinion of Counsel that such transfer may be made without registration under the Securities Act. The Depositor shall provide to any Holder of a Private Certificate and any prospective transferee designated by any such Holder, information regarding the related Certificates and the Mortgage Loans and such other information as shall be necessary to satisfy the condition to eligibility set forth in Rule

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144A(d)(4) for transfer of any such Certificate without registration thereof under the Securities Act pursuant to the registration exemption provided by Rule 144A. The Trustee and the Servicer shall cooperate with the Depositor in providing the Rule 144A information referenced in the preceding sentence, including providing to the Depositor such information regarding the Certificates, the Mortgage Loans and other matters regarding the Trust Fund as the Depositor shall reasonably request to meet its obligation under the

preceding sentence. Each Holder of a Private Certificate desiring to effect such transfer shall, and does hereby agree to, indemnify the Trustee and the Depositor and the Servicer against any liability that may result if the transfer is not so exempt or is not made in accordance with such federal and state laws.

Except with respect to (i) the initial transfer of the Class X and Class P Certificates to the NIMs Trust on the Closing Date or (ii) a transfer of the Class X or Class P Certificates from the NIMs Trust to the Depositor, Unaffiliated Seller or an Affiliate of the Depositor or the Unaffiliated Seller, no transfer of an ERISA-Restricted Certificate shall be made unless the Trustee shall have received a representation letter from the transferee in substantially the form of Exhibit J, to the effect that either (A) such transferee is not an employee benefit plan or arrangement subject to Title I of ERISA, Section 4975 of the Code or any Federal, state or local law ("Similar Law") materially similar to the foregoing provisions of ERISA or the Code, nor a person acting on behalf of any such plan or arrangement nor using the assets of any such plan or arrangement to effect such transfer or (B) with respect to the transfer of an ERISA-Restricted Certificate that is not a Private Certificate, such transferee is an insurance company that is purchasing the Certificate with funds contained in an "insurance company general account" (as such term is defined in Section V(e) of Prohibited Transaction Class Exemption 95-60 ("PTCE 95-60") and the purchase and holding of such Certificate are covered under Sections I and III of PTCE 95-60. For purposes of the preceding sentence, with respect to (i) the transfer of an ERISA-Restricted Certificate that is not a Private Certificate and (ii) the transfer of the Class X or Class P Certificates from the NIMs Trust to an Affiliate of the Depositor or Unaffiliated Seller, in the event the representation letter referred to in the preceding sentence is not furnished, such representation shall be deemed to have been made to the Trustee by the transferee's (including an initial acquiror's) acceptance of the ERISA-Restricted Certificates. In the event that such representation is violated, such attempted transfer or acquisition shall be void and of no effect.

To the extent permitted under applicable law (including, but not limited to, ERISA), the Trustee shall be under no liability to any Person for any registration of transfer of any ERISA-Restricted Certificate that is in fact not permitted by this Section 5.02(b) or for making any payments due on such Certificate to the Holder thereof or taking any other action with respect to such Holder under the provisions of this Agreement so long as the transfer was registered by the Trustee in accordance with the foregoing requirements.

(c) Each Person who has or who acquires any Ownership Interest in a Residual Certificate shall be deemed by the acceptance or acquisition of such Ownership Interest to have agreed to be bound by the following provisions, and the rights of each Person acquiring any Ownership Interest in a Residual Certificate are expressly subject to the following provisions:

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(i) Each Person holding or acquiring any Ownership Interest in a Residual Certificate shall be a Permitted Transferee and shall promptly notify the Trustee of any change or impending change in its status as a Permitted Transferee.

(ii) No Ownership Interest in a Residual Certificate may be registered on the Closing Date or thereafter transferred, and the Trustee shall not register the Transfer of any Residual Certificate unless, in addition to the certificates required to be delivered to the Trustee under subparagraph (b) above, the Trustee shall have been furnished with an affidavit (a "Transfer Affidavit") of the initial owner or the proposed transferee in the form attached hereto as Exhibit H.

(iii) Each Person holding or acquiring any Ownership Interest in a Residual Certificate shall agree (A) to obtain a Transfer Affidavit from any other Person to whom such Person attempts to Transfer its Ownership Interest in a Residual Certificate, (B) to obtain a Transfer Affidavit from any Person for whom such Person is acting as nominee, trustee or agent in connection with any Transfer of a Residual Certificate, (C) not to Transfer its Ownership Interest in a Residual Certificate or to cause the Transfer of an Ownership Interest in a Residual Certificate to any other Person if it has actual knowledge that such Person (i) is a Non-Permitted Transferee or that such Transfer Affidavit is false, (ii) if such transfer is for the purpose of impeding the assessment or collection of tax, (iii) if it has actual knowledge or reason to know that the proposed transferee would be unwilling or unable to pay taxes attributed to the Residual Certificate or (iv) if it has actual knowledge or reason to know that the proposed transferee will not honor the restrictions on subsequent transfers of the Residual Certificate set forth in this Section 5.02(c) and in the Transfer Affidavit, (D) to conduct a reasonable investigation of the financial condition of the proposed transferee and transfer its Ownership Interest in the Residual Certificate only if, as a result of such investigation, it concludes that the proposed transferee has historically paid its debts as they came due and will continue to pay its debts as they come due in the future, and (E) not to cause income from its Ownership Interest in a Residual Certificate to be attributable to a foreign permanent

establishment or fixed base (within the meaning of an applicable income tax treaty) of the Person or another U.S. taxpayer.

(iv) Any attempted or purported Transfer of any Ownership Interest in a Residual Certificate in violation of the provisions of this Section 5.02(c) shall be absolutely null and void and shall vest no rights in the purported Transferee. If any purported transferee shall become a Holder of a Residual Certificate in violation of the provisions of this Section 5.02(c), then the last preceding Permitted Transferee shall be restored to all rights as Holder thereof retroactive to the date of registration of Transfer of such Residual Certificate. The Trustee shall be under no liability to any Person for any registration of Transfer of a Residual Certificate that is in fact not permitted by Section 5.02(b) and this Section 5.02(c) or for making any payments due on such Certificate to the Holder thereof or taking any other action with respect to such Holder under the provisions of this Agreement so long as the Transfer was registered after receipt of the related Transfer Affidavit, Transferor Certificate and the Rule 144A Letter. The Trustee shall be entitled but not obligated to recover from any Holder of a Residual Certificate that was in fact a Non-Permitted Transferee at the time it became a Holder or, at such

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subsequent time as it became a Non-Permitted Transferee, all payments made on such Residual Certificate at and after either such time. Any such payments so recovered by the Trustee shall be paid and delivered by the Trustee to the last preceding Permitted Transferee of such Certificate.

(v) The Depositor shall use its best efforts to make available, upon receipt of written request from the Trustee, all information necessary to compute any tax imposed under Section 860E(e) of the Code as a result of a Transfer of an Ownership Interest in a Residual Certificate to any Holder who is a Non-Permitted Transferee.

The restrictions on Transfers of a Residual Certificate set forth in this Section 5.02(c) shall cease to apply (and the applicable portions of the legend on a Residual Certificate may be deleted) with respect to Transfers occurring after delivery to the Trustee of an Opinion of Counsel, which Opinion of Counsel shall not be an expense of the Trust Fund, the Trustee, the Unaffiliated Seller or the Servicer, to the effect that the elimination of such restrictions will not cause the transfer to be disregarded under Treasury Regulation 1.860E-1(c), cause the Trust Fund hereunder to fail to qualify as a REMIC at any time that the Certificates are outstanding or result in the imposition of any tax on the Trust Fund, a Certificateholder or another Person. Each Person holding or acquiring any Ownership Interest in a Residual Certificate hereby consents to any amendment of this Agreement which, based on an Opinion of Counsel furnished to the Trustee, is reasonably necessary (a) to ensure that the record ownership of, or any beneficial interest in, a Residual Certificate is not transferred, directly or indirectly, to a Person that is a Non-Permitted Transferee and (b) to provide for a means to compel the Transfer of a Residual Certificate which is held by a Person that is a Non-Permitted Transferee to a Holder that is a Permitted Transferee.

(d) The preparation and delivery of all certificates and opinions referred to above in this Section 5.02 in connection with transfer shall be at the expense of the parties to such transfers.

(e) Except as provided below, the Book-Entry Certificates shall at all times remain registered in the name of the Depository or its nominee and at all times: (i) registration of the Certificates may not be transferred by the Trustee except to another Depository; (ii) the Depository shall maintain book-entry records with respect to the Certificate Owners and with respect to ownership and transfers of such Book-Entry Certificates; (iii) ownership and transfers of registration of the Book-Entry Certificates on the books of the Depository shall be governed by applicable rules established by the Depository; (iv) the Depository may collect its usual and customary fees, charges and expenses from its Depository Participants; (v) the Trustee shall deal with the Depository, Depository Participants and indirect participating firms as representatives of the Certificate Owners of the Book-Entry Certificates for purposes of exercising the rights of Holders under this Agreement, and requests and directions for and votes of such representatives shall not be deemed to be inconsistent if they are made with respect to different Certificate Owners; and (vi) the Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its Depository Participants and furnished by the Depository Participants with respect to indirect participating firms and persons shown on the books of such indirect participating firms as direct or indirect Certificate Owners.

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All transfers by Certificate Owners of Book-Entry Certificates shall be made in accordance with the procedures established by the Depository Participant or brokerage firm representing such Certificate Owner. Each Depository

Participant shall only transfer Book-Entry Certificates of Certificate Owners it represents or of brokerage firms for which it acts as agent in accordance with the Depository's normal procedures.

If (x) (i) the Depository or the Depositor advises the Trustee in writing that the Depository is no longer willing or able to properly discharge its responsibilities as Depository, and (ii) the Trustee or the Depositor is unable to locate a qualified successor, (y) the Depositor at its option advises the Trustee in writing that it elects to terminate the book-entry system through the Depository or (z) after the occurrence of an Event of Default, Certificate Owners representing at least 51% of the Certificate Balance of the Book-Entry Certificates together advise the Trustee and the Depository through the Depository Participants in writing that the continuation of a book-entry system through the Depository is no longer in the best interests of the Certificate Owners, the Trustee shall notify all Certificate Owners, through the Depository, of the occurrence of any such event and of the availability of definitive, fully-registered Certificates (the "Definitive Certificates") to Certificate Owners requesting the same. Upon surrender to the Trustee of the related Class of Certificates by the Depository, accompanied by the instructions from the Depository for registration, the Trustee shall issue the Definitive Certificates. Neither the Servicer, the Depositor nor the Trustee shall be liable for any delay in delivery of such instruction and each may conclusively rely on, and shall be protected in relying on, such instructions. The Depositor shall provide the Trustee with an adequate inventory of Certificates to facilitate the issuance and transfer of Definitive Certificates. Upon the issuance of Definitive Certificates all references herein to obligations imposed upon or to be performed by the Depository shall be deemed to be imposed upon and performed by the Trustee, to the extent applicable with respect to such Definitive Certificates and the Trustee shall recognize the Holders of the Definitive Certificates as Certificateholders hereunder; provided, that the Trustee shall not by virtue of its assumption of such obligations become liable to any party for any act or failure to act of the Depository.

#### Section 5.03 Mutilated, Destroyed, Lost or Stolen Certificates.

If (a) any mutilated Certificate is surrendered to the Trustee, or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Certificate and (b) there is delivered to the Depositor, the Servicer, the Certificate Insurer and the Trustee such security or indemnity as may be required by them to hold each of them harmless, then, in the absence of notice to the Trustee that such Certificate has been acquired by a bona fide purchaser, the Trustee shall execute, countersign and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like Class, tenor and Percentage Interest. In connection with the issuance of any new Certificate under this Section 5.03, the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. Any replacement Certificate issued pursuant to this Section 5.03 shall constitute complete and indefeasible evidence of ownership, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

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#### Section 5.04 Persons Deemed Owners.

The Servicer, the Trustee, the Depositor, the Certificate Insurer and any agent of the Servicer, the Depositor, the Certificate Insurer or the Trustee may treat the Person in whose name any Certificate is registered as the owner of such Certificate for the purpose of receiving distributions as provided in this Agreement and for all other purposes whatsoever, and neither the Servicer, the Trustee, the Depositor, the Certificate Insurer nor any agent of the Servicer, the Depositor, the Certificate Insurer or the Trustee shall be affected by any notice to the contrary.

#### Section 5.05 Access to List of Certificateholders' Names and Addresses.

If three or more Certificateholders (a) request such information in writing from the Trustee, (b) state that such Certificateholders desire to communicate with other Certificateholders with respect to their rights under this Agreement or under the Certificates, and (c) provide a copy of the communication which such Certificateholders propose to transmit, or if the Depositor or Servicer shall request such information in writing from the Trustee, then the Trustee shall, within ten Business Days after the receipt of such request, provide the Depositor, the Servicer or such Certificateholders at such recipients' expense the most recent list of the Certificateholders of such Trust Fund held by the Trustee, if any. The Depositor and every Certificateholder, by receiving and holding a Certificate, agree that the Trustee shall not be held accountable by reason of the disclosure of any such information as to the list of the Certificateholders hereunder, regardless of the source from which such information was derived.

#### Section 5.06 Maintenance of Office or Agency.



The Trustee will maintain or cause to be maintained at its expense an office or offices or agency or agencies in New York City where Certificates may be surrendered for registration of transfer or exchange. The Trustee initially designates the offices of its agent for such purposes located at c/o DTC Transfer Agent Services, 55 Water Street, Jeanette Park Entrance, New York, New York 10041. The Trustee shall give prompt written notice to the Certificateholders of any change in such location of any such office or agency.

Section 5.07 Rights of the Certificate Insurer to Exercise Rights of Class A-1 Certificateholders.

By accepting its Class A-1 Certificate, each Class A-1 Certificateholder agrees that unless a Certificate Insurer Default exists, the Certificate Insurer shall be deemed to be the Class A-1 Certificateholders for all purposes (other than with respect to the receipt of payment on the Class A-1 Certificates) and shall have the right to exercise all rights of the Class A-1 Certificateholders under this Agreement and under the Class A-1 Certificates without any further consent of the Class A-1 Certificateholders, including, without limitation:

(a) the right to require the Unaffiliated Seller to repurchase Mortgage Loans pursuant to Section 2.03 to the extent set forth in such Section;

(b) the right to give notices of breach or to terminate the rights and obligations of the Servicer as servicer pursuant to Section 7.01;

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(c) the right to direct the actions of the Trustee during the continuance of a Servicer default pursuant to Sections 3.24, 7.01 and 7.02;

(d) the right to institute proceedings against the Servicer pursuant to Section 7.01;

(e) the right to direct the Trustee to investigate certain matters pursuant to Sections 8.01 and 8.02;

(f) the right to remove the Trustee pursuant to Section 8.07; and

(g) any rights or remedies expressly given the Class A-1 Certificateholders.

In addition, each Certificateholder agrees that, subject to Section 10.11, unless a Certificate Insurer Default exists, the rights specifically enumerated above may only be exercised by the Certificateholders with the prior written consent of the Certificate Insurer.

Section 5.08 Trustee To Act Solely with Consent of the Certificate Insurer.

Unless a Certificate Insurer Default exists, the Trustee shall not, without the Certificate Insurer's consent or unless directed by the Certificate Insurer:

(a) terminate the rights and obligations of the Servicer as Servicer pursuant to Section 7.01;

(b) agree to any amendment pursuant to Section 10.01; or

(c) undertake any litigation.

The Certificate Insurer may, in writing and in its sole discretion renounce all or any of its rights under this Agreement or any requirement for the Certificate Insurer's consent for any period of time.

Section 5.09 Mortgage Loans, Trust Fund and Accounts Held for Benefit of the Certificate Insurer.

(a) The Trustee shall hold the Trust Fund and the Custodial Files for the benefit of the Certificateholders and the Certificate Insurer and all references in this Agreement and in the Certificates to the benefit of Holders of the Certificates shall be deemed to include the Certificate Insurer. The Trustee shall follow all reasonable instructions and requests of the Certificate Insurer to assist it to take action to preserve or enforce the Certificate Insurer's rights or interests under this Agreement unless a Certificate Insurer Default exists.

(b) The Servicer hereby acknowledges and agrees that it shall service the Mortgage Loans for the benefit of the Certificateholders and for the benefit of the Certificate Insurer, and all references in this Agreement to the benefit of or actions on behalf of the Certificateholders shall be deemed to include the Certificate Insurer.

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Section 5.10 Certificate Insurer Default.

Notwithstanding anything elsewhere in this Agreement or in the Certificates to the contrary, if a Certificate Insurer Default exists, or if and to the extent the Certificate Insurer has delivered its written renunciation of all of its rights under this Agreement, all provisions of this Agreement which (a) permit the Certificate Insurer to exercise rights of the Class A-1 Certificateholders, (b) restrict the ability of the Certificateholders, the Servicer or the Trustee to act without the consent or approval of the Certificate Insurer, (c) provide that a particular act or thing must be acceptable to the Certificate Insurer, (d) permit the Certificate Insurer to direct (or otherwise to require) the actions of the Trustee, the Servicer or the Certificateholders, (e) provide that any action or omission taken with the consent, approval or authorization of the Certificate Insurer shall be authorized hereunder or shall not subject the party taking or omitting to take such action to any liability hereunder or (f) which have a similar effect, shall be of no further force and effect and the Trustee shall administer the Trust Fund and perform its obligations hereunder solely for the benefit of the Holders of the Certificates. Nothing in the foregoing sentence, nor any action taken pursuant thereto or in compliance therewith, shall be deemed to have released the Certificate Insurer from any obligation or liability it may have to any party or to the Class A-1 Certificateholders hereunder, under any other agreement, instrument or document (including, without limitation, the Certificate Insurance Policy) or under applicable law.

ARTICLE VI

THE DEPOSITOR AND THE SERVICER

Section 6.01 Respective Liabilities of the Depositor and the Servicer.

The Depositor and the Servicer shall each be liable in accordance herewith only to the extent of the obligations specifically and respectively imposed upon and undertaken by them herein.

Section 6.02 Merger or Consolidation of the Depositor or the Servicer.

The Depositor and the Servicer will each keep in full effect its existence, rights and franchises as a corporation or limited partnership, as the case may be, under the laws of the United States or under the laws of one of the states thereof and will each obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, or any of the Mortgage Loans and to perform its respective duties under this Agreement.

Any Person into which the Depositor or the Servicer may be merged or consolidated, or any Person resulting from any merger or consolidation to which the Depositor or the Servicer shall be a party, or any person succeeding to the business of the Depositor or the Servicer, shall be the successor of the Depositor or the Servicer, as the case may be, hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that the successor or surviving Person to the Servicer shall be qualified to sell mortgage loans to, and to service mortgage loans on behalf of, Fannie Mae or FHLMC.

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The Servicer is and shall continue to be an institution which is a Fannie Mae and FHLMC approved seller/servicer in good standing and shall maintain a net worth of at least \$30,000,000.

Section 6.03 Limitation on Liability of the Depositor, the Servicer and Others.

Neither the Depositor, the Servicer, the Trustee nor any of their respective directors, officers, employees or agents shall be under any liability to the Certificateholders for any action taken or for refraining from the taking of any action in good faith pursuant to this Agreement, or for errors in judgment; provided, however, that this provision shall not protect the Depositor, the Servicer, the Trustee or any such Person against any breach of representations or warranties made by it herein or protect the Depositor, the Servicer, the Trustee or any such Person from any liability which would otherwise be imposed by reasons of willful misfeasance, bad faith or negligence (or with respect to the Depositor, gross negligence) in the performance of duties or by reason of reckless disregard of obligations and duties hereunder. The Depositor and any director, officer, employee or agent of the Depositor may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising hereunder. The Depositor, the Servicer, the Trustee and any director, officer, employee or agent of the Depositor, the Servicer or the Trustee shall be indemnified by the Trust Fund and held harmless against any loss, liability or expense incurred in connection

with any audit, controversy or judicial proceeding relating to a governmental taxing authority or any legal action relating to this Agreement or the Certificates (including, as to the Trustee, the undertaking of actions as directed by the Unaffiliated Seller or the Certificate Insurer pursuant to Section 2.03), other than any loss, liability or expense incurred by reason of willful misfeasance, bad faith or negligence (or with respect to the Depositor, gross negligence) in the performance of their respective duties hereunder or by reason of reckless disregard of their respective obligations and duties hereunder. The Depositor shall not be under any obligation to appear in, prosecute or defend any legal action that is not incidental to its respective duties hereunder and which in its opinion may involve it in any expense or liability; provided, however, that the Depositor may in its discretion undertake any such action (or direct the Trustee to undertake any such actions pursuant to Section 2.03 hereof for the benefit of the Certificateholders) that it may deem necessary or desirable in respect of this Agreement and the rights and duties of the parties hereto and interests of the Trustee and the Certificateholders hereunder. In such event, the legal expenses and costs of such action and any liability resulting therefrom shall be expenses, costs and liabilities of the Trust Fund, and the Depositor shall be entitled to be reimbursed therefor out of the Collection Account.

