

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT PIKEVILLE**

ARNETIA JOYCE ROBINSON,

Plaintiff,

v.

THE FEDERAL HOUSING FINANCE AGENCY, in its capacity as Conservator of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, MELVIN L. WATT, in his official capacity as Director of the Federal Housing Finance Agency, and THE DEPARTMENT OF THE TREASURY,

Defendants.

Civil Action No. 7:15-cv-00109

**MOTION TO DISMISS BY DEFENDANTS FEDERAL HOUSING FINANCE AGENCY,
AS CONSERVATOR FOR FANNIE MAE AND FREDDIE MAC, AND FHFA
DIRECTOR MELVIN L. WATT**

Defendants the Federal Housing Finance Agency (“FHFA”), in its capacity as Conservator for the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”), and Melvin L. Watt, in his official capacity as Director of FHFA, move this Court for an order dismissing Plaintiff’s Amended Complaint for Declaratory and Injunctive Relief with prejudice. This Motion is based on the Memorandum of Law and the records and pleadings filed in this action.

Dated: January 11, 2016

Respectfully submitted,

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[PROPOSED] ORDER

Upon consideration of the Motion to Dismiss by Defendants Federal Housing Finance Agency as Conservator for Fannie Mae and Freddie Mac and FHFA Director Melvin L. Watt, it is hereby **ORDERED** that the Motion is **GRANTED** and that Plaintiff's Amended Complaint for Declaratory and Injunctive Relief is dismissed with prejudice.

Dated:

United States District Judge
Eastern District of Kentucky

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**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BY DEFENDANTS
FEDERAL HOUSING FINANCE AGENCY AS CONSERVATOR FOR FANNIE MAE
AND FREDDIE MAC, AND FHFA DIRECTOR MELVIN L. WATT**

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INTRODUCTION

This litigation is the latest in a series of suits brought by holders of Fannie Mae and Freddie Mac (the “Enterprises”) shares, all of which were issued prior to the placement of the Enterprises into conservatorship. Two federal district courts—for the District of Columbia and the Southern District of Iowa—already have dismissed eleven nearly identical lawsuits. Plaintiff’s Amended Complaint is precluded as a matter of law by these prior decisions. Even if it were not precluded, the Amended Complaint suffers from the same fundamental and incurable legal infirmities as the claims in the eleven already dismissed actions and thus must also be dismissed.

The Enterprises are corporations chartered by Congress to provide liquidity to the national housing finance market. The Federal Housing Finance Agency (“FHFA”) is an independent agency created by the Housing and Economic Recovery Act of 2008 (“HERA”) (Pub. L. No. 110-289, § 1101, 122 Stat. 2654, 2661 (2008) (codified at 12 U.S.C. § 4511 *et seq.*)). Under HERA, FHFA serves as the regulator of the Enterprises. *See* 12 U.S.C. § 4513(a). HERA also grants the Director of FHFA authority to appoint the agency conservator or receiver of the Enterprises. *Id.* § 4617(a)(1).

On September 6, 2008, having concluded that the Enterprises could not continue to operate safely and soundly and fulfill their critical public mission without intervention, FHFA’s Director placed the Enterprises into conservatorships. HERA also authorized the U.S. Department of Treasury (“Treasury”), subject to statutory requirements intended to protect federal taxpayers, to invest billions of taxpayer dollars as necessary for the Enterprises to sustain their critical operations while in conservatorship. On behalf of the Enterprises, in its capacity as Conservator, FHFA entered into agreements with Treasury, commonly known as the Preferred

Stock Purchase Agreements (“PSPAs”). Under the PSPAs, Treasury agreed that for the duration of the Conservatorships, in any quarter in which an Enterprise’s net worth was negative (*i.e.*, liabilities in excess of assets in accordance with U.S. Generally Accepted Accounting Principles (“GAAP”)), to infuse sufficient funds into the Enterprise to eliminate the net worth deficiency of such Enterprise. In exchange, the PSPAs granted Treasury a comprehensive package of rights, including: (1) an initial senior liquidation preference of \$1 billion for each Enterprise; (2) warrants to acquire 79.9% of the Enterprises’ common stock for a nominal payment; (3) payment from each Enterprise of a dividend in the amount of 10% per year of the total amount of funds Treasury provided, and (4) a periodic commitment fee “intended to fully compensate” taxpayers for the continuing Treasury commitment of hundreds of billions of dollars of taxpayer funds.

Both Enterprises drew on the Treasury commitment to eliminate their then-existing negative net worth positions soon after their placement into conservatorships. To date, the Enterprises have drawn more than \$187 billion in taxpayer funds from Treasury and have also paid dividends to Treasury pursuant to the PSPAs. Plaintiff does not seek relief with respect to any of the actions taken by Treasury and the FHFA from September 6, 2008 up to August 16, 2012, actions that included the investment and commitment of hundreds of billions of dollars of taxpayer funds to maintain the operations of the Enterprises. *See* Am. Compl. ¶ 165(a)-(i) (seeking relief only as to the Third Amendment).¹