Neither the Servicer nor any of the officers, employees or agents of the Servicer shall be under any liability to the Trustee or the Depositor for any action taken or for refraining from the taking of any action in good faith pursuant to this Agreement; provided, however, that this provision shall not protect the Servicer or any such person against any breach of warranties or representations made herein, or failure to perform its obligations in compliance with the terms of this Agreement, or any liability which would otherwise be imposed by reason of any breach of the terms and conditions of this Agreement. The Servicer and any officer, employee or agent of the Servicer may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising hereunder. The Servicer shall not be under any obligation to appear in, prosecute or defend any legal action which is not incidental to

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its duties to service the Mortgage Loans in accordance with this Agreement and which in its opinion may involve it in any expenses or liability; provided, however, that the Servicer may undertake any such action which it may deem necessary or desirable in respect to this Agreement and the rights and duties of the parties hereto. In such event, the legal expenses and costs of such action and any liability resulting therefrom shall be expenses, costs and liabilities of the Trust Fund, and the Servicer shall be entitled to be reimbursed therefor out of the Collection Account. In the event the Servicer agrees, at the request of the Depositor, to act on behalf of the Depositor in any litigation relating to the origination of a Mortgage Loan, the Depositor shall pay all expenses associated with the defense and management of such claim (without reimbursement from the Trust Fund).

#### Section 6.04 Limitation on Resignation of the Servicer.

The Servicer shall not assign this Agreement or resign from the obligations and duties hereby imposed on it except by mutual consent of the Servicer, the Certificate Insurer, the Depositor and the Trustee or upon the determination that its duties hereunder are no longer permissible under applicable law and such incapacity cannot be cured by the Servicer. Any such determination permitting the resignation of the Servicer shall be evidenced by an Opinion of Counsel to such effect delivered to the Depositor and the Trustee which Opinion of Counsel shall be in form and substance acceptable to the Depositor and the Trustee. No such resignation shall become effective until a successor shall have assumed the Servicer's responsibilities and obligations hereunder. Notwithstanding anything to the contrary herein, the Servicer may pledge or assign as collateral all its rights, title and interest under this Agreement to a lender (the "Lender"); provided that the Lender may only terminate the Servicer under this Agreement if there has been an Event of Default under this Agreement, in which event the Lender may replace the Servicer in the same manner and subject to the same conditions applicable in the event the Servicer is appointing a successor Servicer upon a servicer termination pursuant to Section 7.02.

#### Section 6.05 Additional Indemnification by the Servicer; Third Party Claims.

The Servicer shall indemnify the Depositor (and its Affiliate, Morgan Stanley Mortgage Capital Inc.), the Unaffiliated Seller and the Trustee and any director, officer, employee, or agent of the Depositor (or its Affiliate, Morgan Stanley Mortgage Capital Inc.), the Unaffiliated Seller and the Trustee and hold them harmless against any and all claims, losses, damages, penalties, fines, forfeitures, reasonable and necessary legal fees and related costs, judgments, and any other costs, fees and expenses that any of them may sustain in any way related to any breach by the Servicer, of any of its representations and warranties referred to in Section 2.03(a)(i) or the failure of the Servicer to perform its duties and service the Mortgage Loans in compliance with the terms

of this Agreement. The Servicer shall indemnify the Unaffiliated Seller and any director, officer, employee, or agent of the Unaffiliated Seller and the Trust Fund and hold it harmless against any and all claims, losses, damages, penalties, fines, forfeitures, reasonable and necessary legal fees and related costs, judgments, and any other costs, fees and expenses that it may sustain in any way related to any breach by the Servicer, of any of its representations and warranties referred to in Section 2.03(a)(ii). The Servicer immediately shall notify the Depositor, the Unaffiliated Seller and the Trustee if a claim is made by a third party with respect to any such breach or failure by the Servicer under this Agreement, assume (with the prior written consent of the Depositor, the Unaffiliated Seller and the Trustee) the

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defense of any such claim and pay all expenses in connection therewith, including reasonable counsel fees, and promptly pay, discharge and satisfy any judgment or decree which may be entered against it or the Depositor, the Unaffiliated Seller or the Trustee in respect of such claim; provided, that if it is determined that the Servicer is not obligated to indemnify such parties in accordance with this Section 6.05, each such party (or the Trust Fund, if applicable) shall promptly reimburse the Servicer in connection with each of the foregoing payments made to such party by the Servicer.

## ARTICLE VII

### DEFAULT

#### Section 7.01 Events of Default.

"Event of Default," wherever used herein, means any one of the following events:

(a) any failure by the Servicer to remit to the Trustee any payment required to be made under the terms of this Agreement which continues unremedied for a period of one Business Day after the date upon which written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer by the Depositor, by the Certificate Insurer or by the Trustee or to the Trustee by Certificateholders entitled to at least 25% of the Voting Rights in the Certificates; or

(b) failure on the part of the Servicer duly to observe or perform in any material respect any other of the covenants or agreements on the part of the Servicer set forth in this Agreement which continues unremedied for a period of forty-five days (except that such number of days shall be fifteen in the case of a failure to pay any premium for any insurance policy required to be maintained under this Agreement) after the earlier of (i) the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Servicer by the Depositor, by the Certificate Insurer, or by the Trustee, or to the Trustee by Certificateholders entitled to at least 25% of the Voting Rights in the Certificates and (ii) actual knowledge of such failure by a Servicing Officer of the Servicer; or

(c) a decree or order of a court or agency or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, bankruptcy, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against the Servicer and such decree or order shall have remained in force undischarged or unstayed for a period of sixty days; or

(d) the Servicer shall consent to the appointment of a conservator or receiver or liquidator in any insolvency, bankruptcy, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Servicer or of or relating to all or substantially all of its property; or

(e) the Servicer shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of any applicable insolvency or reorganization

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statute, make an assignment for the benefit of its creditors, or voluntarily suspend payment of its obligations; or

(f) Fitch reduces its servicer rating of the Servicer to "RPS2-" or lower, Moody's reduces its servicer rating of the Servicer to "SQ3" or lower, or Standard & Poor's reduces its servicer rating of the Servicer to "Average" or lower; or

(g) any failure of the Servicer to make any P&I Advance on any Remittance Date required to be made from its own funds pursuant to Section 4.01 which continues unremedied for one Business Day immediately following the Remittance Date; or

(h) a breach of any representation and warranty of the Servicer referred to in Section 2.03(a), which materially and adversely affects the interests of the Certificateholders or the Certificate Insurer and which continues unremedied for a period of thirty days after the earlier of (i) the date upon which written notice of such breach is given to the Servicer by the Trustee or the Depositor, or to the Servicer, the Depositor, the Certificate Insurer and the Trustee by any Certificateholders entitled to at least 25% of the Voting Rights in the Certificates or by the Certificate Insurer and (ii) actual knowledge of such breach by a Servicing Officer of the Servicer; or

(i) any reduction, withdrawal or qualification of the Servicer's servicer rating by any Rating Agency which results in the Servicer being deemed unacceptable by any Rating Agency to act as a primary servicer for this transaction or a primary servicer or a special servicer for any other mortgage-backed or asset-backed transaction rated or to be rated by any such Rating Agency; or

(j) the Certificate Insurer notifies the Trustee in writing of any uncured "event of default" (as such term is used in the Insurance and Indemnity Agreement) by the Servicer under the Insurance and Indemnity Agreement.

If an Event of Default shall occur, then, and in each and every such case, so long as such Event of Default shall not have been remedied, the Trustee may, subject to Section 5.08(a), or at the direction of the Certificate Insurer, or of Holders holding at least 51% of the Voting Rights, the Trustee shall, by notice in writing to the Servicer (with a copy to each Rating Agency), terminate all of the rights and obligations of the Servicer under this Agreement and in and to the Mortgage Loans and the proceeds thereof, other than its rights as a Certificateholder hereunder; provided, however, that the Trustee shall not be required to give written notice to the Servicer of the occurrence of an Event of Default described in clauses (b) through (i) of this Section 7.01 unless and until a Responsible Officer of the Trustee has actual knowledge of the occurrence of such an Event of Default. On and after the receipt by the Servicer of such written notice, all authority and power of the Servicer hereunder, whether with respect to the Mortgage Loans or otherwise, shall pass to and be vested in the Trustee. The Trustee shall make any P&I Advance which the Servicer failed to make subject to Section 4.01, whether or not the obligations of the Servicer have been terminated pursuant to this Section. The Trustee is hereby authorized and empowered to execute and deliver, on behalf of the Servicer, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such notice of termination, whether to

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complete the transfer and endorsement or assignment of the Mortgage Loans and related documents, or otherwise. Unless expressly provided in such written notice, no such termination shall affect any obligation of the Servicer to pay amounts owed pursuant to Article VIII. The Servicer agrees to cooperate with the Trustee in effecting the termination of the Servicer's responsibilities and rights hereunder, including, without limitation, the transfer to the Trustee of all cash amounts which shall at the time be credited to the Collection Account, or thereafter be received with respect to the Mortgage Loans.

Notwithstanding any termination of the activities of the Servicer hereunder, the Servicer shall be entitled to receive, out of any late collection of a Scheduled Payment on a Mortgage Loan which was due prior to the notice terminating such Servicer's rights and obligations as Servicer hereunder and received after such notice, that portion thereof to which such Servicer would have been entitled pursuant to Section 3.11, and any other amounts payable to such Servicer hereunder the entitlement to which arose prior to the termination of its activities hereunder in accordance with Section 3.11 and in the time period specified in Section 3.11. The Servicer shall continue to be entitled to the benefits of Section 6.03, notwithstanding any termination hereunder, with respect to events occurring prior to such termination.

#### Section 7.02 Trustee to Act; Appointment of Successor.

On and after the time the Servicer receives a notice of termination pursuant to Section 3.24 or Section 7.01, subject to the third paragraph of this Section 7.02, the Trustee shall, unless the Certificate Insurer shall have named an alternative successor Servicer and given written notice thereof to the Trustee of at least 30 days prior to the effective date of the transfer of servicing to such successor, subject to and to the extent provided in Section 3.05, be the successor to the Servicer in its capacity as servicer under this Agreement and the transactions set forth or provided for herein and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Servicer by the terms and provisions hereof and applicable law including the obligation to make P&I Advances and Servicing Advances pursuant to Section 4.01. As compensation therefor, the Trustee shall be entitled to all funds relating to the Mortgage Loans that the Servicer would have been entitled to charge to the Collection Account or Distribution Account if the Servicer had continued to act hereunder including, if the Servicer was receiving the

Servicing Fee, the Servicing Fee and the income on investments or gain related to the Collection Account and Distribution Account.

Notwithstanding the foregoing, if the Trustee has become the successor to the Servicer in accordance with Section 7.01, the Trustee may, if it shall be unwilling to so act, or shall, if it is prohibited by applicable law from making P&I Advances and Servicing Advances pursuant to Section 4.01 or if it is otherwise unable to so act, appoint, or petition a court of competent jurisdiction to appoint, any established mortgage loan servicing institution the appointment of which does not adversely affect the then current rating of the Certificates by each Rating Agency, as the successor to the Servicer hereunder in the assumption of all or any part of the responsibilities, duties or liabilities of the Servicer hereunder. Any successor to the Servicer shall be an institution which is a Fannie Mae and FHLMC approved seller/servicer in good standing, which has a net worth of at least \$30,000,000, which is willing to service the Mortgage Loans and which executes and delivers to the Depositor and the Trustee an agreement accepting such delegation and assignment, containing an assumption by such Person of the rights, powers,

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duties, responsibilities, obligations and liabilities of the Servicer (other than liabilities of the Servicer under Section 6.03 incurred prior to termination of the Servicer under Section 7.01), with like effect as if originally named as a party to this Agreement; provided that each Rating Agency acknowledges that its rating of the Certificates in effect immediately prior to such assignment and delegation will not be qualified or reduced, as a result of such assignment and delegation. Pending appointment of a successor to the Servicer hereunder, the Trustee, unless the Trustee is prohibited by law from so acting, shall, subject to Section 3.05, act in such capacity as hereinabove provided. In connection with such appointment and assumption, the Trustee may make such arrangements for the compensation of such successor out of payments on Mortgage Loans as it and such successor shall agree; provided, however, that no such compensation shall be in excess of the Servicing Fee Rate and amounts paid to the Servicer from investments. The Trustee and such successor shall take such action, consistent with this Agreement, as shall be necessary to effectuate any such succession. Neither the Trustee nor any other successor servicer shall be deemed to be in default hereunder by reason of any failure to make, or any delay in making, any distribution hereunder or any portion thereof or any failure to perform, or any delay in performing, any duties or responsibilities hereunder, in either case caused by the failure of the Servicer to deliver or provide, or any delay in delivering or providing, any cash, information, documents or records to it.

Notwithstanding any provision in this Agreement to the contrary, prior to the 20th day following the notice of termination of the Servicer and with the consent of the Certificate Insurer (such consent not to be unreasonably withheld, delayed or conditioned), the terminated Servicer may appoint a successor Servicer that satisfies the eligibility criteria of a successor Servicer set forth in this Section 7.02; provided such successor Servicer agrees to fully effect the servicing transfer within 90 days following the termination of the Servicer and to make all P&I Advances and Servicing Advances that would otherwise be made by the Trustee under this Section 7.02 as of the date of such appointment and prior thereto, the terminated Servicer makes all P&I Advances and Servicing Advances; otherwise the Trustee shall appoint a successor Servicer as otherwise set forth in this Section 7.02. Any proceeds received in connection with the appointment of such successor Servicer shall be the property of the terminated Servicer or its designee.

Any successor to the Servicer as servicer shall give notice to the Mortgagors of such change of servicer and shall, during the term of its service as servicer, maintain in force the policy or policies that the Servicer is required to maintain pursuant to Section 3.13.

#### Section 7.03 Notification to Certificateholders.

(a) Upon any termination of or appointment of a successor to the Servicer, the Trustee shall give prompt written notice thereof to Certificateholders, the Certificate Insurer, the Unaffiliated Seller and to each Rating Agency.

(b) Within 60 days after the occurrence of any Event of Default, the Trustee shall transmit by mail to all Certificateholders, the Certificate Insurer, the Unaffiliated Seller and each Rating Agency notice of each such Event of Default hereunder known to the Trustee, unless such Event of Default shall have been cured or waived.

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#### ARTICLE VIII

#### CONCERNING THE TRUSTEE

Section 8.01 Duties of the Trustee.

The Trustee, before the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform such duties and only such duties as are specifically set forth in this Agreement. In case an Event of Default has occurred and remains uncured, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

The Trustee, upon receipt of all resolutions, certificates, statements, opinions, reports, documents, orders or other instruments furnished to the Trustee that are specifically required to be furnished pursuant to any provision of this Agreement shall examine them to determine whether they are in the form required by this Agreement. The Trustee shall not be responsible for the accuracy or content of any resolution, certificate, statement, opinion, report, document, order, or other instrument.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct.

Unless an Event of Default known to the Trustee has occurred and is continuing,

(a) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, the Trustee shall not be liable except for the performance of the duties and obligations specifically set forth in this Agreement, no implied covenants or obligations shall be read into this Agreement against the Trustee, and the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement which it believed in good faith to be genuine and to have been duly executed by the proper authorities respecting any matters arising hereunder;

(b) the Trustee shall not be liable for an error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it is finally proven that the Trustee was negligent in ascertaining the pertinent facts; and

(c) the Trustee shall not be liable with respect to any action taken, suffered, or omitted to be taken by it in good faith in accordance with the direction of the Certificate Insurer, or of Holders of Certificates evidencing not less than 25% of the Voting Rights of Certificates relating to the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Agreement.

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Section 8.02 Certain Matters Affecting the Trustee.

Except as otherwise provided in Section 8.01:

(a) the Trustee may request and rely upon and shall be protected in acting or refraining from acting upon any resolution, Officer's Certificate, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties and the Trustee shall have no responsibility to ascertain or confirm the genuineness of any signature of any such party or parties;

(b) the Trustee may consult with counsel, financial advisers or accountants and the advice of any such counsel, financial advisers or accountants and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such Opinion of Counsel;

(c) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement;

(d) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing to do so by the Certificate Insurer, or by Holders of Certificates evidencing not less than 25% of the Voting Rights allocated to each Class of Certificates;

(e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents,

accountants or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agents, accountants or attorneys appointed with due care by it hereunder;

(f) the Trustee shall not be required to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it;

(g) the Trustee shall not be liable for any loss on any investment of funds pursuant to this Agreement (other than as issuer of the investment security);

(h) the Trustee shall not be deemed to have knowledge of an Event of Default until a Responsible Officer of the Trustee shall have received written notice thereof; and

(i) the Trustee shall be under no obligation to exercise any of the trusts, rights or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any of the Certificateholders, pursuant to this Agreement, unless such Certificateholders shall have offered to the Trustee

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reasonable security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred therein or thereby.

#### Section 8.03 Trustee Not Liable for Certificates or Mortgage Loans.

The recitals contained herein and in the Certificates shall be taken as the statements of the Depositor and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Agreement or of the Certificates or of any Mortgage Loan or related document other than with respect to the Trustee's execution and countersignature of the Certificates. The Trustee shall not be accountable for the use or application by the Depositor or the Servicer of any funds paid to the Depositor or the Servicer in respect of the Mortgage Loans or deposited in or withdrawn from the Collection Account by the Depositor or the Servicer.

The Trustee shall have no responsibility for filing or recording any financing or continuation statement in any public office at any time or to otherwise perfect or maintain the perfection of any security interest or lien granted to it hereunder (unless the Trustee shall have become the successor Servicer).

The Trustee executes the Certificates not in its individual capacity but solely as Trustee of the Trust Fund created by this Agreement, in the exercise of the powers and authority conferred and vested in it by this Agreement. Each of the undertakings and agreements made on the part of the Trustee on behalf of the Trust Fund in the Certificates is made and intended not as a personal undertaking or agreement by the Trustee but is made and intended for the purpose of binding only the Trust Fund.

#### Section 8.04 Trustee May Own Certificates.

The Trustee in its individual or any other capacity may become the owner or pledgee of Certificates with the same rights as it would have if it were not the Trustee.

#### Section 8.05 Trustee's Fees and Expenses.

(a) As compensation for its activities under this Agreement, the Trustee may withdraw from the Distribution Account on each Distribution Date the Trustee Fee for the Distribution Date. The Trustee and any director, officer, employee, or agent of the Trustee shall be indemnified by the Servicer against any loss, liability, or expense (including reasonable attorney's fees) resulting from any failure by the Servicer to perform its obligations under this Agreement. This indemnity shall survive the termination of this Agreement or the resignation or removal of the Trustee under this Agreement.

The Trustee shall not be entitled to payment or reimbursement from the Unaffiliated Seller for any routine ongoing expenses incurred by the Trustee in the ordinary course of its duties as Trustee, Registrar, or paying agent under this Agreement or for any other expenses, including indemnification payments, except as set forth herein.

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#### Section 8.06 Eligibility Requirements for the Trustee.

The Trustee hereunder shall at all times be a corporation or



association organized and doing business under the laws of a state or the United States of America, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by federal or state authority and with a credit rating which would not cause any of the Rating Agencies to reduce their respective then current ratings of the Certificates (or having provided such security from time to time as is sufficient to avoid such reduction) as evidenced in writing by each Rating Agency. If such corporation or association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 8.06 the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with this Section 8.06, the Trustee shall resign immediately in the manner and with the effect specified in Section 8.07. The entity serving as Trustee may have normal banking and trust relationships with the Depositor and its affiliates or the Servicer and its affiliates; provided, however, that such entity cannot be an affiliate of the Depositor, the Unaffiliated Seller or the Servicer other than the Trustee in its role as successor to the Servicer.

#### Section 8.07 Resignation and Removal of the Trustee.

The Trustee may at any time resign and be discharged from the trusts hereby created by giving written notice of resignation to the Depositor, the Servicer, the Certificate Insurer, the Unaffiliated Seller, each Rating Agency not less than 60 days before the date specified in such notice, when, subject to Section 8.08, such resignation is to take effect, and acceptance by a successor trustee in accordance with Section 8.08 meeting the qualifications set forth in Section 8.06. If no successor trustee meeting such qualifications shall have been so appointed and have accepted appointment within 30 days after the giving of such notice or resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee.

If at any time the Trustee shall cease to be eligible in accordance with Section 8.06 and shall fail to resign after written request thereto by the Depositor, or if at any time the Trustee shall become incapable of acting, or shall be adjudged as bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, or a tax is imposed with respect to the Trust Fund by any state in which the Trustee or the Trust Fund is located and the imposition of such tax would be avoided by the appointment of a different trustee, then the Depositor or the Servicer may remove the Trustee and appoint a successor trustee reasonably acceptable to the Certificate Insurer by written instrument, in triplicate, one copy of which shall be delivered to the Trustee, one copy to the Servicer and one copy to the successor trustee.

The Certificate Insurer or the Holders of Certificates entitled to at least a majority of the Voting Rights may at any time remove the Trustee and appoint a successor trustee by written instrument or instruments, in triplicate, signed by such Holders or their attorneys-in-fact

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duly authorized, one complete set of which shall be delivered by the successor Trustee to the Servicer, one complete set to the Trustee so removed and one complete set to the successor so appointed. The successor trustee shall notify each Rating Agency of any removal of the Trustee.

Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to this Section 8.07 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.08.

#### Section 8.08 Successor Trustee.

Any successor trustee appointed as provided in Section 8.07 shall execute, acknowledge and deliver to the Depositor and to its predecessor trustee and the Servicer an instrument accepting such appointment hereunder and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor hereunder, with the like effect as if originally named as trustee herein. The Depositor, the Certificate Insurer, the Servicer and the predecessor trustee shall execute and deliver such instruments and do such other things as may reasonably be required for more fully and certainly vesting and confirming in the successor trustee all such rights, powers, duties, and obligations.

No successor trustee shall accept appointment as provided in this Section 8.08 unless at the time of its acceptance, the successor trustee is eligible under Section 8.06 and its appointment does not adversely affect the then current rating of the Certificates.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.08, the Depositor shall mail notice of the succession of such trustee hereunder to all Holders of Certificates. If the Depositor fails to mail such notice within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Depositor.

#### Section 8.09 Merger or Consolidation of the Trustee.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the business of the Trustee, shall be the successor of the Trustee hereunder; provided that such corporation shall be eligible under Section 8.06 without the execution or filing of any paper or further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

#### Section 8.10 Appointment of Co-Trustee or Separate Trustee.

Notwithstanding any other provisions of this Agreement, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Fund or property securing any Mortgage Note may at the time be located, the Servicer and the Trustee acting jointly shall have the power and shall execute and deliver all instruments to appoint one or more Persons approved by the Trustee to act as co-trustee or co-trustees jointly with the Trustee, or separate trustee or separate trustees, of all or any part of the Trust Fund, and

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to vest in such Person or Persons, in such capacity and for the benefit of the Certificateholders, such title to the Trust Fund or any part thereof, whichever is applicable, and, subject to the other provisions of this Section 8.10, such powers, duties, obligations, rights and trusts as the Servicer and the Trustee may consider appropriate. If the Servicer shall not have joined in such appointment within 15 days after the receipt by it of a request to do so, or in the case an Event of Default shall have occurred and be continuing, the Trustee alone shall have the power to make such appointment. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 8.06 and no notice to Certificateholders of the appointment of any co-trustee or separate trustee shall be required under Section 8.08.

Every separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(a) To the extent necessary to effectuate the purposes of this Section 8.10, all rights, powers, duties and obligations conferred or imposed upon the Trustee, except for the obligation of the Trustee under this Agreement to advance funds on behalf of the Servicer, shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed (whether as Trustee hereunder or as successor to the Servicer hereunder), the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the applicable Trust Fund or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Trustee;

(b) No trustee hereunder shall be held personally liable because of any act or omission of any other trustee hereunder and such appointment shall not, and shall not be deemed to, constitute any such separate trustee or co-trustee as agent of the Trustee;

(c) The Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee; and

(d) The Trustee, and not the Servicer, shall be liable for the payment of reasonable compensation and expenses to any such separate trustee or co-trustee from the Trustee Fee payable to the Trustee on each Distribution Date.

Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the separate trustees and co-trustees, when and as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Agreement and the conditions of this Article VIII. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Trustee or separately, as may be provided therein, subject to all the provisions of this Agreement, specifically including every provision of this Agreement relating to the conduct

of, affecting the liability of, or affording protection and indemnity to, the Trustee. Every such instrument shall be filed with the Trustee and a copy thereof given to the Servicer and the Depositor.

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Any separate trustee or co-trustee may, at any time, constitute the Trustee its agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Agreement on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

#### Section 8.11 Tax Matters.

As set forth in the Preliminary Statement, the assets within the Trust Fund for which any REMIC election is to be made shall constitute, and the conduct of matters relating to such assets shall be consistent with the treatment of such assets as, a REMIC. To this end, the Trustee covenants and agrees to act as agent (and the Trustee is hereby appointed to act as agent) on behalf of any REMIC created hereunder, and that in such capacity it shall:

(a) prepare and file in a timely manner, a U.S. Real Estate Mortgage Investment Conduit Income Tax Return (Form 1066 or any successor form adopted by the Internal Revenue Service) and prepare and file with the Internal Revenue Service and applicable state or local tax authorities income tax or information returns for each taxable year with respect to any REMIC described in the Preliminary Statement containing such information and at the times and in the manner as may be required by the Code or state or local tax laws, regulations, or rules, and furnish to Certificateholders the schedules, statements or information at such times and in such manner as may be required thereby;

(b) within thirty days of the Closing Date, furnish to the Internal Revenue Service on Form 8811 or as otherwise may be required by the Code, the name, title, address, and telephone number of the person that the Holders of the Certificates may contact for tax information relating thereto, together with such additional information as may be required by such Form, and update such information at the time or times in the manner required by the Code;

(c) make an election that each of the Lower Tier REMIC, the Middle Tier REMIC and the Upper Tier REMIC be treated as a REMIC on the federal tax return for its first taxable year (and, if necessary, under applicable state law);

(d) prepare and forward to the Certificateholders and to the Internal Revenue Service and, if necessary, state tax authorities, all information returns and reports as and when required to be provided to them in accordance with the REMIC Provisions, including the calculation of any original issue discount using the Prepayment Assumption (as defined in the Prospectus Supplement);

(e) provide information necessary for the computation of tax imposed on the transfer of a Residual Certificate to a Person that is a Non-Permitted Transferee, or an agent (including a broker, nominee or other middleman) of a Non-Permitted Transferee, or a pass-through entity in which a Non-Permitted Transferee is the record holder of an interest (the reasonable cost of computing and furnishing such information may be charged to the Person liable for such tax);

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(f) to the extent that they are under its control, conduct matters relating to such assets at all times that any Certificates are outstanding so as to maintain the status as a REMIC under the REMIC Provisions;

(g) not knowingly or intentionally take any action or omit to take any action that would cause the termination of the REMIC status of any REMIC created hereunder;

(h) pay, from the sources specified in the last paragraph of this Section 8.11, the amount of any federal or state tax, including prohibited transaction taxes as described below, imposed on any REMIC created hereunder before its termination when and as the same shall be due and payable (but such obligation shall not prevent the Trustee or any other appropriate Person from contesting any such tax in appropriate proceedings and shall not prevent the Trustee from withholding payment of such tax, if permitted by law, pending the outcome of such proceedings);

(i) cause federal, state or local income tax or information returns to be signed by the Trustee or such other person as may be required to sign such returns by the Code or state or local laws, regulations or rules;

(j) maintain records relating to each REMIC created hereunder, including the income, expenses, assets, and liabilities thereof on a calendar year basis and on the accrual method of accounting and the fair market value and adjusted basis of the assets determined at such intervals as may be required by the Code, as may be necessary to prepare the foregoing returns, schedules, statements or information; and

(k) as and when necessary and appropriate, represent each REMIC created hereunder in any administrative or judicial proceedings relating to an examination or audit by any governmental taxing authority, request an administrative adjustment as to any taxable year of each REMIC created hereunder, enter into settlement agreements with any governmental taxing agency, extend any statute of limitations relating to any tax item of any REMIC created hereunder, and otherwise act on behalf of the REMIC in relation to any tax matter or controversy involving it.

The Trustee shall treat the rights of the Class P Certificateholders to Prepayment Charges as the beneficial ownership of interests in a grantor trust, and not as an obligation of any REMIC created hereunder, for federal income tax purposes.

To enable the Trustee to perform its duties under this Agreement, the Depositor shall provide to the Trustee within ten days after the Closing Date all information or data that the Trustee requests in writing and determines to be relevant for tax purposes to the valuations and offering prices of the Certificates, including the price, yield, prepayment assumption, and projected cash flows of the Certificates and the Mortgage Loans. Moreover, the Depositor shall provide information to the Trustee concerning the value to each Class of Certificates of the right to receive Basis Risk Carry Forward Amounts from the Excess Reserve Fund Account. Thereafter, the Depositor shall provide to the Trustee promptly upon written request therefor any additional information or data that the Trustee may, from time to time, reasonably request to enable the Trustee to perform its duties under this Agreement. The Depositor hereby

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indemnifies the Trustee for any losses, liabilities, damages, claims, or expenses of the Trustee arising from any errors or miscalculations of the Trustee that result from any failure of the Depositor to provide, or to cause to be provided, accurate information or data to the Trustee on a timely basis.

If any tax is imposed on "prohibited transactions" of any REMIC created hereunder as defined in Section 860F(a)(2) of the Code, on the "net income from foreclosure property" of such REMIC as defined in Section 860G(c) of the Code, on any contribution to the REMIC after the Startup Day pursuant to Section 860G(d) of the Code, or any other tax is imposed, including any minimum tax imposed on the REMIC pursuant to Sections 23153 and 24874 of the California Revenue and Taxation Code, if not paid as otherwise provided for herein, the tax shall be paid by (i) the Trustee if such tax arises out of or results from negligence of the Trustee in the performance of any of its obligations under this Agreement, (ii) the Servicer if such tax arises out of or results from a breach by the Servicer of any of its obligations under this Agreement, (iii) the Unaffiliated Seller shall pay if such tax arises out of or results from the Unaffiliated Seller's obligation to repurchase a Mortgage Loan pursuant to Section 2.03, or (iv) in all other cases, or if the Trustee, the Servicer or the Unaffiliated Seller fails to honor its obligations under the preceding clauses (i) or (ii), any such tax will be paid with amounts otherwise to be distributed to the Certificateholders, as provided in Section 4.02(a).

#### Section 8.12 Periodic Filings.

(a) The Trustee and the Servicer shall reasonably cooperate with the Depositor in connection with the Trust's satisfying the reporting requirements under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Trustee shall prepare on behalf of the Trust any Forms 8-K and 10-K customary for similar securities as required by the Exchange Act and the Rules and Regulations of the Securities and Exchange Commission (the "SEC") thereunder, and the Trustee shall file (via the SEC's Electronic Data Gathering and Retrieval System) such Forms with the SEC on behalf of the Depositor. The Depositor hereby grants to the Trustee a limited power of attorney to execute and file each such Form 8-K but only to the extent no accompanying certification is required to be filed on behalf of the Depositor. Such power of attorney shall continue until either the earlier of (i) receipt by the Trustee from the Depositor of written termination of such power of attorney and (ii) the termination of the Trust. The Depositor shall execute the Form 10-K. The Trustee shall have no liability with respect to any failure to properly prepare or file such periodic reports resulting from or relating to the Trustee's inability or failure to obtain any information not resulting from its own negligence or willful misconduct.

(b) Each Form 8-K shall be filed by the Trustee with the SEC within 15 days after each Distribution Date, including a Form 8-K with a copy of the statement to the Certificateholders for such Distribution Date as an exhibit thereto. Prior to March 30th of each year (or such earlier date as may be

required by the Exchange Act and the Rules and Regulations of the SEC), the Trustee shall file a Form 10-K, in substance as required by applicable law or the SEC's staff interpretations. Such Form 10-K shall include as exhibits the Servicer's annual statement of compliance described under Section 3.22 (upon which the Trustee may rely) and the accountant's report described under Section 3.23, in each case to the extent they have been timely delivered to the Trustee. If they are not so timely delivered, the Trustee shall file an

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amended Form 10-K including such documents as exhibits reasonably promptly after they are delivered to the Trustee. The Form 10-K shall also include a certification in the form attached hereto as Exhibit M (the "Certification"), which shall be signed by the senior officer of the Depositor in charge of securitization. The Trustee shall prepare and deliver each Form 10-K to the Depositor for execution no later than March 20th (or if such day is not a Business Day, the immediately preceding Business Day) of each year. The Depositor shall return the executed Form 10-K to the Trustee for filing no later than March 25th (or if such day is not a Business Day, the immediately preceding Business Day) of each year.

(c) Notwithstanding that the Certification is to be signed by an officer of the Depositor, a Responsible Officer of the Trustee shall sign a certification, in the form attached hereto as Exhibit N for the benefit of the Depositor and its officers, directors and Affiliates in respect of items 1 through 3 thereof of the Certification (provided, however, that the Trustee shall not undertake an analysis of the accountant's report attached as an exhibit to the Form 10-K), and a Servicing Officer of the Servicer who is responsible for the servicing and administration of the Mortgage Loans shall sign a certification in the form attached hereto as Exhibit N for the benefit of the Depositor, the Trustee and their respective officers, directors and Affiliates in respect of items 4 and 5 of the Certification. Each such certification shall be delivered to the Depositor and the Trustee (as applicable), no later than March 15th of each year (or if such day is not a Business Day, the immediately preceding Business Day) and the Depositor shall deliver the Certification to be filed to the Trustee no later than March 20th of each year (or if such day is not a Business Day, the immediately preceding Business Day). In the event that prior to the filing date of the Form 10-K in March of each year, the Trustee or the Servicer has actual knowledge of information material to the Certification, that party shall promptly notify the Depositor and each of the other parties signing the certifications. In addition, (i) the Trustee shall indemnify and hold harmless the Depositor and its officers, directors and Affiliates from and against any losses, damages, penalties, fines, forfeitures, reasonable and necessary legal fees and related costs, judgments and other costs and expenses arising out of or based upon any breach of the Trustee's obligations under this Section 8.12(c) or the Trustee's negligence, bad faith or willful misconduct in connection therewith and (ii) the Servicer shall indemnify and hold harmless the Depositor, the Trustee and their respective officers, directors and Affiliates from and against any losses, damages, penalties, fines, forfeitures, reasonable and necessary legal fees and related costs, judgments and other costs and expenses arising out of or based upon any breach of the Servicer's obligations under this Section 8.12(c) or the Servicer's negligence, bad faith or willful misconduct in connection therewith. If the indemnification provided for herein is unavailable or insufficient to hold harmless the indemnified party then (i) the Trustee agrees in connection with a breach of the Trustee's obligations under this Section 8.12(c) or the Trustee's negligence, bad faith or willful misconduct in connection therewith that it shall contribute to the amount paid or payable by the Depositor as a result of the losses, claims, damages or liabilities of the Depositor in such proportion as is appropriate to reflect the relative fault of the Depositor on the one hand and the Trustee on the other and (ii) the Servicer agrees that it shall contribute to the amount paid or payable by the Depositor and/or the Trustee as a result of the losses, claims, damages or liabilities of the Depositor and/or the Trustee in such proportion as is appropriate to reflect the relative fault of the Depositor and the Trustee, as the case may be, on the one hand and the Servicer on the other in connection with a breach of the Servicer's obligations under this Section 8.12(c) or the Servicer's negligence, bad faith or willful misconduct in connection therewith.

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(d) Upon any filing with the Securities and Exchange Commission, the Trustee shall promptly deliver to the Depositor a copy of any such executed report, statement or information.

(e) Prior to January 30 of the first year in which the Trustee is able to do so under applicable law, the Trustee shall, in accordance with applicable law, file a Form 15D Suspension Notification with respect to the Trust Fund in a timely manner.

Section 8.13 Tax Classification of the Excess Reserve Fund Account.

For federal income tax purposes, the Trustee shall treat the Excess

Reserve Fund Account as an outside reserve fund, within the meaning of Treasury Regulation ss. 1.860G-2(h), that is beneficially owned by the holder of the Class X Certificate. The Trustee shall treat the rights that each Class of Certificates has to receive payments of Basis Risk Carry Forward Amounts from the Excess Reserve Fund Account as rights to receive payments under an interest rate cap contract written by the Class X Certificateholder in favor of each Class. Accordingly, each Class of Certificates (excluding the Class X, Class P and Class R Certificates) will be comprised of two components - an Upper Tier Regular Interest and an interest in a notional principal contract. The Trustee shall allocate the issue price for a Class of Certificates between such two components for purposes of determining the issue price of the Upper Tier Regular Interest component based on information received from the Depositor.

#### Section 8.14 Cap Agreements.

The Trustee is hereby authorized and directed to execute and deliver the Cap Agreements and to acknowledge the provisions thereof.

### ARTICLE IX

#### TERMINATION

#### Section 9.01 Termination upon Liquidation or Purchase of the Mortgage Loans.

Subject to Section 9.03, the obligations and responsibilities of the Depositor, the Servicer and the Trustee created hereby with respect to the Trust Fund shall terminate upon the earlier of (a) the purchase, on or after the applicable Optional Termination Date, by the Servicer or the Class X Certificateholders of all Mortgage Loans (and REO Properties) at the price equal to the sum of (i) 100% of the unpaid principal balance of each Mortgage Loan (other than in respect of REO Property) plus accrued and unpaid interest thereon at the applicable Mortgage Rate, (ii) the lesser of (x) the appraised value of any REO Property as determined by the higher of two appraisals completed by two independent appraisers selected by the party exercising the optimal termination at the expense of the party exercising the optimal termination plus, accrued and unpaid interest on each Mortgage Loan at the applicable Mortgage Rate and (y) the unpaid principal balance of each Mortgage Loan related to any REO Property, in each case plus accrued and unpaid interest thereon at the applicable Mortgage Rate and (iii) all costs and expenses incurred by, or on behalf of, the Trust Fund, of which the Trustee has actual knowledge, in connection with any violation by such Mortgage Loan of any predatory or abusive-lending law (the "Termination Price") and (b) the later of (i) the maturity or other liquidation (or any

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Advance with respect thereto) of the last Mortgage Loan remaining in the Trust Fund and the disposition of all REO Property and (ii) the distribution to Certificateholders of all amounts required to be distributed to them pursuant to this Agreement. In no event shall the trusts created hereby continue beyond the expiration of 21 years from the death of the survivor of the descendants of Joseph P. Kennedy, the late Ambassador of the United States to the Court of St. James's, living on the date hereof.

Notwithstanding the foregoing, if Standard & Poor's has rated a class of debt securities ("Net Interest Margin Securities") that are backed by the Class X Certificates and Class P Certificates and that are outstanding on any date on which the Servicer intends to exercise its option to purchase the Mortgage Loans, the Servicer will be permitted to exercise such option only if one of the following additional conditions is met: (i) after distribution of the Termination Price to the Certificateholders (other than the Holders of the Class X Certificates, Class P Certificates and Class R Certificates) to redeem the related Certificates, the remainder of the Termination Price (the "Remainder Amount") is distributed to the Holders of the Class X Certificates and Class P Certificates and is sufficient to pay the outstanding principal amount of and accrued and unpaid interest on the Net Interest Margin Securities to the extent the Net Interest Margin Securities are then outstanding; or (ii) (A) at the same time that the Servicer remits the Termination Price to the Trustee, it also remits to the Trustee an additional amount which, in combination with the Remainder Amount, is sufficient to pay the outstanding principal amount of and accrued and unpaid interest on the Net Interest Margin Securities, and (B) the Trustee remits the Remainder Amount to the Holders of the Class X Certificates and Class P Certificates and remits that additional amount directly to the indenture trustee (plus any outstanding fees and expenses due and owing to the indenture trustee) under the indenture creating the Net Interest Margin Securities.

No purchase under this Section 9.01 will be permitted without the consent of the Certificate Insurer, unless no draw on the Certificate Insurance Policy would be made and no amounts due to the Certificate Insurer would remain unreimbursed on the final Distribution Date.

#### Section 9.02 Final Distribution on the Certificates.

If on any Determination Date, the Servicer determines that there are no Outstanding Mortgage Loans and no other funds or assets in the Trust Fund other than the funds in the Collection Account, the Servicer shall direct the Trustee promptly to send a Notice of Final Distribution to each Certificateholder. If the Servicer or the Class X Certificateholder elects to terminate the Trust Fund pursuant to clause (a) of Section 9.01, at least 20 days prior to the date the Notice of Final Distribution is to be mailed to the affected Certificateholders such electing party shall notify the Depositor and the Trustee of the date the Servicer or the Class X Certificateholder intends to terminate the Trust Fund and of the applicable repurchase price of the Mortgage Loans and REO Properties.

A Notice of Final Distribution, specifying the Distribution Date on which Certificateholders may surrender their Certificates for payment of the final distribution and cancellation, shall be given promptly by the Trustee by letter to Certificateholders mailed not earlier than the 10th day and not later than the 15th day of the month next preceding the month of such final distribution. Any such Notice of Final Distribution shall specify (a) the Distribution

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Date upon which final distribution on the Certificates will be made upon presentation and surrender of Certificates at the office therein designated, (b) the amount of such final distribution, (c) the location of the office or agency at which such presentation and surrender must be made, and (d) that the Record Date otherwise applicable to such Distribution Date is not applicable, distributions being made only upon presentation and surrender of the Certificates at the office therein specified. The Trustee will give such Notice of Final Distribution to each Rating Agency at the time such Notice of Final Distribution is given to Certificateholders.

In the event such Notice of Final Distribution is given, the Servicer shall cause all funds in the Collection Account to be remitted to the Trustee for deposit in the Distribution Account on the Business Day prior to the applicable Distribution Date in an amount equal to the final distribution in respect of the Certificates. Upon such final deposit with respect to the Trust Fund and the receipt by the Trustee of a Request for Release therefor, the Trustee shall promptly release to the Servicer the Custodial Files for the Mortgage Loans.

Upon presentation and surrender of the Certificates, the Trustee shall cause to be distributed to the Certificateholders of each Class (after reimbursement of all amounts due to the Servicer, the Certificate Insurer, the Depositor and the Trustee hereunder), in each case on the final Distribution Date and in the order set forth in Section 4.02, in proportion to their respective Percentage Interests, with respect to Certificateholders of the same Class, up to an amount equal to (i) as to each Class of Regular Certificates (except the Class X Certificate), the Certificate Balance thereof plus for each such Class and the Class X Certificate accrued interest thereon in the case of an interest-bearing Certificate and all other amounts to which such Classes are entitled pursuant to Section 4.02 and (ii) as to the Residual Certificates, the amount, if any, which remains on deposit in the Distribution Account (other than the amounts retained to meet claims) after application pursuant to clause (i) above.

In the event that any affected Certificateholders shall not surrender Certificates for cancellation within six months after the date specified in the above mentioned written notice, the Trustee shall give a second written notice to the remaining Certificateholders to surrender their Certificates for cancellation and receive the final distribution with respect thereto. If within six months after the second notice all the applicable Certificates shall not have been surrendered for cancellation, the Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining Certificateholders concerning surrender of their Certificates, and the cost thereof shall be paid out of the funds and other assets which remain a part of the Trust Fund. If within one year after the second notice all Certificates shall not have been surrendered for cancellation, the Class R Certificateholders shall be entitled to all unclaimed funds and other assets of the Trust Fund which remain subject hereto.

#### Section 9.03 Additional Termination Requirements.

In the event the Servicer or the Class X Certificateholder, as applicable, exercises its purchase option with respect to the Mortgage Loans as provided in Section 9.01, the Trust Fund shall be terminated in accordance with the following additional requirements, unless the Trustee has been supplied with an Opinion of Counsel, at the expense of the Servicer or the Class X Certificateholder, as applicable, to the effect that the failure to comply with the requirements of this Section 9.03 will not (i) result in the imposition of taxes on "prohibited transactions" on

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either REMIC as defined in Section 860F of the Code, or (ii) cause either the Lower Tier REMIC, the Middle Tier REMIC or the Upper Tier REMIC to fail to qualify as a REMIC at any time that any Certificates are outstanding:

(a) The Trustee shall sell all of the assets of the Trust Fund to the Servicer or the Class X Certificateholder, as applicable, and, within 90 days of such sale, shall distribute to the Certificateholders the proceeds of such sale in complete liquidation of each of the Lower Tier REMIC, the Middle Tier REMIC and the Upper Tier REMIC.

(b) The Trustee shall attach a statement to the final federal income tax return for each of the Lower Tier REMIC, the Middle Tier REMIC and the Upper Tier REMIC stating that pursuant to Treasury Regulations Section 1.860F-1, the first day of the 90-day liquidation period for each such REMIC was the date on which the Trustee sold the assets of the Trust Fund to the Servicer or the Class X Certificateholder, as applicable.

#### ARTICLE X

##### MISCELLANEOUS PROVISIONS

###### Section 10.01 Amendment.

This Agreement may be amended from time to time (x) by the Depositor, the Servicer and the Trustee, with the prior written consent of the Certificate Insurer, (y) with the consent of the Unaffiliated Seller unless the Trustee receives an Opinion of Counsel (which Opinion of Counsel shall not be an expense of the Trustee or the Trust Fund) stating that the amendment will not adversely affect the Unaffiliated Seller, but (z) without the consent of any of the Certificateholders (i) to cure any ambiguity or mistake, (ii) to correct any defective provision herein or to supplement any provision herein which may be inconsistent with any other provision herein, (iii) to add to the duties of the Depositor or the Servicer, (iv) to add any other provisions with respect to matters or questions arising hereunder or (v) to modify, alter, amend, add to or rescind any of the terms or provisions contained in this Agreement; provided, that any action pursuant to clauses (iv) or (v) above shall not, as evidenced by an Opinion of Counsel (which Opinion of Counsel shall not be an expense of the Trustee or the Trust Fund), adversely affect in any material respect the interests of any Certificateholder; and provided, further, that the amendment shall not be deemed to adversely affect in any material respect the interests of the Certificateholders if the Person requesting the amendment obtains a letter from each Rating Agency stating that the amendment would not result in the downgrading or withdrawal of the respective ratings then assigned to the Certificates; it being understood and agreed that any such letter in and of itself will not represent a determination as to the materiality of any such amendment and will represent a determination only as to the credit issues affecting any such rating.

In addition, this Agreement may also be amended from time to time (x) by the Trustee, the Depositor and the Servicer, with the prior written consent of the Certificate Insurer, and (y) with the consent of the Unaffiliated Seller unless the Trustee receives an Opinion of Counsel (which Opinion of Counsel shall not be an expense of the Trustee or the Trust Fund) stating that the amendment will not adversely affect the Unaffiliated Seller, but (z) without the

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consent of the Certificateholders, to modify, eliminate or add to any of its provisions to such extent as shall be necessary or helpful to (i) maintain the qualification of the Lower Tier REMIC, the Middle Tier REMIC and the Upper Tier REMIC under the Code, (ii) avoid or minimize the risk of the imposition of any tax on the Lower Tier REMIC, the Middle Tier REMIC or the Upper Tier REMIC pursuant to the Code that would be a claim at any time prior to the final redemption of the Certificates or (iii) comply with any other requirements of the Code; provided, that the Trustee has been provided an Opinion of Counsel, which opinion shall be an expense of the party requesting such opinion but in any case shall not be an expense of the Trustee or the Trust Fund, to the effect that such action is necessary or helpful to, as applicable, (i) maintain such qualification, (ii) avoid or minimize the risk of the imposition of such a tax or (iii) comply with any such requirements of the Code.

This Agreement may also be amended from time to time (x) by the Depositor, the Servicer and the Trustee, with the prior written consent of the Certificate Insurer, (y) with the consent of the Unaffiliated Seller unless the Trustee receives an Opinion of Counsel (which Opinion of Counsel shall not be an expense of the Trustee or the Trust Fund) stating that the amendment will not adversely affect the Unaffiliated Seller, and (z), except as set forth in Section 3.27, with the consent of the Holders of Certificates evidencing Percentage Interests aggregating not less than 66-2/3% of each Class of Certificates (based on the aggregate outstanding principal balance of such class at such time) affected thereby, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of the Holders of Certificates; provided,



however, that no such amendment shall (i) reduce in any manner the amount of, or delay the timing of, payments required to be distributed on any Certificate without the consent of the Holder of such Certificate, (ii) adversely affect in any material respect the interests of the Holders of any Class of Certificates in a manner other than as described in (i), without the consent of the Holders of Certificates of such Class evidencing, as to such Class, Percentage Interests aggregating not less than 66-2/3%, or (iii) reduce the aforesaid percentages of Certificates the Holders of which are required to consent to any such amendment, without the consent of the Holders of all such Certificates then outstanding.

Notwithstanding any contrary provision of this Agreement, the Trustee shall not consent to any amendment to this Agreement unless it shall have first received an Opinion of Counsel, which opinion shall not be an expense of the Trustee or the Trust Fund, to the effect that such amendment will not cause the imposition of any tax on any REMIC or the Certificateholders or cause any REMIC to fail to qualify as a REMIC at any time that any Certificates are outstanding.

Notwithstanding the foregoing provisions of this Section 10.01, with respect to any amendment that significantly modifies the permitted activities of the Trustee or the Servicer, any Certificate beneficially owned by the Depositor, the Unaffiliated Seller or any of their respective Affiliates shall be deemed not to be outstanding (and shall not be considered when determining the percentage of Certificateholders consenting or when calculating the total number of Certificates entitled to consent) for purposes of determining if the requisite consents of Certificateholders under this Section 10.01 have been obtained.

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Promptly after the execution of any amendment to this Agreement requiring the consent of Certificateholders, the Trustee shall furnish written notification of the substance or a copy of such amendment to each Certificateholder and each Rating Agency.

It shall not be necessary for the consent of Certificateholders under this Section 10.01 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent shall approve the substance thereof. The manner of obtaining such consents and of evidencing the authorization of the execution thereof by Certificateholders shall be subject to such reasonable regulations as the Trustee may prescribe.

Nothing in this Agreement shall require the Trustee to enter into an amendment without receiving an Opinion of Counsel (which Opinion shall not be an expense of the Trustee or the Trust Fund), satisfactory to the Trustee that (i) such amendment is permitted and is not prohibited by this Agreement and that all requirements for amending this Agreement have been complied with; and (ii) either (A) the amendment does not adversely affect in any material respect the interests of any Certificateholder or (B) the conclusion set forth in the immediately preceding clause (A) is not required to be reached pursuant to this Section 10.01.

#### Section 10.02 Recordation of Agreement; Counterparts.

This Agreement is subject to recordation in all appropriate public offices for real property records in all the counties or other comparable jurisdictions in which any or all of the Mortgaged Properties are situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected by the Servicer at its expense, but only upon receipt of an Opinion of Counsel to the effect that such recordation materially and beneficially affects the interests of the Certificateholders.

For the purpose of facilitating the recordation of this Agreement as herein provided and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument.

#### Section 10.03 Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HERETO AND THE CERTIFICATEHOLDERS SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

#### Section 10.04 Intention of Parties.

It is the express intent of the parties hereto that the conveyance (i) of the Mortgage Loans by the Depositor and (ii) of the Trust Fund by the Depositor to the Trustee each be, and be construed as, an absolute sale thereof. It is, further, not the intention of the parties that such conveyances be deemed a pledge thereof. However, in the event that, notwithstanding the intent of the parties, such assets are held to be the property of the Depositor, as the case may be,

or if for any other reason this Agreement is held or deemed to create a security interest in either such assets, then (i) this Agreement shall be deemed to be a security agreement within the meaning of the Uniform Commercial Code of the State of New York and (ii) the conveyances provided for in this Agreement shall be deemed to be an assignment and a grant by the Depositor to the Trustee, for the benefit of the Certificateholders, of a security interest in all of the assets transferred, whether now owned or hereafter acquired.

The Depositor for the benefit of the Certificateholders and of the Certificate Insurer shall, to the extent consistent with this Agreement, take such actions as may be necessary to ensure that, if this Agreement were deemed to create a security interest in the Trust Fund, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the term of the Agreement. The Depositor shall arrange for filing any Uniform Commercial Code continuation statements in connection with any security interest granted or assigned to the Trustee for the benefit of the Certificateholders.

#### Section 10.05 Notices.

(a) The Trustee shall use its best efforts to promptly provide notice to each Rating Agency with respect to each of the following of which it has actual knowledge:

1. Any material change or amendment to this Agreement;
2. The occurrence of any Event of Default that has not been cured;
3. The resignation or termination of the Servicer or the Trustee and the appointment of any successor;
4. The repurchase or substitution of Mortgage Loans pursuant to Section 2.03; and
5. The final payment to Certificateholders.

(b) In addition, the Trustee shall promptly furnish to each Rating Agency copies of the following:

1. Each report to Certificateholders described in Section 4.03; and
2. Any notice of a purchase of a Mortgage Loan pursuant to Section 2.02, 2.03 or 3.11.

All directions, demands, consents and notices hereunder shall be in writing and shall be deemed to have been duly given when delivered to (a) in the case of the Depositor or the Representative, Morgan Stanley ABS Capital I Inc. or Morgan Stanley & Co. Incorporated, 1585 Broadway, New York, New York 10036, Attention: Valerie Kay, with a copy to Morgan Stanley & Co. Incorporated, 1221 Avenue of the Americas, New York, New York, 10020, Attention: Michelle Wilke, (b) in the case of the Servicer, Countrywide Home Loans Servicing LP, 450 Park Granada, Calabasas, California, 91302, Attention: Secretary, or such other address

as may be hereafter furnished to the parties hereto in writing, (c) in the case of the Trustee to the Corporate Trust Office, Deutsche Bank National Trust Company, 1761 East St. Andrew Place, Santa Ana, California 92705-4934, Attention: Trust Administration DC04M1, or such other address as the Trustee may hereafter furnish to the parties hereto, (d) in the case of the Unaffiliated Seller, CDC Mortgage Capital, Inc., 9 West 57th Street, New York, New York 10019, Attention: General Counsel, or such other address as the Unaffiliated Seller may hereafter furnish to the parties hereto, (e) in the case of each of the Rating Agencies, the address specified therefor in the definition corresponding to the name of such Rating Agency and (f) in the case of any Originator, the address specified therefor in the applicable Mortgage Loan Purchase Agreement. Notices to Certificateholders shall be deemed given when mailed, first class postage prepaid, to their respective addresses appearing in the Certificate Register.

#### Section 10.06 Severability of Provisions.

If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement or of the Certificates or the rights of the Holders thereof.

#### Section 10.07 Assignment.

Notwithstanding anything to the contrary contained herein, except as provided in Section 6.02, this Agreement may not be assigned by the Servicer without the prior written consent of the Trustee, the Certificate Insurer and Depositor; provided, however, that, subject to Section 3.27, the Servicer may pledge or sell its interest in any reimbursements for P&I Advances or Servicing Advances hereunder.

#### Section 10.08 Limitation on Rights of Certificateholders.

The death or incapacity of any Certificateholder shall not operate to terminate this Agreement or the trust created hereby, nor entitle such Certificateholder's legal representative or heirs to claim an accounting or to take any action or commence any proceeding in any court for a petition or winding up of the trust created hereby, or otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

No Certificateholder shall have any right to vote (except as provided herein) or in any manner otherwise control the operation and management of the Trust Fund, or the obligations of the parties hereto, nor shall anything herein set forth or contained in the terms of the Certificates be construed so as to constitute the Certificateholders from time to time as partners or members of an association; nor shall any Certificateholder be under any liability to any third party by reason of any action taken by the parties to this Agreement pursuant to any provision hereof.

No Certificateholder shall have any right by virtue or by availing itself of any provisions of this Agreement to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement, unless such Holder previously shall have given to the Trustee a written notice of an Event of Default and of the continuance thereof, as herein

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provided, and unless the Holders of Certificates evidencing not less than 25% of the Voting Rights evidenced by the Certificates, and the Certificate Insurer, shall also have made written request to the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses, and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity shall have neglected or refused to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by each Certificateholder with every other Certificateholder and the Trustee, that no one or more Holders of Certificates shall have any right in any manner whatever by virtue or by availing itself or themselves of any provisions of this Agreement to affect, disturb or prejudice the rights of the Holders of any other of the Certificates, or to obtain or seek to obtain priority over or preference to any other such Holder or to enforce any right under this Agreement, except in the manner herein provided and for the common benefit of all Certificateholders. For the protection and enforcement of the provisions of this Section 10.08, each and every Certificateholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

#### Section 10.09 Inspection and Audit Rights.

The Servicer agrees that, on reasonable prior notice, it will permit any representative of the Depositor, the Unaffiliated Seller, the Certificate Insurer or the Trustee during the Servicer's normal business hours, to examine all the books of account, records, reports and other papers of the Servicer relating to the Mortgage Loans, to make copies and extracts therefrom, to cause such books to be audited by independent certified public accountants selected by the party conducting the inspection and to discuss its affairs, finances and accounts relating to the Mortgage Loans with its officers, employees and independent public accountants (and by this provision the Servicer hereby authorizes said accountants to discuss with such representative such affairs, finances and accounts), all at such reasonable times and as often as may be reasonably requested. Any customary out-of-pocket expense of the Servicer incident to the exercise by the Depositor, the Unaffiliated Seller, the Certificate Insurer or the Trustee of any right under this Section 10.09 shall be borne by the Servicer.

#### Section 10.10 Certificates Nonassessable and Fully Paid.

It is the intention of the Depositor that Certificateholders shall not be personally liable for obligations of the Trust Fund, that the interests in the Trust Fund represented by the Certificates shall be nonassessable for any reason whatsoever, and that the Certificates, upon due authentication thereof by the Trustee pursuant to this Agreement, are and shall be deemed fully paid.

#### Section 10.11 The Certificate Insurer Default.

Any right conferred to the Certificate Insurer shall be suspended

during any period in which a Certificate Insurer Default exists. At such time as the Class A-1 Certificates are no longer outstanding hereunder, and no amounts owed to the Certificate Insurer hereunder remain unpaid, the Certificate Insurer's rights hereunder shall terminate.

Section 10.12 Third Party Beneficiary.

The parties agree that the Certificate Insurer is intended and shall have all rights of a third-party beneficiary of this Agreement.

Section 10.13 Waiver of Jury Trial.

EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, the Depositor, the Trustee, the Unaffiliated Seller and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first above written.

MORGAN STANLEY ABS CAPITAL I INC.,  
as Depositor

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

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, solely as Trustee and  
not in its individual capacity

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

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

COUNTRYWIDE HOME LOANS SERVICING  
LP, as Servicer  
By: COUNTRYWIDE GP, INC.

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

CDC MORTGAGE CAPITAL INC.,  
as Unaffiliated Seller

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

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

SCHEDULE I

Mortgage Loan Schedule

SCHEDULE IA

Schedule of Countrywide Serviced Loans

SCHEDULE II

CDC MORTGAGE CAPITAL TRUST 2004-HE1

Mortgage Pass-Through Certificates,  
Series 2004-HE1

Representations and Warranties of the Servicer  
-----

(1) The Servicer is duly organized as a limited partnership and is validly existing and in good standing under the laws of the state of Texas and is licensed and qualified to transact any and all business contemplated by this Pooling and Servicing Agreement to be conducted by the Servicer in any state in which a Mortgaged Property is located or is otherwise not required under applicable law to effect such qualification and, in any event, is in compliance with the doing business laws of any such State, to the extent necessary to ensure its ability to enforce each Mortgage Loan and to service the Mortgage Loans in accordance with the terms of this Pooling and Servicing Agreement;

(2) The Servicer has the full power and authority to service each Mortgage Loan, and to execute, deliver and perform, and to enter into and consummate the transactions contemplated by this Pooling and Servicing Agreement and has duly authorized by all necessary action on the part of the Servicer the execution, delivery and performance of this Pooling and Servicing Agreement; and this Pooling and Servicing Agreement, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitutes a legal, valid and binding obligation of the Servicer, enforceable against the Servicer in accordance with its terms, except to the extent that (a) the enforceability thereof may be limited by bankruptcy, insolvency, moratorium, receivership and other similar laws relating to creditors' rights generally and (b) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to the equitable defenses and to the discretion of the court before which any proceeding therefor may be brought;

(3) The execution and delivery of this Pooling and Servicing Agreement by the Servicer, the servicing of the Mortgage Loans by the Servicer hereunder, the consummation by the Servicer of any other of the transactions herein contemplated, and the fulfillment of or compliance with the terms hereof are in the ordinary course of business of the Servicer and will not (A) result in a breach of any term or provision of the organizational documents of the Servicer or (B) conflict with, result in a breach, violation or acceleration of, or result in a default under, the terms of any other material agreement or instrument to which the Servicer is a party or by which it may be bound, or any statute, order or regulation applicable to the Servicer of any court, regulatory body, administrative agency or governmental body having jurisdiction over the Servicer; and the Servicer is not a party to, bound by, or in breach or violation of any indenture or other agreement or instrument, or subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or governmental body having

jurisdiction over it, which materially and adversely affects or, to the Servicer's knowledge, would in the future materially and adversely affect, (x) the ability of the Servicer to perform its obligations under this Pooling and Servicing Agreement or (y) the business, operations, financial condition, properties or assets of the Servicer taken as a whole;

(4) The Servicer is an approved seller/servicer for Fannie Mae or Freddie Mac in good standing;

(5) No litigation is pending against the Servicer that would

materially and adversely affect the execution, delivery or enforceability of this Pooling and Servicing Agreement or the ability of the Servicer to service the Mortgage Loans or to perform any of its other obligations hereunder in accordance with the terms hereof;

(6) No consent, approval, authorization or order of any court or governmental agency or body is required for the execution, delivery and performance by the Servicer of, or compliance by the Servicer with, this Pooling and Servicing Agreement or the consummation by the Servicer of the transactions contemplated by this Pooling and Servicing Agreement, except for such consents, approvals, authorizations or orders, if any, that have been obtained prior to the Closing Date; and

(7) The Servicer represents that its computer and other systems used in servicing the Mortgage Loans operate in a manner such that the Servicer can service the Mortgage Loans in accordance with the terms of this Pooling and Servicing Agreement.

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#### SCHEDULE IIA

##### Further Representations and Warranties of the Servicer

(1) Mortgage Loan Schedule. With respect to each Mortgage Loan, as of the applicable Cut-off Date, each of (1) the last Due Date on which a payment was actually applied to the outstanding principal balance of each Mortgage Loan; (2) the Stated Principal Balance of each Mortgage Loan, after deduction of payments of principal due and collected on or before the applicable Cut-off Date; and (3) the Servicing Transfer Date for each Mortgage Loan, in each case, as listed on the Mortgage Loan Schedule, is true and correct;

(2) Payments Current. Unless otherwise indicated on the related Mortgage Loan Schedule, with respect to each Mortgage Loan, no Scheduled Payment is 30 days or more Delinquent as of the Cut-off Date nor has any Payment been 30 days or more Delinquent at any time from and after the Servicing Transfer Date through the Cut-off Date;

(3) Original Terms Unmodified. With respect to each Mortgage Loan, the terms of the Mortgage Note and Mortgage have not been impaired, waived, altered or modified by or on behalf of the Servicer from and after the Servicing Transfer Date;

(4) No Satisfaction of Mortgage. With respect to each Mortgage Loan, since the related Servicing Transfer Date and except for prepayments in full, the Mortgage has not been satisfied, cancelled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission. From and after the Servicing Transfer Date, the Servicer has not waived the performance by the Mortgagor of any action, if the Mortgagor's failure to perform such action would cause the Mortgage Loan to be in default, nor has the Servicer waived any default resulting from any action or inaction by the Mortgagor;

(5) No Defaults. With respect to each Mortgage Loan, to the best knowledge of the Servicer, other than payments due but not yet 30 days Delinquent, there is no material default, breach, violation or event which would permit acceleration existing under the Mortgage or the Mortgage Note;

(6) Mortgaged Property Undamaged; No Condemnation Proceedings. With respect to each Mortgage Loan, to the best knowledge of the Servicer and except as the Servicer has previously notified the Unaffiliated Seller in writing, there is no proceeding pending or threatened for the total or partial condemnation of the Mortgaged Property, the related Mortgaged Property is undamaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty so as to affect adversely the value of the related Mortgaged Property as security for the Mortgage Loan or the use for which the premises were intended and each related Mortgaged Property is in good repair;

(7) Escrow Payments/Interest Rate Adjustments. With respect to each Mortgage Loan, since the Servicing Transfer Date, the servicing and collection practices used by the Servicer with respect to such Mortgage Loan have been in all material respects in compliance with Accepted Servicing Practices, applicable laws and regulations, and have been in all material

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respects legal and proper. With respect to escrow deposits and Escrow Payments,

if any, all such deposits and payments received by the Servicer are in the possession of, or under the control of, the Servicer and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. All Escrow Payments have been collected in full compliance with state and federal law and the provisions of the related Mortgage Note and Mortgage (to the extent not otherwise prohibited by law). From and after the Servicing Transfer Date, all Mortgage Rate adjustments (if any) have been made in strict compliance with state and federal law and the terms of the related Mortgage Note;

(8) Other Insurance Policies. The improvements upon each Mortgaged Property are covered by a valid and existing hazard insurance policy with a generally acceptable carrier that provides for fire and extended coverage and coverage for such other hazards as are customary in the area where the Mortgaged Property is located;

(9) No Violation of Environmental Laws. With respect to each Mortgage Loan, to the best knowledge of the Servicer and except as the Servicer has previously notified the Unaffiliated Seller in writing, there is no pending action or proceeding directly involving the related Mortgaged Property in which compliance with any environmental law, rule or regulation is an issue and there is no violation of any environmental law, rule or regulation with respect to the related Mortgaged Property; and

(10) Servicemembers Civil Relief Act. With respect to each Mortgage Loan, from and after the Servicing Transfer Date, no Mortgagor has notified the Servicer, and the Servicer has no knowledge, of any relief requested or allowed to the Mortgagor under the Servicemembers Civil Relief Act or any similar state or local law.

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### SCHEDULE III

- (a) Due Organization and Authority. The Unaffiliated Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of New York and has all licenses necessary to carry on its business as now being conducted and is licensed, qualified and in good standing in each state wherein it owns or leases any material properties or where a Mortgaged Property is located, if the laws of such state require licensing or qualification in order to conduct business of the type conducted by the Unaffiliated Seller, and in any event the Unaffiliated Seller is in compliance with the laws of any such state to the extent necessary; the Unaffiliated Seller has the full corporate power, authority and legal right to execute and deliver this Agreement and to perform its obligations hereunder; the execution, delivery and performance of this Agreement by the Unaffiliated Seller and the consummation of the transactions contemplated hereby have been duly and validly authorized; this Agreement and all agreements contemplated hereby have been duly executed and delivered and constitute the valid, legal, binding and enforceable obligations of the Unaffiliated Seller, regardless of whether such enforcement is sought in a proceeding in equity or at law; and all requisite corporate action has been taken by the Unaffiliated Seller to make this Agreement and all agreements contemplated hereby valid and binding upon the Unaffiliated Seller in accordance with their terms;
- (b) No Conflicts. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will conflict with or result in a breach of any of the terms, conditions or provisions of the Unaffiliated Seller's charter or by-laws or any legal restriction or any agreement or instrument to which the Unaffiliated Seller is now a party or by which it is bound, or constitute a default or result in an acceleration under any of the foregoing, except such unfulfillment, non-compliance or default or acceleration does not in the aggregate have a material adverse effect on the operation, business, condition (business or otherwise) of the Unaffiliated Seller or result in the violation of any law, rule, regulation, order, judgment or decree to which the Unaffiliated Seller or its property is subject, except such violation does not in the aggregate have a material adverse effect on the operation, business, condition (business or otherwise) of the Unaffiliated Seller or result in the creation or imposition of any lien, charge or encumbrance that would have an adverse effect upon any of its properties pursuant to the terms of any mortgage, contract, deed of trust or other instrument;
- (c) No Litigation Pending. There is no action, suit, proceeding or investigation pending nor, to the Unaffiliated Seller's knowledge, threatened against the Unaffiliated Seller, before any court, administrative agency or other tribunal asserting the invalidity of this Agreement, seeking to prevent the consummation of any of the transactions contemplated by this Agreement or which, either in any one instance or in the aggregate, may result in any material adverse change in the business, operations, financial condition, properties or assets of the Unaffiliated Seller, or in any material impairment of the right or ability of the

Unaffiliated Seller to carry on its business substantially as now conducted, or which would draw into question the validity of this Agreement or of any action taken or to be taken in connection with the obligations of the Unaffiliated Seller contemplated herein, or

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which would be likely to impair materially the ability of the Unaffiliated Seller to perform under the terms of this Agreement;

- (d) No Consent Required. No consent, approval, authorization or order of, or registration or filing with, or notice to any court or governmental agency or body including HUD, the FHA or the VA is required for the execution, delivery and performance by the Unaffiliated Seller of or compliance by the Unaffiliated Seller with this Agreement or the consummation of the transactions contemplated by this Agreement, or if required, such approval has been obtained prior to the Closing Date;

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EXHIBIT A

Unless this Certificate is presented by an authorized representative of the Depository Trust Company, a New York corporation ("DTC"), to Issuer or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE REPRESENTS OWNERSHIP OF A "REGULAR INTEREST" IN A "REAL ESTATE MORTGAGE INVESTMENT CONDUIT," AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") AND CERTAIN OTHER ASSETS.

Certificate No. : [A-1-1/A-2-1/A-3-1/A-4-1/M-1-1/  
M-2-1/M-3-1/B-1-1/B-2-1/B-3-1]

Cut-off Date : February 1, 2004

First Distribution Date : March 25, 2004

Initial Certificate Balance of this Certificate ("Denomination") :

Initial Certificate Balances of all Certificates of this Class :

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CUSIP : A-1 12506YCG2  
A-2 12506YCH0  
A-3 12506YCJ6  
A-4 12506YCK3  
M-1 12506YCL1  
M-2 12506YCM9  
M-3 12506YCN7  
B-1 12506YCP2  
B-2 12506YCQ0  
B-3 12506YCR8

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MORGAN STANLEY ABS CAPITAL I INC.

CDC Mortgage Capital Trust 2004-HE1  
Mortgage Pass-Through Certificates, Series  
2004-HE1 [Class A-1] [Class A-2] [Class A-3][Class A-4]  
[Class M-1] [Class M-2]  
[Class M-3] [Class B-1] [Class B-2] [Class B-3]

evidencing a percentage interest in the distributions allocable to the Certificates of the above-referenced Class.

Principal in respect of this Certificate is distributable monthly as set forth herein. Accordingly, the Certificate Balance at any time may be less than the Certificate Balance as set forth herein. This Certificate does not evidence an obligation of, or an interest in, and is not guaranteed by the Depositor, the Unaffiliated Seller, any Originator, the Servicer or the Trustee referred to below or any of their respective affiliates. Neither this Certificate nor the Mortgage Loans are guaranteed or insured by any governmental agency or instrumentality.

This certifies that CEDE & CO., is the registered owner of the Percentage Interest evidenced by this Certificate (obtained by dividing the denomination of this Certificate by the aggregate of the denominations of all Certificates of the Class to which this Certificate belongs) in certain monthly distributions pursuant to a Pooling and Servicing Agreement dated as of the Cut-off Date specified above (the "Agreement") among Morgan Stanley ABS Capital I Inc., as depositor (the "Depositor"), Countrywide Home Loans Servicing LP, as servicer (the "Servicer"), CDC Mortgage Capital Inc., as unaffiliated seller (the "Unaffiliated Seller") and Deutsche Bank National Trust Company, as trustee (the "Trustee"). To the extent not defined herein, the capitalized terms used herein have the meanings assigned in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of the acceptance hereof assents and by which such Holder is bound.

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose unless manually countersigned by an authorized signatory of the Trustee.

\* \* \*

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IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated:

DEUTSCHE BANK NATIONAL TRUST  
COMPANY,  
not in its individual capacity, but solely  
as Trustee

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

Countersigned:

By: \_\_\_\_\_  
Authorized Signatory of  
DEUTSCHE BANK NATIONAL TRUST COMPANY,  
not in its individual capacity,  
but solely as Trustee

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MORGAN STANLEY ABS CAPITAL I INC.  
CDC Mortgage Capital Trust 2004-HE1  
Mortgage Pass-Through Certificates, Series 2004-HE1

This Certificate is one of a duly authorized issue of Certificates designated as CDC Mortgage Capital Trust 2004-HE1 Mortgage Pass-Through Certificates, Series 2004-HE1 (herein collectively called the "Certificates"), and representing a beneficial ownership interest in the Trust Fund created by the Agreement.

The Certificateholder, by its acceptance of this Certificate, agrees that it will look solely to the funds on deposit in the Distribution Account for payment hereunder and that the Trustee is not liable to the Certificateholders for any amount payable under this Certificate or the Agreement or, except as expressly provided in the Agreement, subject to any liability under the Agreement.

This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for the interests, rights and limitations of rights, benefits, obligations and duties evidenced thereby, and the rights, duties and immunities of the Trustee.

Pursuant to the terms of the Agreement, a distribution will be made on the 25th day of each month or, if such day is not a Business Day, the Business Day immediately following (the "Distribution Date"), commencing on the first Distribution Date specified on the face hereof, to the Person in whose name this Certificate is registered at the close of business on the applicable Record Date in an amount equal to the product of the Percentage Interest evidenced by this Certificate and the amount required to be distributed to Holders of Certificates of the Class to which this Certificate belongs on such Distribution Date pursuant to the Agreement. The Record Date applicable to each Distribution Date is the Business Day immediately preceding such Distribution Date; provided, however, that for any Definitive Certificates, the Record Date shall be the last Business Day of the month next preceding the month of such Distribution Date.

Distributions on this Certificate shall be made by wire transfer of immediately available funds to the account of the Holder hereof at a bank or other entity having appropriate facilities therefor, if such Certificateholder shall have so notified the Trustee in writing at least five Business Days prior to the related Record Date and such Certificateholder shall satisfy the conditions to receive such form of payment set forth in the Agreement, or, if not, by check mailed by first class mail to the address of such Certificateholder appearing in the Certificate Register. The final distribution on each Certificate will be made in like manner, but only upon presentment and surrender of such Certificate at the offices designated by the Trustee for such purposes, or such other location specified in the notice to Certificateholders of such final distribution.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Trustee and the rights of the Certificateholders under the Agreement at any time by the parties thereto, and Financial Security Assurance Inc., as Certificate Insurer, with the consent of the Holders of Certificates affected by such amendment evidencing the requisite Percentage Interest, as provided in the Agreement.

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Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the transfer hereof or in exchange therefor or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable in the Certificate Register of the Trustee upon surrender of this Certificate for registration of transfer at the offices designated by the Trustee for such purposes, accompanied by a written instrument of transfer in form satisfactory to the Trustee and the Certificate Registrar duly executed by the holder hereof or such holder's attorney duly authorized in writing, and thereupon one or more new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest in the Trust Fund will be issued to the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in denominations specified in the Agreement. As provided in the Agreement and subject to certain limitations therein set forth, Certificates are exchangeable for new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest, as requested by the Holder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Depositor, the Servicer, the Unaffiliated Seller, the Certificate Insurer and the Trustee and any agent of any of them may treat the Person in whose name this Certificate is registered as the owner hereof for all purposes, and no such party shall be affected by any notice to the contrary.

On any Distribution Date on which the aggregate Stated Principal Balance of the Mortgage Loans, as of the last day of the related Due Period, is less than or equal to 10% of the Maximum Pool Principal Balance, the Servicer and/or the Class X Certificateholders will have the option to repurchase, in whole, from the Trust Fund all remaining Mortgage Loans and all property acquired in respect of the Mortgage Loans at a purchase price determined as provided in the Agreement. The obligations and responsibilities created by the Agreement will terminate as provided in Section 9.01 of the Agreement.

Any term used herein that is defined in the Agreement shall have the meaning assigned in the Agreement, and nothing herein shall be deemed inconsistent with that meaning.

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Please print or typewrite name and address including postal zip code of assignee)

the Percentage Interest evidenced by the within Certificate and hereby authorizes the transfer of registration of such Percentage Interest to assignee on the Certificate Register of the Trust Fund.

I (We) further direct the Trustee to issue a new Certificate of a like denomination and Class, to the above named assignee and deliver such Certificate to the following address:  
\_\_\_\_\_.

Dated:

\_\_\_\_\_  
Signature by or on behalf of assignor

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DISTRIBUTION INSTRUCTIONS

The assignee should include the following for purposes of distribution:

Distributions shall be made, by wire transfer or otherwise, in immediately available funds to \_\_\_\_\_,

\_\_\_\_\_ ,  
for the account of \_\_\_\_\_ ,

account number \_\_\_\_\_ , or, if mailed by check, to \_\_\_\_\_ ,

Applicable statements should be mailed to \_\_\_\_\_ ,  
\_\_\_\_\_ .

This information is provided by \_\_\_\_\_ ,

the assignee named above, or \_\_\_\_\_ ,

as its agent.

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EXHIBIT B

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EXHIBIT C

NEITHER THIS CERTIFICATE NOR ANY INTEREST HEREIN MAY BE TRANSFERRED UNLESS THE PROPOSED TRANSFEROR DELIVERS TO THE TRUSTEE A TRANSFEROR LETTER IN THE FORM OF EXHIBIT H TO THE AGREEMENT REFERRED TO HEREIN AND EITHER (I) THE TRUSTEE RECEIVES A RULE 144A LETTER IN THE FORM OF EXHIBIT I TO THE AGREEMENT REFERRED TO HEREIN OR (II) THE TRUSTEE RECEIVES AN OPINION OF COUNSEL, DELIVERED AT THE EXPENSE OF THE TRANSFEROR, THAT SUCH TRANSFER MAY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

EXCEPT AS PROVIDED IN THE AGREEMENT, NEITHER THIS CERTIFICATE NOR ANY INTEREST HEREIN MAY BE TRANSFERRED UNLESS THE TRANSFEREE DELIVERS TO THE TRUSTEE A REPRESENTATION LETTER TO THE EFFECT THAT SUCH TRANSFEREE IS NOT AN EMPLOYEE BENEFIT PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR ANY FEDERAL, STATE OR LOCAL LAW ("SIMILAR LAW") MATERIALLY SIMILAR TO THE FOREGOING PROVISIONS OF ERISA OR THE CODE, OR A PERSON ACTING ON BEHALF OF ANY SUCH PLAN OR ARRANGEMENT OR USING THE ASSETS OF ANY SUCH PLAN OR ARRANGEMENT TO EFFECT SUCH TRANSFER. ANY PURPORTED TRANSFER OF THIS CERTIFICATE IN VIOLATION OF THE TRANSFER RESTRICTIONS SET FORTH IN THE AGREEMENT SHALL BE VOID AND OF NO EFFECT.

Certificate No.	:	1
Cut-off Date	:	February 1, 2004
First Distribution Date	:	March 25, 2004
Percentage Interest of this Certificate ("Denomination")	:	100%
Principal Balance	:	\$100
CUSIP	:	N/A

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MORGAN STANLEY ABS CAPITAL I INC.  
CDC Mortgage Capital Trust 2004-HE1  
Mortgage Pass-Through Certificates, Series 2004-HE1

Class P

evidencing a percentage interest in the distributions allocable to the Certificates of the above-referenced Class.

Distributions in respect of this Certificate are distributable monthly as set forth herein. This Certificate does not evidence an obligation of, or an interest in, and is not guaranteed by the Depositor, the Unaffiliated Seller, the Servicer or the Trustee referred to below or any of their respective affiliates. Neither this Certificate nor the Mortgage Loans are guaranteed or insured by any governmental agency or instrumentality.

This certifies that \_\_\_\_\_, is the registered owner of the Percentage Interest evidenced by this Certificate (obtained by dividing the denomination of this Certificate by the aggregate of the denominations of all Certificates of the Class to which this Certificate belongs) in certain monthly distributions pursuant to a Pooling and Servicing Agreement dated as of the Cut-off Date specified above (the "Agreement") among Morgan Stanley ABS Capital I Inc., as depositor (the "Depositor"), Countrywide Home Loans Servicing LP, as servicer (the "Servicer"), CDC Mortgage Capital Inc., as unaffiliated seller (the "Unaffiliated Seller") and Deutsche Bank National Trust Company, as trustee (the "Trustee"). To the extent not defined herein, the capitalized terms used herein have the meanings assigned in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of the acceptance hereof assents and by which such Holder is bound.

This Certificate does not have a Pass-Through Rate and will be entitled to distributions only to the extent set forth in the Agreement. In addition, any distribution of the proceeds of any remaining assets of the Trust will be made only upon presentment and surrender of this Certificate at the offices designated by the Trustee for such purposes, or such other location specified in the notice to Certificateholders of such final distribution.

No transfer of a Certificate of this Class shall be made unless such disposition is exempt from the registration requirements of the

Securities Act of 1933, as amended (the "1933 Act"), and any applicable state securities laws or is made in accordance with the 1933 Act and such laws. In the event of any such transfer, the Trustee shall require the transferor to execute a transferor certificate (in substantially the form attached to the Agreement) and deliver either (i) a Rule 144A Letter, in either case substantially in the form attached to the Agreement, or (ii) a written Opinion of Counsel to the Trustee that such transfer may be made pursuant to an exemption, describing the applicable exemption and the basis therefor, from the 1933 Act or is being made pursuant to the 1933 Act, which Opinion of Counsel shall be an expense of the transferor.

Except as provided in the Agreement, no transfer of a Certificate of this Class shall be made unless the Trustee shall have received a representation letter from the transferee of

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this Certificate, acceptable to and in form and substance satisfactory to the Trustee, to the effect that such transferee is not an employee benefit plan or arrangement subject to Title I of ERISA, Section 4975 of the Code or any Similar Law, and is not acting on behalf of any such plan or arrangement or using the assets of any such plan or arrangement to effect such transfer. Any purported transfer of a Certificate of this Class in violation of the transfer restrictions set forth in the Agreement shall be void and of no effect.

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose unless manually countersigned by an authorized signatory of the Trustee.

\* \* \*

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IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated:

DEUTSCHE BANK NATIONAL TRUST  
COMPANY,  
not in its individual capacity, but solely as  
Trustee

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

Countersigned:

By: \_\_\_\_\_  
Authorized Signatory of  
DEUTSCHE BANK NATIONAL TRUST COMPANY,  
not in its individual capacity,  
but solely as Trustee

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MORGAN STANLEY ABS CAPITAL I INC.  
CDC Mortgage Capital Trust 2004-HE1  
Mortgage Pass-Through Certificates, Series 2004-HE1

This Certificate is one of a duly authorized issue of Certificates designated as CDC Mortgage Capital Trust 2004-HE1 Mortgage Pass-Through Certificates, Series 2004-HE1 (herein collectively called the "Certificates"), and representing a beneficial ownership interest in the Trust Fund created by the Agreement.

The Certificateholder, by its acceptance of this Certificate, agrees that it will look solely to the funds on deposit in the Distribution Account for payment hereunder and that the Trustee is not liable to the Certificateholders for any amount payable under this Certificate or the

Agreement or, except as expressly provided in the Agreement, subject to any liability under the Agreement.

This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for the interests, rights and limitations of rights, benefits, obligations and duties evidenced thereby, and the rights, duties and immunities of the Trustee.

Pursuant to the terms of the Agreement, a distribution will be made on the 25th day of each month or, if such 25th day is not a Business Day, the Business Day immediately following (the "Distribution Date"), commencing on the first Distribution Date specified on the face hereof, to the Person in whose name this Certificate is registered at the close of business on the applicable Record Date in an amount equal to the product of the Percentage Interest evidenced by this Certificate and the amount required to be distributed to Holders of Certificates of the Class to which this Certificate belongs on such Distribution Date pursuant to the Agreement. The Record Date applicable to each Distribution Date is the last Business Day of the month next preceding the month of such Distribution Date.

Distributions on this Certificate shall be made by wire transfer of immediately available funds to the account of the Holder hereof at a bank or other entity having appropriate facilities therefor, if such Certificateholder shall have so notified the Trustee in writing at least five Business Days prior to the related Record Date and such Certificateholder shall satisfy the conditions to receive such form of payment set forth in the Agreement, or, if not, by check mailed by first class mail to the address of such Certificateholder appearing in the Certificate Register. The final distribution on each Certificate will be made in like manner, but only upon presentment and surrender of such Certificate at the offices designated by the Trustee for such purposes or such other location specified in the notice to Certificateholders of such final distribution.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Trustee and the rights of the Certificateholders under the Agreement at any time by the parties thereto, and Financial Security Assurance Inc., Certificate Insurer with the consent of the Holders of Certificates affected by such amendment evidencing the requisite Percentage Interest, as provided in the Agreement. Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the

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transfer hereof or in exchange therefor or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable in the Certificate Register of the Trustee upon surrender of this Certificate for registration of transfer at the offices designated by the Trustee for such purposes or the office or agency maintained by the Trustee in New York, New York, accompanied by a written instrument of transfer in form satisfactory to the Trustee and the Certificate Registrar duly executed by the holder hereof or such holder's attorney duly authorized in writing, and thereupon one or more new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest in the Trust Fund will be issued to the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in denominations specified in the Agreement. As provided in the Agreement and subject to certain limitations therein set forth, Certificates are exchangeable for new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest, as requested by the Holder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Depositor, the Servicer, the Unaffiliated Seller, the Certificate Insurer and the Trustee and any agent of any of them may treat the Person in whose name this Certificate is registered as the owner hereof for all purposes, and no such party shall be affected by any notice to the contrary.

On any Distribution Date on which the aggregate Stated Principal Balance of the Mortgage Loans, as of the last day of the related Due Period, is less than or equal to 10% of the Maximum Pool Principal Balance, the Servicer and/or the Class X Certificateholders will have the option to

repurchase, in whole, from the Trust Fund all remaining Mortgage Loans and all property acquired in respect of the Mortgage Loans at a purchase price determined as provided in the Agreement. The obligations and responsibilities created by the Agreement will terminate as provided in Section 9.01 of the Agreement.

Any term used herein that is defined in the Agreement shall have the meaning assigned in the Agreement, and nothing herein shall be deemed inconsistent with that meaning.

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ASSIGNMENT

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FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(Please print or typewrite name and address including postal zip code of assignee)

the Percentage Interest evidenced by the within Certificate and hereby authorizes the transfer of registration of such Percentage Interest to assignee on the Certificate Register of the Trust Fund.

I (We) further direct the Trustee to issue a new Certificate of a like denomination and Class, to the above named assignee and deliver such Certificate to the following address:

\_\_\_\_\_.

Dated:

\_\_\_\_\_  
Signature by or on behalf of assignor

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DISTRIBUTION INSTRUCTIONS

The assignee should include the following for purposes of distribution:

Distributions shall be made, by wire transfer or otherwise, in immediately available funds to \_\_\_\_\_,

\_\_\_\_\_

for the account of \_\_\_\_\_,

account number \_\_\_\_\_, or, if mailed by check, to \_\_\_\_\_,

Applicable statements should be mailed to \_\_\_\_\_,

\_\_\_\_\_.

This information is provided by \_\_\_\_\_,

the assignee named above, or \_\_\_\_\_,

as its agent.

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EXHIBIT D

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE REPRESENTS THREE "RESIDUAL INTERESTS" IN THREE "REAL ESTATE MORTGAGE INVESTMENT CONDUITS," AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE").

NEITHER THIS CERTIFICATE NOR ANY INTEREST HEREIN MAY BE TRANSFERRED UNLESS THE PROPOSED TRANSFEREE DELIVERS TO THE TRUSTEE A REPRESENTATION LETTER IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT REFERRED TO HEREIN.

NEITHER THIS CERTIFICATE NOR ANY INTEREST HEREIN MAY BE TRANSFERRED UNLESS THE TRANSFEREE DELIVERS TO THE TRUSTEE A REPRESENTATION LETTER TO THE EFFECT THAT SUCH TRANSFEREE IS NOT AN EMPLOYEE BENEFIT PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR ANY FEDERAL, STATE OR LOCAL LAW ("SIMILAR LAW") MATERIALLY SIMILAR TO THE FOREGOING PROVISIONS OF ERISA OR THE CODE, OR A PERSON ACTING ON BEHALF OF ANY SUCH PLAN OR ARRANGEMENT OR USING THE ASSETS OF ANY SUCH PLAN OR ARRANGEMENT TO EFFECT SUCH TRANSFER. ANY PURPORTED TRANSFER OF THIS CERTIFICATE IN VIOLATION OF THE TRANSFER RESTRICTIONS SET FORTH IN THE AGREEMENT SHALL BE VOID AND OF NO EFFECT.

Certificate No. : 1  
Cut-off Date : February 1, 2004  
First Distribution Date : March 25, 2004  
Percentage Interest of this Certificate ("Denomination") : 100%  
CUSIP : N/A

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MORGAN STANLEY ABS CAPITAL I INC.  
CDC Mortgage Capital Trust 2004-HE1  
Mortgage Pass-Through Certificates, Series 2004-HE1

Class R

evidencing a percentage interest in the distributions allocable to the Certificates of the above-referenced Class.

Distributions in respect of this Certificate is distributable monthly as set forth herein. This Class R Certificate has no Certificate Balance and is not entitled to distributions in respect of principal or interest. This Certificate does not evidence an obligation of, or an interest in, and is not guaranteed by the Depositor, the Servicer, the Unaffiliated Seller or the Trustee referred to below or any of their respective affiliates. Neither this Certificate nor the Mortgage Loans are guaranteed or insured by any governmental agency or instrumentality.

This certifies that \_\_\_\_\_ is the registered owner of the Percentage Interest specified above of any monthly distributions due to the Class R Certificates pursuant to a Pooling and Servicing Agreement dated as of the Cut-off Date specified above (the "Agreement") among Morgan Stanley ABS Capital I Inc., as depositor (the "Depositor"), Countrywide Home Loans Servicing LP, as servicer (the "Servicer"), CDC Mortgage Capital Inc., as unaffiliated seller (the "Unaffiliated Seller") and Deutsche Bank National Trust Company, as trustee (the "Trustee"). To the extent not defined herein, the capitalized terms used herein have the meanings assigned in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of the acceptance hereof assents and by which such Holder is bound.

Any distribution of the proceeds of any remaining assets of the Trust Fund will be made only upon presentment and surrender of this Class R Certificate at the offices designated by the Trustee for such purposes or such other location specified in the notice to Certificateholders of such final distribution.

No transfer of a Class R Certificate shall be made unless the Trustee shall have received a representation letter from the transferee of this Certificate, acceptable to and in form and substance satisfactory to the Trustee, to the effect that such transferee is not an employee benefit plan or arrangement subject to Title I of ERISA, Section 4975 of the Code or any Similar Law, and is not acting on behalf of any such plan or arrangement or using the assets of any such plan or arrangement to effect such transfer. Any purported transfer of a Class R Certificate in violation of the transfer restrictions set forth in the Agreement shall be void and of no effect.

Each Holder of this Class R Certificate shall be deemed by the acceptance or acquisition an Ownership Interest in this Class R Certificate to have agreed to be bound by the following provisions, and the rights of each Person acquiring any Ownership Interest in this Class R Certificate are expressly subject to the following provisions: (i) each Person holding or acquiring any Ownership Interest in this Class R Certificate shall be a



Permitted Transferee and shall promptly notify the Trustee of any change or impending change in its status as a Permitted Transferee, (ii) no Ownership Interest in this Class R Certificate may be registered on the

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Closing Date or thereafter transferred, and the Trustee shall not register the Transfer of this Certificate unless, in addition to the certificates required to be delivered to the Trustee under Section 5.02(b) of the Agreement, the Trustee shall have been furnished with a Transfer Affidavit of the initial owner or the proposed transferee in the form attached as Exhibit H to the Agreement, (iii) each Person holding or acquiring any Ownership Interest in this Class R Certificate shall agree (A) to obtain a Transfer Affidavit from any other Person to whom such Person attempts to Transfer its Ownership Interest this Class R Certificate, (B) to obtain a Transfer Affidavit from any Person for whom such Person is acting as nominee, trustee or agent in connection with any Transfer of this Class R Certificate and (C) not to Transfer the Ownership Interest in this Class R Certificate or to cause the Transfer of the Ownership Interest in this Class R Certificate to any other Person if it has actual knowledge that such Person is not a Permitted Transferee and (iv) any attempted or purported Transfer of the Ownership Interest in this Class R Certificate in violation of the provisions herein shall be absolutely null and void and shall vest no rights in the purported Transferee.

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose unless manually countersigned by an authorized signatory of the Trustee.

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IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated:

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
not in its individual capacity, but solely as  
Trustee

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

Countersigned:

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

Authorized Signatory of  
DEUTSCHE BANK NATIONAL TRUST COMPANY,  
not in its individual capacity,  
but solely as Trustee

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MORGAN STANLEY ABS CAPITAL I INC.  
CDC Mortgage Capital Trust 2004-HE1  
Mortgage Pass-Through Certificates, Series 2004-HE1

This Certificate is one of a duly authorized issue of Certificates designated as CDC Mortgage Capital Trust 2004-HE1 Mortgage Pass-Through Certificates, Series 2004-HE1 (herein collectively called the "Certificates"), and representing a beneficial ownership interest in the Trust Fund created by the Agreement.

The Certificateholder, by its acceptance of this Certificate, agrees that it will look solely to the funds on deposit in the Distribution Account for payment hereunder and that the Trustee is not liable to the Certificateholders for any amount payable under this Certificate or the Agreement or, except as expressly provided in the Agreement, subject to any

liability under the Agreement.

This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for the interests, rights and limitations of rights, benefits, obligations and duties evidenced thereby, and the rights, duties and immunities of the Trustee.

Pursuant to the terms of the Agreement, a distribution will be made on the 25th day of each month or, if such day is not a Business Day, the Business Day immediately following (the "Distribution Date"), commencing on the first Distribution Date specified on the face hereof, to the Person in whose name this Certificate is registered at the close of business on the applicable Record Date in an amount equal to the product of the Percentage Interest evidenced by this Certificate and the amount required to be distributed to Holders of Certificates of the Class to which this Certificate belongs on such Distribution Date pursuant to the Agreement. The Record Date applicable to each Distribution Date is the last Business Day of the month next preceding the month of such Distribution Date.

Distributions on this Certificate shall be made by wire transfer of immediately available funds to the account of the Holder hereof at a bank or other entity having appropriate facilities therefor, if such Certificateholder shall have so notified the Trustee in writing at least five Business Days prior to the related Record Date and such Certificateholder shall satisfy the conditions to receive such form of payment set forth in the Agreement, or, if not, by check mailed by first class mail to the address of such Certificateholder appearing in the Certificate Register. The final distribution on each Certificate will be made in like manner, but only upon presentment and surrender of such Certificate at the offices designated by the Trustee for such purposes or such other location specified in the notice to Certificateholders of such final distribution.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Trustee and the rights of the Certificateholders under the Agreement at any time by the parties thereto, and Financial Security Assurance Inc., as Certificate Insurer with the consent of the Holders of Certificates affected by such amendment evidencing the requisite Percentage Interest, as provided in the Agreement. Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the

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transfer hereof or in exchange therefor or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable in the Certificate Register of the Trustee upon surrender of this Certificate for registration of transfer at the offices designated by the Trustee for such purposes or the office or agency maintained by the Trustee in California, accompanied by a written instrument of transfer in form satisfactory to the Trustee and the Certificate Registrar duly executed by the holder hereof or such holder's attorney duly authorized in writing, and thereupon one or more new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest in the Trust Fund will be issued to the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in denominations specified in the Agreement. As provided in the Agreement and subject to certain limitations therein set forth, Certificates are exchangeable for new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest, as requested by the Holder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Depositor, the Servicer, the Unaffiliated Seller, the Certificate Insurer and the Trustee and any agent of any of them may treat the Person in whose name this Certificate is registered as the owner hereof for all purposes, and no such party shall be affected by any notice to the contrary.

On any Distribution Date on which the aggregate Stated Principal Balance of the Mortgage Loans, as of the last day of the related Due Period, is less than or equal to 10% of the Maximum Pool Principal Balance, the Servicer and/or the Class X Certificateholder will have the option to repurchase, in whole, from the Trust Fund all remaining Mortgage Loans and all

property acquired in respect of the Mortgage Loans at a purchase price determined as provided in the Agreement. The obligations and responsibilities created by the Agreement will terminate as provided in Section 9.01 of the Agreement.

Any term used herein that is defined in the Agreement shall have the meaning assigned in the Agreement, and nothing herein shall be deemed inconsistent with that meaning.

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ASSIGNMENT

-----

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s)

and transfer(s) unto \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(Please print or typewrite name and address including postal zip code of assignee)

the Percentage Interest evidenced by the within Certificate and hereby authorizes the transfer of registration of such Percentage Interest to assignee on the Certificate Register of the Trust Fund.

I (We) further direct the Trustee to issue a new Certificate of a like denomination and Class, to the above named assignee and deliver such Certificate to the following address:

\_\_\_\_\_.

Dated:

\_\_\_\_\_  
Signature by or on behalf of assignor

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DISTRIBUTION INSTRUCTIONS

The assignee should include the following for purposes of distribution:

Distributions shall be made, by wire transfer or otherwise, in immediately available funds to \_\_\_\_\_,

\_\_\_\_\_,

for the account of \_\_\_\_\_,

account number \_\_\_\_\_, or, if mailed by check, to \_\_\_\_\_,

Applicable statements should be mailed to \_\_\_\_\_,

\_\_\_\_\_.

This information is provided by \_\_\_\_\_,

the assignee named above, or \_\_\_\_\_,

as its agent.

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EXHIBIT E

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE REPRESENTS OWNERSHIP OF TWO "REGULAR INTERESTS" IN A "REAL ESTATE MORTGAGE INVESTMENT CONDUIT," AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE").

NEITHER THIS CERTIFICATE NOR ANY INTEREST HEREIN MAY BE TRANSFERRED UNLESS THE PROPOSED TRANSFEROR DELIVERS TO THE TRUSTEE A TRANSFEROR LETTER IN THE FORM OF

EXHIBIT H TO THE AGREEMENT REFERRED TO HEREIN AND EITHER (I) THE TRUSTEE RECEIVES A RULE 144A LETTER IN THE FORM OF EXHIBIT I TO THE AGREEMENT REFERRED TO HEREIN OR (II) THE TRUSTEE RECEIVES AN OPINION OF COUNSEL, DELIVERED AT THE EXPENSE OF THE TRANSFEROR, THAT SUCH TRANSFER MAY BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

EXCEPT AS PROVIDED IN THE AGREEMENT, NEITHER THIS CERTIFICATE NOR ANY INTEREST HEREIN MAY BE TRANSFERRED UNLESS THE TRANSFEREE DELIVERS TO THE TRUSTEE A REPRESENTATION LETTER TO THE EFFECT THAT SUCH TRANSFEREE IS NOT AN EMPLOYEE BENEFIT PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR ANY FEDERAL, STATE OR LOCAL LAW ("SIMILAR LAW") MATERIALLY SIMILAR TO THE FOREGOING PROVISIONS OF ERISA OR THE CODE, OR A PERSON ACTING ON BEHALF OF ANY SUCH PLAN OR ARRANGEMENT OR USING THE ASSETS OF ANY SUCH PLAN OR ARRANGEMENT TO EFFECT SUCH TRANSFER. ANY PURPORTED TRANSFER OF THIS CERTIFICATE IN VIOLATION OF THE TRANSFER RESTRICTIONS SET FORTH IN THE AGREEMENT SHALL BE VOID AND OF NO EFFECT.

Certificate No.	:	1
Cut-off Date	:	February 1, 2004
First Distribution Date	:	March 25, 2004
Percentage Interest of this Certificate ("Denomination")	:	100%
CUSIP	:	N/A

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MORGAN STANLEY ABS CAPITAL I INC.

CDC Mortgage Capital Trust 2004-HE1  
Mortgage Pass-Through Certificates, Series 2004-HE1

Class X

evidencing a percentage interest in the distributions allocable to the Certificates of the above-referenced Class.

Distributions in respect of this Certificate are distributable monthly as set forth herein. This Certificate does not evidence an obligation of, or an interest in, and is not guaranteed by the Depositor, the Servicer, the Unaffiliated Seller or the Trustee referred to below or any of their respective affiliates. Neither this Certificate nor the Mortgage Loans are guaranteed or insured by any governmental agency or instrumentality.

This certifies that \_\_\_\_\_, is the registered owner of the Percentage Interest evidenced by this Certificate (obtained by dividing the denomination of this Certificate by the aggregate of the denominations of all Certificates of the Class to which this Certificate belongs) in certain monthly distributions pursuant to a Pooling and Servicing Agreement dated as of the Cut-off Date specified above (the "Agreement") among Morgan Stanley ABS Capital I Inc., as depositor (the "Depositor"), Countrywide Home Loans Servicing LP, as servicer (the "Servicer"), CDC Mortgage Capital Inc., as unaffiliated seller (the "Unaffiliated Seller") and Deutsche Bank National Trust Company, as trustee (the "Trustee"). To the extent not defined herein, the capitalized terms used herein have the meanings assigned in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of the acceptance hereof assents and by which such Holder is bound.

This Certificate will be entitled to distributions only to the extent set forth in the Agreement. In addition, any distribution of the proceeds of any remaining assets of the Trust will be made only upon presentment and surrender of this Certificate at the offices designated by the Trustee for such purposes, or such other location specified in the notice to Certificateholders of such final distribution.

No transfer of a Certificate of this Class shall be made unless such disposition is exempt from the registration requirements of the Securities Act of 1933, as amended (the "1933 Act"), and any applicable state securities laws or is made in accordance with the 1933 Act and such laws. In the event of any such transfer, the Trustee shall require the transferor to execute a transferor certificate (in substantially the form attached to the Agreement) and deliver either (i) a Rule 144A Letter, in either case substantially in the form attached to the Agreement, or (ii) a written Opinion of Counsel to the Trustee that such transfer may be made pursuant to an exemption, describing the applicable exemption and the basis therefor, from the 1933 Act or is being made pursuant to the 1933 Act, which Opinion of Counsel shall be an expense of the

transferor.

Except as provided in the Agreement, no transfer of a Certificate of this Class shall be made unless the Trustee shall have received a representation letter from the transferee of

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this Certificate, acceptable to and in form and substance satisfactory to the Trustee, to the effect that such transferee is not an employee benefit plan or arrangement subject to Title I of ERISA, Section 4975 of the Code or any Similar Law, and is not acting on behalf of any such plan or arrangement or using the assets of any such plan or arrangement to effect such transfer. Any purported transfer of a Certificate of this Class in violation of the transfer restrictions set forth in the Agreement shall be void and of no effect.

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose unless manually countersigned by an authorized signatory of the Trustee.

\* \* \*

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IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated:

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
not in its individual capacity, but solely as  
Trustee

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

Countersigned:

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

Authorized Signatory of  
DEUTSCHE BANK NATIONAL TRUST COMPANY,  
not in its individual capacity,  
but solely as Trustee

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MORGAN STANLEY ABS CAPITAL I INC.  
CDC Mortgage Capital Trust 2004-HE1  
Mortgage Pass-Through Certificates, Series 2004-HE1

This Certificate is one of a duly authorized issue of Certificates designated as CDC Mortgage Capital Trust 2004-HE1 Mortgage Pass-Through Certificates, Series 2004-HE1 (herein collectively called the "Certificates"), and representing a beneficial ownership interest in the Trust Fund created by the Agreement.

The Certificateholder, by its acceptance of this Certificate, agrees that it will look solely to the funds on deposit in the Distribution Account for payment hereunder and that the Trustee is not liable to the Certificateholders for any amount payable under this Certificate or the Agreement or, except as expressly provided in the Agreement, subject to any liability under the Agreement.

This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for the interests, rights and limitations of rights, benefits, obligations and duties evidenced thereby, and the rights, duties and immunities of the Trustee.

Pursuant to the terms of the Agreement, a distribution will be made on the 25th day of each month or, if such 25th day is not a Business Day,

the Business Day immediately following (the "Distribution Date"), commencing on the first Distribution Date specified on the face hereof, to the Person in whose name this Certificate is registered at the close of business on the applicable Record Date in an amount equal to the product of the Percentage Interest evidenced by this Certificate and the amount required to be distributed to Holders of Certificates of the Class to which this Certificate belongs on such Distribution Date pursuant to the Agreement. The Record Date applicable to each Distribution Date is the last Business Day of the month next preceding the month of such Distribution Date.

Distributions on this Certificate shall be made by wire transfer of immediately available funds to the account of the Holder hereof at a bank or other entity having appropriate facilities therefor, if such Certificateholder shall have so notified the Trustee in writing at least five Business Days prior to the related Record Date and such Certificateholder shall satisfy the conditions to receive such form of payment set forth in the Agreement, or, if not, by check mailed by first class mail to the address of such Certificateholder appearing in the Certificate Register. The final distribution on each Certificate will be made in like manner, but only upon presentment and surrender of such Certificate at the offices designated by the Trustee for such purposes or such other location specified in the notice to Certificateholders of such final distribution.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Trustee and the rights of the Certificateholders under the Agreement at any time by the parties thereto, and Financial Security Assurance Inc., as Certificate Insurer with the consent of the Holders of Certificates affected by such amendment evidencing the requisite Percentage Interest, as provided in the Agreement. Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the

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transfer hereof or in exchange therefor or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable in the Certificate Register of the Trustee upon surrender of this Certificate for registration of transfer at the offices designated by the Trustee for such purposes or the office or agency maintained by the Trustee in New York, New York, accompanied by a written instrument of transfer in form satisfactory to the Trustee and the Certificate Registrar duly executed by the holder hereof or such holder's attorney duly authorized in writing, and thereupon one or more new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest in the Trust Fund will be issued to the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in denominations specified in the Agreement. As provided in the Agreement and subject to certain limitations therein set forth, Certificates are exchangeable for new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest, as requested by the Holder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Depositor, the Servicer, the Unaffiliated Seller, the Certificate Insurer and the Trustee and any agent of any of them may treat the Person in whose name this Certificate is registered as the owner hereof for all purposes, and no such party shall be affected by any notice to the contrary.

On any Distribution Date on which the aggregate Stated Principal Balance of the Mortgage Loans, as of the last day of the related Due Period, is less than or equal to 10% of the Maximum Principal Balance, the Servicer and/or the Class X Certificateholders will have the option to repurchase, in whole, from the Trust Fund all remaining Mortgage Loans and all property acquired in respect of the Mortgage Loans at a purchase price determined as provided in the Agreement. The obligations and responsibilities created by the Agreement will terminate as provided in Section 9.01 of the Agreement.

Any term used herein that is defined in the Agreement shall have the meaning assigned in the Agreement, and nothing herein shall be deemed inconsistent with that meaning.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s)

and transfer(s) unto \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Please print or typewrite name and address including postal zip code of assignee)

the Percentage Interest evidenced by the within Certificate and hereby authorizes the transfer of registration of such Percentage Interest to assignee on the Certificate Register of the Trust Fund.

I (We) further direct the Trustee to issue a new Certificate of a like denomination and Class, to the above named assignee and deliver such Certificate to the following address:

Dated:

\_\_\_\_\_  
Signature by or on behalf of assignor

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DISTRIBUTION INSTRUCTIONS

The assignee should include the following for purposes of distribution:

Distributions shall be made, by wire transfer or otherwise, in immediately available funds to \_\_\_\_\_,

\_\_\_\_\_ ,  
for the account of \_\_\_\_\_ ,

account number \_\_\_\_\_ , or, if mailed by check, to \_\_\_\_\_ ,

Applicable statements should be mailed to \_\_\_\_\_ ,  
\_\_\_\_\_ .

This information is provided by \_\_\_\_\_ ,

the assignee named above, or \_\_\_\_\_ ,  
as its agent.

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EXHIBIT F

FORM OF INITIAL CERTIFICATION OF TRUSTEE

[date]

Morgan Stanley ABS Capital I Inc.  
1585 Broadway  
New York, New York 10036

Countrywide Home Loans Servicing LP  
450 Park Granada  
Calabasas, California 91302

CDC Mortgage Capital Inc.  
9 West 57th Street, 36th Floor  
New York, New York 10019

Financial Security Assurance Inc.  
350 Park Avenue  
New York, New York 10022

-----  
-----  
Re: Pooling and Servicing Agreement dated as of February 1, 2004  
among Morgan Stanley ABS Capital I Inc., as Depositor,  
Countrywide Home Loans Servicing LP, as Servicer, CDC  
Mortgage Capital Inc., as Unaffiliated Seller and Deutsche  
Bank National Trust Company, as Trustee, CDC Mortgage  
Capital Trust Series 2004-HE1

Gentlemen:

In accordance with Section 2.02 of the above-captioned Pooling  
and Servicing Agreement (the "Pooling and Servicing Agreement"), for each  
Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan  
listed in the attached schedule), it has received:

(i) the original Mortgage Note, endorsed as provided in  
the following form: "Pay to the order of \_\_\_\_\_, without recourse";  
and

(ii) a duly executed assignment of the Mortgage.

Based on its review and examination and only as to the  
foregoing documents, such documents appear regular on their face and related to  
such Mortgage Loan.

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The Trustee has made no independent examination of any  
documents contained in each Mortgage File beyond the review specifically  
required in the Pooling and Servicing Agreement. The Trustee makes no  
representations as to: (i) the validity, legality, sufficiency, enforceability  
or genuineness of any of the documents contained in each Mortgage File of any of  
the Mortgage Loans identified on the Mortgage Loan Schedule, or (ii) the  
collectability, insurability, perfection, priority, effectiveness or suitability  
of any such Mortgage Loan. Notwithstanding anything herein to the contrary, the  
Trustee has made no determination and makes no representations as to whether (i)  
any endorsement is sufficient to transfer all right, title and interest of the  
party so endorsing, as Noteholder or assignee thereof, in and to that Mortgage  
Note or (ii) any assignment is in recordable form or sufficient to effect the  
assignment of and transfer to the assignee thereof, under the Mortgage to which  
the assignment relates.

Capitalized words and phrases used herein shall have the  
respective meanings assigned to them in the Pooling and Servicing Agreement.

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
as Trustee

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

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

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

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EXHIBIT G

FORM OF FINAL CERTIFICATION OF TRUSTEE

[date]

Morgan Stanley ABS Capital I Inc.  
1585 Broadway  
New York, New York 10036

Countrywide Home Loans Servicing LP  
450 Park Granada  
Calabasas, California 91302

CDC Mortgage Capital Inc.  
9 West 57th Street, 36th Floor  
New York, New York 10019



-----  
-----  
Re: Pooling and Servicing Agreement dated as of February 1, 2004  
among Morgan Stanley ABS Capital I Inc., as Depositor,  
Countrywide Home Loans Servicing LP, as Servicer, CDC  
Mortgage Capital Inc., as Unaffiliated Seller and Deutsche  
Bank National Trust Company, as Trustee, CDC Mortgage  
Capital Trust Series 2004-HE1

Gentlemen:

In accordance with Section 2.02 of the above-captioned Pooling and Servicing Agreement (the "Pooling and Servicing Agreement"), the undersigned, as Trustee, hereby certifies that as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or listed on the attached Document Exception Report) it has received:

(i) The original Mortgage Note, endorsed in the form provided in Section 2.01 of the Pooling and Servicing Agreement, with all intervening endorsements showing a complete chain of endorsement from the originator to the last endorsee.

(ii) The original recorded Mortgage.

(iii) A duly executed assignment of the Mortgage in the form provided in Section 2.01 of the Pooling and Servicing Agreement; or, if the Unaffiliated Seller has certified or the Trustee otherwise knows that the related Mortgage has not been returned

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from the applicable recording office, a copy of the assignment of the Mortgage (excluding information to be provided by the recording office).

(iv) The original or duplicate original recorded assignment or assignments of the Mortgage showing a complete chain of assignment from the originator to the last endorsee.

(v) The original or duplicate lender's title policy and all riders thereto or, if such original is unavailable, any one of an original title binder, either an original title binder or an original or copy of the title commitment, and if copies then certified to be true and complete by the title company.

Based on its review and examination and only as to the foregoing documents, (a) such documents appear regular on their face and related to such Mortgage Loan, and (b) the information set forth in items (1), (2) and (18) of the Mortgage Loan Schedule and items (1), (9) and (17) of the Data Tape Information accurately reflects information set forth in the Custodial File.

The Trustee has made no independent examination of any documents contained in each Mortgage File beyond the review of the Custodial File specifically required in the Pooling and Servicing Agreement. The Trustee makes no representations as to: (i) the validity, legality, sufficiency, enforceability or genuineness of any of the documents contained in each Mortgage File of any of the Mortgage Loans identified on the Mortgage Loan Schedule, or (ii) the collectability, insurability, perfection, priority, effectiveness or suitability of any such Mortgage Loan. Notwithstanding anything herein to the contrary, the Trustee has made no determination and makes no representations as to whether (i) any endorsement is sufficient to transfer all right, title and interest of the party so endorsing, as Noteholder or assignee thereof, in and to that Mortgage Note or (ii) any assignment is in recordable form or sufficient to effect the assignment of and transfer to the assignee thereof, under the Mortgage to which the assignment relates.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the Pooling and Servicing Agreement.

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
as Trustee

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

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

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

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EXHIBIT H

TRANSFER AFFIDAVIT

MORGAN STANLEY ABS CAPITAL I INC. Trust 2004-HE1,  
Mortgage Pass-Through Certificates,  
Series 2004-HE1

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

The undersigned, being first duly sworn, deposes and says as follows:

1. The undersigned is an officer of \_\_\_\_\_, the proposed transferee of an ownership interest in a Class R Certificate (the "Certificate") issued pursuant to the Pooling and Servicing Agreement, (the "Agreement"), relating to the above-referenced Series, by and among Morgan Stanley ABS Capital I Inc., as depositor (the "Depositor"), Countrywide Home Loans Servicing LP, as servicer, CDC Mortgage Capital Inc., as unaffiliated seller (the "Unaffiliated Seller") and Deutsche Bank National Trust Company, as Trustee. Capitalized terms used, but not defined herein or in Exhibit 1 hereto, shall have the meanings ascribed to such terms in the Agreement. The transferee has authorized the undersigned to make this affidavit on behalf of the transferee for the benefit of the depositor and the trustee.

2. The transferee is not, as of the date hereof, and will not be, as of the date of the transfer, a "disqualified organization" within the meaning of Section 860E(e)(5) of the Internal Revenue Code of 1986. The transferee will endeavor to remain other than a disqualified organization for so long as it retains its ownership interest in the certificate.

3. The transferee has historically paid its debts as they came due and will continue to pay its debts as they come due in the future.

4. The transferee has no present knowledge or expectation that it will be unable to pay any United States taxes owed by it or become insolvent or subject to a bankruptcy proceeding for so long as the certificate remains outstanding.

5. The transferee has been advised of, and understands that as the holder of a noneconomic residual interest it may incur tax liabilities in excess of any cash flows generated by the interest. The transferee intends to pay such taxes associated with holding the certificate as they become due.

6. The transferee will not cause income from the certificate to be attributable to a foreign permanent establishment or fixed base (within the meaning of an applicable income tax treaty) of the transferee or another U.S. taxpayer.

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(1)7. [A. Formula Test] The transferee agrees that the present value of the anticipated tax liabilities associated with holding the certificate does not exceed the sum of the present value of any consideration given to the transferee to acquire the certificate, the present value of the expected future distributions on the certificate, and the present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses. The transferee agrees that it complied with U.S. Treasury Regulations Section 1.860E-1(c)(8) in making such representation.

The transferee agrees that it is not a foreign permanent establishment or fixed base (within the meaning of an applicable income tax treaty) of the transferor or another U.S. taxpayer.

[B. Asset Test] The transferee, at the time of the transfer, and at the close of the transferee's two fiscal years preceding the year of the

transfer, had gross assets for financial reporting purposes in excess of \$100 million and net assets in excess of \$10 million (excluding any obligation of a person related to the Transferee within the meaning of U.S. Treasury Regulations Section 1.860E-1(c)(6)(ii) or any other asset if a principle purpose for holding or acquiring the other asset was to permit the Transferee to satisfy the above stated minimum asset requirements).

The Transferee is an "eligible corporation," as defined in U.S. Treasury Regulations Section 1.860E-1(c)(6)(i). The Transferee agrees, in connection with any subsequent transfer of its Ownership Interest in the Certificate, to transfer its Ownership Interest only to another "eligible corporation," as defined in U.S. Treasury Regulations Section 1.860E-1(c)(6)(i), and to honor the restrictions on subsequent transfers of the Certificate by transferring its Ownership Interest only in a transaction that satisfies the requirements of U.S. Treasury Regulations Section 1.860E-1(c)(4)(i), (ii) (iii) and U.S. Treasury Regulations Section 1.860E-1(c)(5).

The Transferee determined the consideration paid to it to acquire the Certificate in good faith and based on reasonable market assumptions (including, but not limited to, borrowing and investment rates, prepayment and loss assumptions, expense and reinvestment assumptions, tax rates and other factors specific to the Transferee).

8. The Transferee is a citizen or resident of the United States, a corporation, partnership or other entity created or organized in, or under the laws of, the United States or any political subdivision thereof, or an estate or trust whose income from sources without the United States is includable in gross income for United States federal income tax purposes regardless of its connection with the conduct of a trade or business within the United States.

9. The Transferee's taxpayer identification number is \_\_\_\_\_.

(1) Insert either section 7A or 7B.

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10. The Transferee is not an employee benefit plan or arrangement subject to Title I of ERISA, Section 4975 of the Code or any Similar Law, and is not acting on behalf of any such plan or arrangement or using the assets of any such plan or arrangement to effect the Transfer.

11. The Transferee has reviewed the provisions of Section 5.02(c) of the Agreement and understands the legal consequences of the acquisition of an Ownership Interest in the Certificate, including, without limitation, the restrictions on subsequent Transfers and the provisions regarding voiding the Transfer and mandatory sales. The Transferee expressly agrees to be bound by and to abide by the provisions of Section 5.02(c) of the Agreement and the restrictions noted on the face of the Certificate. The Transferee understands and agrees that any breach of any of the representations included herein shall render the Transfer to the Transferee contemplated hereby null and void.

12. The Transferee consents to any additional restrictions or arrangements that shall be deemed necessary upon advice of counsel to constitute a reasonable arrangement to ensure that the Certificate will only be owned, directly or indirectly, by a Transferee that is not a disqualified organization.

13. The Transferee will not transfer its interest in the Certificate for the purpose of impeding the assessment or collection of any tax.

14. The Transferee will not transfer such Certificate unless (i) it has received from any subsequent transferee an affidavit in substantially the same form as this affidavit containing the same representations set forth herein, and (ii) as of the time of the transfer, it does not have actual knowledge that such affidavit is false. The Transferee will deliver such affidavit to the Trustee upon receipt.

\* \* \*

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IN WITNESS WHEREOF, the Transferee has caused this instrument to be executed on its behalf, pursuant to authority of its Board of Directors, by its duly authorized officer and its corporate seal to be hereunto affixed,

duly attested, this \_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Print Name of Transferee

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

[Corporate Seal]

ATTEST:

\_\_\_\_\_  
[Assistant] Secretary

Personally appeared before me the above-named \_\_\_\_\_,  
known or proved to me to be the same person who executed the foregoing  
instrument and to be the \_\_\_\_\_ of the Transferee, and acknowledged that he  
executed the same as his free act and deed and the free act and deed of the  
Transferee.

Subscribed and sworn before me this \_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires the \_\_ day  
of \_\_\_\_\_, 20\_\_

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EXHIBIT I

FORM OF TRANSFEROR CERTIFICATE

\_\_\_\_\_, 20\_\_

Morgan Stanley ABS Capital I Inc.  
1585 Broadway  
New York, New York 10036  
Attention: Michelle Wilke

Deutsche Bank National Trust Company,  
as Trustee,  
1761 East St. Andrew Place  
Santa Ana, California 92705

Re: CDC Mortgage Capital Trust, Series 2004-HE1, Mortgage  
Pass-Through Certificates, Series 2004-HE1, Class \_\_\_\_

Ladies and Gentlemen:

In connection with our disposition of the above Certificates  
we certify that (a) we understand that the Certificates have not been registered  
under the Securities Act of 1933, as amended (the "Act"), and are being disposed  
by us in a transaction that is exempt from the registration requirements of the  
Act, (b) we have not offered or sold any Certificates to, or solicited offers to  
buy any Certificates from, any person, or otherwise approached or negotiated  
with any person with respect thereto, in a manner that would be deemed, or taken  
any other action which would result in, a violation of Section 5 of the Act and  
(c) to the extent we are disposing of a Residual Certificate, we have no  
knowledge the Transferee is not a Permitted Transferee.

Very truly yours,

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer

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EXHIBIT J

FORM OF RULE 144A LETTER

\_\_\_\_\_, 20\_\_

Morgan Stanley ABS Capital I Inc.  
1585 Broadway  
New York, New York 10036  
Attention: Michelle Wilke

Deutsche Bank National Trust Company,  
as Trustee,  
1761 East St. Andrew Place  
Santa Ana, California 92705

Re: CDC Mortgage Capital Trust, Series 2004-HE1, Mortgage  
Pass-Through Certificates, Series 2004-HE1, Class \_\_\_\_

Ladies and Gentlemen:

In connection with our acquisition of the above Certificates we certify that (a) we understand that the Certificates are not being registered under the Securities Act of 1933, as amended (the "Act"), or any state securities laws and are being transferred to us in a transaction that is exempt from the registration requirements of the Act and any such laws, (b) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of investments in the Certificates, (c) we have had the opportunity to ask questions of and receive answers from the Depositor concerning the purchase of the Certificates and all matters relating thereto or any additional information deemed necessary to our decision to purchase the Certificates, (d) we are not an employee benefit plan or arrangement that is subject to Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), Section 4975 of the Internal Revenue Code of 1986, as amended (the "Code"), or any federal, state or local law materially similar to the foregoing provisions of ERISA or the Code, and we are not acting on behalf of any such plan or arrangement or using the assets of any such plan or arrangement to effect our purchase of the Certificates or, with respect to any Certificates other than Class P, Class R and Class X Certificates, we are an insurance company and are purchasing the Certificates with funds contained in an "insurance company general account" (as defined term is defined in Section V(e) of Prohibited Transaction Class Exemption 95-60 ("PTCE 95-60")), and the purchase and holding of such Certificates are covered under Sections I and III of PTCE 95-60, (e) we have not, nor has anyone acting on our behalf offered, transferred, pledged, sold or otherwise disposed of the Certificates, any interest in the Certificates or any other similar

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security to, or solicited any offer to buy or accept a transfer, pledge or other disposition of the Certificates, any interest in the Certificates or any other similar security from, or otherwise approached or negotiated with respect to the Certificates, any interest in the Certificates or any other similar security with, any person in any manner, or made any general solicitation by means of general advertising or in any other manner, or taken any other action, that would constitute a distribution of the Certificates under the Securities Act or that would render the disposition of the Certificates a violation of Section 5 of the Securities Act or require registration pursuant thereto, nor will act, nor has authorized or will authorize any person to act, in such manner with respect to the Certificates, and (f) we are a "qualified institutional buyer" as that term is defined in Rule 144A under the Securities Act and have completed either of the forms of certification to that effect attached hereto as Annex 1 or Annex 2. We are aware that the sale to us is being made in reliance on Rule 144A. We are acquiring the Certificates for our own account or for resale

pursuant to Rule 144A and further, understand that such Certificates may be resold, pledged or transferred only (i) to a person reasonably believed to be a qualified institutional buyer that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that the resale, pledge or transfer is being made in reliance on Rule 144A, or (ii) pursuant to another exemption from registration under the Securities Act.

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ANNEX 1 TO EXHIBIT J

QUALIFIED INSTITUTIONAL BUYER STATUS UNDER SEC RULE 144A

[For Transferees Other Than Registered Investment Companies]

The undersigned (the "Buyer") hereby certifies as follows to the parties listed in the Rule 144A Transferee Certificate to which this certification relates with respect to the Certificates described therein:

1. As indicated below, the undersigned is the President, Chief Financial Officer, Senior Vice President or other executive officer of the Buyer.

2. In connection with purchases by the Buyer, the Buyer is a "qualified institutional buyer" as that term is defined in Rule 144A under the Securities Act of 1933, as amended ("Rule 144A") because (i) the Buyer owned and/or invested on a discretionary basis \$\_\_\_\_\_ in securities (except for the excluded securities referred to below) as of the end of the Buyer's most recent fiscal year (such amount being calculated in accordance with Rule 144A and (ii) the Buyer satisfies the criteria in the category marked below.

\_\_\_\_\_ Corporation, etc. The Buyer is a corporation (other than a bank, savings and loan association or similar institution), Massachusetts or similar business trust, partnership, or charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

\_\_\_\_\_ Bank. The Buyer (a) is a national bank or banking institution organized under the laws of any State, territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official or is a foreign bank or equivalent institution, and (b) has an audited net worth of at least \$25,000,000 as demonstrated in its latest annual financial statements, a copy of which is attached hereto.

\_\_\_\_\_ Savings and Loan. The Buyer (a) is a savings and loan association, building and loan association, cooperative bank, homestead association or similar institution, which is supervised and examined by a State or Federal authority having supervision over any such institutions or is a foreign savings and loan association or equivalent institution and (b) has an audited net worth of at least \$25,000,000 as demonstrated in its latest annual financial statements, a copy of which is attached hereto.

\_\_\_\_\_ Broker-dealer. The Buyer is a dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934.

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\_\_\_\_\_ Insurance Company. The Buyer is an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a State, territory or the District of Columbia.

\_\_\_\_\_ State or Local Plan. The Buyer is a plan established and maintained by a State, its

political subdivisions, or any agency or instrumentality of the State or its political subdivisions, for the benefit of its employees.

\_\_\_\_\_ ERISA Plan. The Buyer is an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974.

\_\_\_\_\_ Investment Advisor. The Buyer is an investment advisor registered under the Investment Advisors Act of 1940.

\_\_\_\_\_ Small Business Investment Company. Buyer is a small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

\_\_\_\_\_ Business Development Company. Buyer is a business development company as defined in Section 202(a)(22) of the Investment Advisors Act of 1940.

3. The term "securities" as used herein does not include (i) securities of issuers that are affiliated with the Buyer, (ii) securities that are part of an unsold allotment to or subscription by the Buyer, if the Buyer is a dealer, (iii) securities issued or guaranteed by the U.S. or any instrumentality thereof, (iv) bank deposit notes and certificates of deposit, (v) loan participations, (vi) repurchase agreements, (vii) securities owned but subject to a repurchase agreement and (viii) currency, interest rate and commodity swaps.

4. For purposes of determining the aggregate amount of securities owned and/or invested on a discretionary basis by the Buyer, the Buyer used the cost of such securities to the Buyer and did not include any of the securities referred to in the preceding paragraph, except (i) where the Buyer reports its securities holdings in its financial statements on the basis of their market value, and (ii) no current information with respect to the cost of those securities has been published. If clause (ii) in the preceding sentence applies, the securities may be valued at market. Further, in determining such aggregate amount, the Buyer may have included securities owned by subsidiaries of the Buyer, but only if such subsidiaries are consolidated with the Buyer in its financial statements prepared in accordance with generally accepted accounting principles and if the investments of such subsidiaries are managed under the Buyer's direction. However, such securities were not included if the Buyer is a majority-owned, consolidated subsidiary of another enterprise and the Buyer is not itself a reporting company under the Securities Exchange Act of 1934, as amended.

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5. The Buyer acknowledges that it is familiar with Rule 144A and understands that the seller to it and other parties related to the Certificates are relying and will continue to rely on the statements made herein because one or more sales to the Buyer may be in reliance on Rule 144A.

6. Until the date of purchase of the Rule 144A Securities, the Buyer will notify each of the parties to which this certification is made of any changes in the information and conclusions herein. Until such notice is given, the Buyer's purchase of the Certificates will constitute a reaffirmation of this certification as of the date of such purchase. In addition, if the Buyer is a bank or savings and loan is provided above, the Buyer agrees that it will furnish to such parties updated annual financial statements promptly after they become available.

\_\_\_\_\_  
Print Name of Transferor

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

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

## ANNEX 2 TO EXHIBIT J

QUALIFIED INSTITUTIONAL BUYER STATUS UNDER SEC RULE 144A  
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[For Transferees That are Registered Investment Companies]

The undersigned (the "Buyer") hereby certifies as follows to the parties listed in the Rule 144A Transferee Certificate to which this certification relates with respect to the Certificates described therein:

1. As indicated below, the undersigned is the President, Chief Financial Officer or Senior Vice President of the Buyer or, if the Buyer is a "qualified institutional buyer" as that term is defined in Rule 144A under the Securities Act of 1933, as amended ("Rule 144A") because Buyer is part of a Family of Investment Companies (as defined below), is such an officer of the Adviser.

2. In connection with purchases by Buyer, the Buyer is a "qualified institutional buyer" as defined in SEC Rule 144A because (i) the Buyer is an investment company registered under the Investment Company Act of 1940, as amended and (ii) as marked below, the Buyer alone, or the Buyer's Family of Investment Companies, owned at least \$100,000,000 in securities (other than the excluded securities referred to below) as of the end of the Buyer's most recent fiscal year. For purposes of determining the amount of securities owned by the Buyer or the Buyer's Family of Investment Companies, the cost of such securities was used, except (i) where the Buyer or the Buyer's Family of Investment Companies reports its securities holdings in its financial statements on the basis of their market value, and (ii) no current information with respect to the cost of those securities has been published. If clause (ii) in the preceding sentence applies, the securities may be valued at market.

\_\_\_\_\_ The Buyer owned \$ \_\_\_\_\_ in securities (other than the excluded securities referred to below) as of the end of the Buyer's most recent fiscal year (such amount being calculated in accordance with Rule 144A).

\_\_\_\_\_ The Buyer is part of a Family of Investment Companies which owned in the aggregate \$ \_\_\_\_\_ in securities (other than the excluded securities referred to below) as of the end of the Buyer's most recent fiscal year (such amount being calculated in accordance with Rule 144A).

3. The term "Family of Investment Companies" as used herein means two or more registered investment companies (or series thereof) that have the same investment adviser or investment advisers that are affiliated (by virtue of being majority owned subsidiaries of the same parent or because one investment adviser is a majority owned subsidiary of the other).

4. The term "securities" as used herein does not include (i) securities of issuers that are affiliated with the Buyer or are part of the Buyer's Family of Investment Companies, (ii) securities issued or guaranteed by the U.S. or any instrumentality thereof, (iii) bank deposit notes and certificates of deposit, (iv) loan participations, (v) repurchase agreements,

(vi) securities owned but subject to a repurchase agreement and (vii) currency, interest rate and commodity swaps.

5. The Buyer is familiar with Rule 144A and understands that the parties listed in the Rule 144A Transferee Certificate to which this certification relates are relying and will continue to rely on the statements made herein because one or more sales to the Buyer will be in reliance on Rule 144A. In addition, the Buyer will only purchase for the Buyer's own account.

6. Until the date of purchase of the Certificates, the undersigned will notify the parties listed in the Rule 144A Transferee Certificate to which this certification relates of any changes in the information and conclusions herein. Until such notice is given, the Buyer's purchase of the Certificates will constitute a reaffirmation of this certification by the undersigned as of the date of such purchase.



\_\_\_\_\_  
Print Name of Transferor

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

IF AN ADVISER:

\_\_\_\_\_  
Print Name of Buyer

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

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EXHIBIT K

REQUEST FOR RELEASE  
(for Trustee)

To: [Address]

Re:

In connection with the administration of the Mortgage Loans held by you as the Trustee on behalf of the Certificateholders, we request the release, and acknowledge receipt, of the (Custodial File/[specify documents]) for the Mortgage Loan described below, for the reason indicated.

Mortgagor's Name, Address & Zip Code:  
-----

Mortgage Loan Number:  
-----

Send Custodial File to:  
-----

Reason for Requesting Documents (check one)  
-----

- \_\_\_\_\_ 1. Mortgage Loan Paid in Full. (The Company hereby certifies that all amounts received in connection therewith have been credited to the Collection Account as provided in the Pooling and Servicing Agreement.)
- \_\_\_\_\_ 2. Mortgage Loan Repurchase Pursuant to Subsection 2.03 of the Pooling and Servicing Agreement. (The Company hereby certifies that the repurchase price has been credited to the Collection Account as provided in the Pooling and Servicing Agreement.)
- \_\_\_\_\_ 3. Mortgage Loan Liquidated By \_\_\_\_\_. (The Company hereby certifies that all proceeds of foreclosure, insurance, condemnation or other liquidation have been finally received and credited to the Collection Account pursuant to the Pooling and Servicing Agreement.)
- \_\_\_\_\_ 4. Mortgage Loan in Foreclosure.
- \_\_\_\_\_ 5. Other (explain).

If box 1, 2 or 3 above is checked, and if all or part of the Custodial File was previously released to us, please release to us our previous request and receipt on file with you, as well as any additional documents in your possession relating to the specified Mortgage Loan.

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If box 4 or 5 above is checked, upon our return of all of the above documents to you as the Trustee, please acknowledge your receipt by signing in the space indicated below, and returning this form.

COUNTRYWIDE HOME LOANS SERVICING LP

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

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EXHIBIT L

FORM OF SUBSEQUENT TRANSFER AGREEMENT

CDC MORTGAGE CAPITAL TRUST 2004-HE1

Pursuant to separate Mortgage Loan Purchase Agreements, Aames Capital Corporation ("Aames"), Oakmont Mortgage Company, Inc. ("Oakmont"), Encore Credit Corp. ("Encore"), People's Choice Home Loan, Inc., ("People's Choice"), Accredited Home Lenders, Inc. ("Accredited"), The CIT Group/Consumer Finance, Inc. (and its affiliates) (collectively, "CIT"), Master Financial Corporation ("Master Financial"), Chapel Mortgage Corporation ("Chapel"), First Guaranty Mortgage Corporation ("FGMC"), SIB Mortgage Corp. ("SIB"), IMPAC Funding Corporation (and its affiliate, Novelle Financial Services, Inc. ("Novelle")), "IFC"), First Banc Mortgage, Inc. ("First Banc"), Ameriquest Mortgage Company ("Ameriquest"), BNC Mortgage, Inc. ("BNC"), Aegis Mortgage Corporation ("Aegis"), and Lenders Direct Capital Corporation ("Lenders Direct" (and together with Aames, Oakmont, Encore, People's Choice, Accredited, CIT, Master Financial, CIT, FGMC, SIB, IFC, First Banc, Ameriquest, BNC, and Aegis, the "Originators") have agreed to sell to CDC Mortgage Capital Inc. (the "Unaffiliated Seller") certain mortgage loans (each, a "Mortgage Loan"). These Mortgage Loans may in turn be sold by the Unaffiliated Seller to MORGAN STANLEY ABS CAPITAL I INC. (the "Depositor") and then sold by the Depositor to the CDC Mortgage Capital Trust 2004-HE1 (the "Trust Fund"). The Trust Fund was established pursuant to a Pooling and Servicing Agreement, dated as of February 1, 2004 (the "Pooling and Servicing Agreement") among the Unaffiliated Seller, the Depositor, Countrywide Home Loans Servicing LP, as servicer (the "Servicer") and Deutsche Bank National Trust Company, as trustee (the "Trustee"). The Pooling and Servicing Agreement permits a Pre-Funding feature, allowing for the acquisition by the Trust Fund of Subsequent Mortgage Loans during the Pre-Funding Period. Representations and warranties with respect to the Mortgage Loans have been made by the Originators pursuant to separate Assignment and Recognition Agreements.

Capitalized terms used herein and not defined herein have their respective meanings as set forth in the Pooling and Servicing Agreement.

Conveyance of Subsequent Mortgage Loans.  
-----

The Unaffiliated Seller does hereby irrevocably sell, transfer, assign, set over and otherwise convey to the Depositor, without recourse (except as otherwise explicitly provided for herein) all of its right, title and interest in and to the Subsequent Mortgage Loans, exclusive of the obligations of the Unaffiliated Seller or any other Person with respect to the Subsequent Mortgage Loans but including specifically, without limitation, the Mortgages, the Custodial Files and all other documents, materials and properties appurtenant thereto and the Mortgage Notes, including all interest and principal collected by the Unaffiliated Seller on or with respect to the Subsequent Mortgage Loans after the related Subsequent Cut-off Date, together with all of its right, title and interest in and to the proceeds received after such Subsequent Cut-off Date of any related insurance policies on behalf of the Depositor.

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The Depositor does hereby irrevocably sell, transfer, assign, set over and otherwise convey to the Trust Fund, without recourse (except as otherwise explicitly provided for herein) all of its right, title and interest in and to the Subsequent Mortgage Loans, exclusive of the obligations of the

Depositor or any other Person with respect to the Subsequent Mortgage Loans but including specifically, without limitation, the Mortgages, the Custodial Files and all other documents, materials and properties appurtenant thereto and the Mortgage Notes, including all interest and principal collected by the Depositor on or with respect to the Subsequent Mortgage Loans after the related Subsequent Cut-off Date, together with all of its right, title and interest in and to the proceeds received after such Subsequent Cut-off Date of any related insurance policies on behalf of the Trust Fund.

The expenses and costs relating to the delivery of the Subsequent Mortgage Loans specified in this Subsequent Transfer Agreement and the Pooling and Servicing Agreement shall be borne by the Unaffiliated Seller.

The Unaffiliated Seller hereby affirms the representation and warranty set forth in Sections 3.01(f), 3.01(h), 3.01(n), 3.01(p) and 3.03 of the Unaffiliated Seller's Agreement with respect to the Subsequent Mortgage Loans as of the date hereof. The Unaffiliated Seller hereby delivers notice and confirms that each of the conditions set forth in Section 2.01(c) of the Pooling and Servicing Agreement are satisfied as of the date hereof.

The Servicer hereby affirms the representations and warranties set forth in Schedule IIA to the Pooling and Servicing Agreement with respect to the Subsequent Mortgage Loans as of the date hereof.

Additional terms of the sale are attached hereto as Attachment A.

To the extent permitted by applicable law, this Subsequent Transfer Agreement, or a memorandum thereof if permitted under applicable law, is subject to recordation in all appropriate public offices for real property records in all counties or other comparable jurisdictions in which any or all of the properties subject to the Mortgages are situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected by the Servicer at the Unaffiliated Seller's expense, but only when accompanied by an opinion of counsel to the effect that such recordation materially and beneficially affects the interests of the Certificateholders or is necessary for the administration or servicing of the Mortgage Loans.

This Agreement shall be construed in accordance with the laws of the State of New York and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws, without giving effect to the principles of conflicts of laws.

This Agreement may be executed in one or more counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed to be an original; such counterparts, together, shall constitute one and the same Agreement.

All terms and conditions of the Pooling and Servicing Agreement are hereby ratified, confirmed and incorporated herein; provided, that in the event of any conflict the provisions of this Subsequent Transfer Agreement shall control over the conflicting provisions of the Pooling and Servicing Agreement.

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[Remainder of Page Intentionally Left Blank]

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CDC MORTGAGE CAPITAL INC., as Unaffiliated Seller

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

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

MORGAN STANLEY ABS CAPITAL I INC.,  
as Depositor

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

COUNTRYWIDE HOME LOANS SERVICING LP,  
as Servicer

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

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
as Trustee

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

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

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EXHIBIT M

FORM OF CERTIFICATION TO BE  
PROVIDED TO DEPOSITOR

Re: CDC Mortgage Capital Trust 2004-HE1 Mortgage Pass-Through Certificates, Series 2004-HE1, issued pursuant to the Pooling and Servicing Agreement, dated as of February 1, 2004 (the "Pooling and Servicing Agreement"), among Morgan Stanley ABS Capital I Inc., as depositor (the "Depositor", CDC Mortgage Capital Inc., as unaffiliated seller, Deutsche Bank National Trust Company, as trustee (the "Trustee"), and Countrywide Home Loans Servicing LP, as servicer (the "Servicer").

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 10-K ("Annual Report"), and all reports on Form 8-K containing distribution or servicing reports (collectively with this Annual Report, the "Reports") filed in respect of periods included in the year covered by this Annual Report of the Depositor relating to the above-referenced trust and series of certificates;
2. Based on my knowledge, the information in the Reports, taken as a whole, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading as of the last day of the period covered by this Annual Report;
3. Based on my knowledge, the distribution or servicing information required to be provided to the Trustee by the Servicer under the Pooling and Servicing Agreement for inclusion in the Reports is included in these Reports;
4. Based on my knowledge and upon the annual compliance statement included in this Annual Report and required to be delivered to the Trustee in accordance with the terms of the Pooling and Servicing Agreement, and except as disclosed in the Reports, the Servicer has fulfilled its obligations under the Pooling and Servicing Agreement; and

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5. The Reports disclose all significant deficiencies relating to the Servicer's compliance with the minimum servicing standards

based upon the report provided by an independent public accountant, after conducting a review in compliance with the Uniform Single Attestation Program for Mortgage Bankers or similar procedure, as set forth in the Pooling and Servicing Agreement, that is included in the Reports.

In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties: the Trustee and the Servicer.

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

\_\_\_\_\_  
[Signature]

[Title]

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EXHIBIT N

Trustee/Servicer Certifications to be provided to Depositor

Re: CDC Mortgage Capital Trust 2004-HE1 Mortgage Pass-Through Certificates, Series 2004-HE1, issued pursuant to the Pooling and Servicing Agreement, dated as of February 1, 2004 (the "Pooling and Servicing Agreement"), among Morgan Stanley ABS Capital I Inc., as depositor (the "Depositor," CDC Mortgage Capital Inc., as unaffiliated seller (the "Unaffiliated Seller"), Deutsche Bank National Trust Company, as trustee (the "Trustee"), and Countrywide Home Loans Servicing LP, as servicer (the "Servicer").

I, [identify the certifying individual], certify to the Depositor and the Trustee, if applicable, and its officers, directors and affiliates, and with the knowledge and intent that they will rely upon this certification, that:

1. [To be certified by the Trustee] I have reviewed the annual report on Form 10-K for the fiscal year 20\_\_ (the "Annual Report"), and all reports on Form 8-K containing distribution date reports filed in respect of periods included in the year covered by the Annual Report (collectively with this Annual Report, the "Reports"), of the Depositor relating to the above-referenced trust;
2. [To be certified by the Trustee] Based on my knowledge, the information in the Reports, taken as a whole, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading as of the last day of the period covered by the Annual Report;
3. [To be certified by the Trustee] Based on my knowledge, the distribution or servicing information required to be provided to the Trustee by the Servicer under the Pooling and Servicing Agreement for inclusion in the Reports is included in the Reports;
4. [To be certified by the Servicer] I am responsible for reviewing the activities performed by the Servicer under the Pooling and Servicing Agreement during the calendar year immediately preceding the date of this certificate (the "Relevant Year"). Based upon the review required by the Pooling and Servicing Agreement and except as disclosed in the annual compliance statement or the accountant's statement provided pursuant to Section 3.23 of the Pooling and Servicing Agreement, to the best of my knowledge, the Servicer has fulfilled its obligations under the Pooling and Servicing Agreement throughout the Relevant Year; and
5. [To be certified by the Servicer] All significant deficiencies relating to the Servicer's compliance with the minimum servicing standards for purposes of the report provided by an independent public accountant, after conducting a review conducted in compliance with the Uniform Single Attestation Program for Mortgage Bankers or similar procedure, as set forth in the Pooling and Servicing

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Agreement, have been disclosed to such accountant and are included in such reports.

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

\_\_\_\_\_  
[Signature]  
[Title]

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February 25, 2004

To the Addressees Listed  
on Schedule I Attached Hereto

Re: CDC Mortgage Capital Trust 2004-HE1,  
Mortgage Pass-Through Certificates, Series 2004-HE1

Ladies and Gentlemen:

We have acted as tax counsel to Morgan Stanley ABS Capital I Inc., as depositor (the "Depositor") in connection with the issuance by the CDC Mortgage Capital Trust 2004-HE1 (the "Trust") of its Mortgage Pass-Through Certificates, Series 2004-HE1 (the "Certificates"), pursuant to a Pooling and Servicing Agreement, dated as of February 1, 2004 (the "Pooling and Servicing Agreement"), among the Depositor, Countrywide Home Loans Servicing LP, as servicer, CDC Mortgage Capital Inc., as unaffiliated seller, and Deutsche Bank National Trust Company, as trustee. Terms capitalized herein and not otherwise defined herein shall have their respective meanings as set forth in the Pooling and Servicing Agreement.

As tax counsel, we have examined such documents and records as we deemed appropriate for purposes of rendering the opinions set forth below, including the following: (a) a Prospectus dated January 23, 2004 (the "Base Prospectus"), as supplemented by the Prospectus Supplement, dated February 20, 2004 (the "Prospectus Supplement"), and (b) an executed copy of the Pooling and Servicing Agreement.

Based upon the foregoing and upon the assumptions set forth below, we are of the opinion, under the laws of the United States in effect as of the date hereof, that:

1. Assuming that each REMIC created under the Pooling and Servicing Agreement elects, as it has covenanted to do in the Pooling and Servicing Agreement, to be treated as a "real estate mortgage investment conduit" ("REMIC"), as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"), and the parties to the Pooling and Servicing Agreement comply with the terms thereof, each REMIC will be treated as a REMIC.

2. Each of the Lower Tier Regular Interests will be treated as one or more "regular interests" in the Lower Tier REMIC, and the Class LT-R Interest will be the sole "residual interest" in the Lower Tier REMIC.

3. Each of the Middle Tier Regular Interests will be treated as one or more "regular interests" in the Middle Tier REMIC, and the Class MT-R Interest will be the sole "residual" interest" in the Middle Tier REMIC.

4. Each of the Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class B-1, Class B-2 and Class B-3 Certificates represents an interest in two separate investments: (i) the corresponding class of regular interests in the Upper Tier REMIC, the Class A-1, Class A-2, Class A-3, Class A-4, Class M-1, Class M-2, Class M-3, Class B-1, Class B-2

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and Class B-3, respectively, and (ii) an interest in a notional principal contract, the right to receive Basis Risk Carry Forward Amounts. The Class X represents two regular interests in the Upper Tier REMIC. The Class UT-R Interest will be the sole "residual interest" in the Upper Tier REMIC.

5. The Class P Certificates represent an undivided beneficial ownership interest in a grantor trust under Subpart E of Part I of Subchapter J of the Code, the assets of which are the Prepayment Charges.

6. The statements under the caption "Material Federal Income Tax Considerations" in the Prospectus Supplement and "Material Federal Income Tax Consequences" in the Prospectus, as they relate to federal income tax matters and to the extent that they constitute matters of law or legal conclusions with respect thereto, are correct in all material respects.

7. As a consequence of the qualification of each of the REMICs as a REMIC, the Upper Tier Regular Interests, the Middle Tier Regular Interests, and the Lower Tier Regular Interests will be treated as "regular ... interest(s) in a REMIC" under Section 7701(a)(19)(C) of the Code and "real estate assets" under Section 856(c)(5)(B) of the Code generally in the same proportion that the assets in the Trust consist of qualifying assets under such Sections. In addition, as a consequence of the qualification of each of the REMICs as a REMIC, interest on the Upper Tier Regular Interests, the Middle Tier Regular Interests, and the Lower Tier Regular Interests will be treated as "interest on obligations secured by mortgages on real property" under Section 856(c)(3)(B) of the Code to the extent that such Upper Tier Regular Interests, the Middle Tier Regular Interests and Lower Tier Regular Interests are treated as "real estate assets" under Section 856(c)(5)(B) of the Code.

8. The rights to receive Basis Risk Carry Forward Amounts will not constitute (i) a "real estate asset" within the meaning of Section 856(c)(5)(B) of the Code if held by a real estate investment trust; (ii) a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Code or a "permitted investment" within the meaning of Section 860G(a)(5) of the Code if held by a REMIC; or (iii) assets described in Section 7701(a)(19)(C)(xi) of the Code if held by a thrift.



9. Assuming that the Trust acquires the Subsequent Mortgage Loans in the manner contemplated by the Pooling and Servicing Agreement, such acquisition will not result in a "prohibited transaction" (as defined in the REMIC Provisions) for any REMIC held by the Trust, and will not cause any REMIC held by the Trust to cease to qualify as a REMIC.

The opinions set forth herein are based upon the existing provisions of the Code and Treasury regulations issued or proposed thereunder, published Revenue Rulings and releases of the Internal Revenue Service and existing case law, any of which could be changed at any time. Any such changes may be retroactive in application and could modify the legal conclusions upon which such opinions are based. The opinions expressed herein are limited as described above,

To the Addressees Listed on  
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and we do not express an opinion on any other tax aspect of the transactions contemplated by the documents relating to the transaction.

In rendering the foregoing opinions, we express no opinion as to the laws of any jurisdiction other than the federal income tax laws of the United States. This opinion is rendered as of the date hereof, and we undertake no obligation to update this letter or the opinions contained herein after the date hereof. This opinion is rendered only to those to whom it is addressed and may not be relied on in connection with any transactions other than the transactions contemplated herein. This opinion may not be used, circulated, quoted or otherwise referred to for any other purpose without our prior written consent.

Very truly yours,

#### SCHEDULE I

CDC Mortgage Capital Inc.  
9 West 57th Street, 36th Floor  
New York, New York 10019

Morgan Stanley ABS Capital I Inc.  
1585 Broadway  
New York, New York 10036

Morgan Stanley & Co. Incorporated  
1585 Broadway

Deutsche Bank National Trust Company  
1761 East St. Andrew Place

New York, New York 10036

Santa Ana, CA 92705-4934

Banc of America Securities LLC  
100 North Tryon Street  
NC1-007-11-07  
Charlotte, North Carolina 28255

Moody's Investors Service Inc.  
99 Church Street  
New York, New York 10007

Fitch, Inc.  
One State Street Plaza  
New York, New York 10004

Standard & Poor's Ratings Services  
55 Water Street  
New York, New York 10041

Countrywide Home Loans Servicing LP  
450 Park Granada  
Calabasas, California 91302

Countrywide Securities, Inc.  
4500 park Granada  
Calabass, California 91302

Financial Security Assurance Inc.  
350 Park Avenue  
New York, New York 10022

Greenwich Capital Markets, Inc.  
600 Steamboat Road  
Greenwich, Connecticut 06830

CDC Securities  
9 West 57th Street, 36th Floor  
New York, New York 10019