¹ The Amended Complaint devotes many paragraphs to the alleged misdeeds of FHFA and Treasury prior to the Third Amendment, including allegations that conservatorship was unnecessary, that the Enterprises were “not in financial distress” in September 2008, and that Treasury had a “long-term policy of seeking to seize control of Fannie and Freddie.” Am. Compl. ¶¶ 38-49. But these allegations are irrelevant because, as noted above, Plaintiff seeks *no*

Footnote continued on next page

On August 17, 2012, FHFA and Treasury executed the Third Amendment to the PSPAs to (1) replace the fixed, 10% dividend with a variable dividend equal to the net worth of the Enterprises, minus a prescribed capital reserve, on a quarterly basis, and (2) waive the periodic commitment fee so long as the variable net worth dividend is in place. Thus, under the Third Amendment, Treasury agreed not to exercise its express contractual right to assure full taxpayer compensation through the payment of a periodic commitment fee, for so long as all profits, if any, achieved by the Enterprises are used to compensate taxpayers for their continuing commitment.

Plaintiff asks the Court to re-write the agreements pursuant to which Treasury remains committed, as of the date of this filing and into the indefinite future, to invest up to an additional \$258.1 billion when and as necessary to prevent the mandatory placement of the Enterprises into statutory receivership and liquidation. Alleging that the Conservator should have taken alternative steps, Plaintiff would have the Court second-guess the non-reviewable operational judgments of the Conservator. But by statute, the Conservator is authorized to take action which it determines is in the best interests of the Enterprises or the agency, 12 U.S.C. § 4617(b)(2)(J)(ii), and Congress has mandated that such decisions are committed to the Conservator's discretion and insulated from judicial review, *id.* § 4617(f). As with the claims asserted in each of the eleven similar cases brought by shareholders in other federal courts,

Footnote continued from previous page

relief with respect to anything pre-dating the Third Amendment. Indeed, it would be impossible for Plaintiff to challenge the placement of the Enterprises into conservatorship because HERA grants the Enterprises the exclusive right to challenge the appointment of the conservator, and such a challenge must be brought within 30 days of the appointment. 12 U.S.C. § 4617(a)(5).

Plaintiff's claims fail as a matter of law. There are at least three independent bases for dismissal—each purely legal.

First, the Court lacks jurisdiction over Plaintiff's equitable and declaratory claims because "no court may take any action to restrain or affect the exercise of powers or functions of the [FHFA] as a conservator." 12 U.S.C. § 4617(f). Because the Conservator acted squarely within its statutory powers in executing the Third Amendment, Section 4617(f) bars Plaintiff's claims, notwithstanding allegations that the Third Amendment was unwise, unnecessary, ineffective, or improperly motivated.

Second, Plaintiff's claims fail because FHFA as Conservator "succeed[ed]" by operation of law to "all" shareholder rights during conservatorship, including Plaintiff's ability to pursue claims based on their stock certificates and/or on behalf of the Enterprises. Only upon the conclusion of the conservatorships, either through the appointment of FHFA as receiver or otherwise, could any court have jurisdiction to hear a shareholder claim—e.g., pursuant to 12 U.S.C. § 4617(b)(6) in a receivership.

Third, Plaintiff's claims, which are derivative in nature (*i.e.*, brought on behalf of the Enterprises), are, pursuant to the doctrine of issue preclusion, barred by the dispositive holding in materially identical suits that HERA expressly prohibits the prosecution by shareholder plaintiffs of derivative claims brought on behalf of the Enterprises.

STATEMENT OF FACTS

I. The Importance of the Enterprises to the National Economy and the Collapse of the National Housing Market

Fannie Mae and Freddie Mac are corporations chartered by Congress to provide liquidity to the national housing-finance system. To fulfill their congressional mandate, the Enterprises purchase residential mortgages originated by banks and other qualified lenders, which then can

use the sale proceeds to originate additional mortgages. *See* Am. Compl. ¶ 34. To finance their purchases, the Enterprises bundle the mortgages into mortgage-backed securities (“MBS”) that are sold to investors. *See id.* By 2007, following an unprecedented rise in house prices, the housing market began to collapse, with homeowners defaulting on their mortgages at accelerating rates. At that time, the Enterprises held mortgages worth trillions of dollars. *See* Am. Compl. ¶ 2.

II. FHFA Is Appointed Statutory Conservator and Succeeds by Operation of Law to All the Rights of the Enterprises and Their Shareholders

Through HERA, Congress created FHFA in July 2008 as an independent agency to supervise and regulate the Enterprises. Pub. L. No. 110-289, 122 Stat. 2654 (July 30, 2008). HERA grants to FHFA, as regulator, the authority to ensure that the Enterprises operate in a “safe and sound manner,” while “foster[ing] liquid, efficient, competitive, and resilient national housing finance markets.” 12 U.S.C. § 4513(a)(1)(B)(i), (ii). HERA also authorizes FHFA’s Director to “appoint the [FHFA] as conservator or receiver for a regulated entity . . . for the purpose of reorganizing, rehabilitating, or winding up [its] affairs.” *Id.* § 4617(a)(1)-(2).

On September 6, 2008, FHFA’s Director placed the Enterprises into FHFA’s conservatorship. *See* Am. Compl. ¶ 46. FHFA as Conservator “immediately succeed[ed] to . . . all rights, titles, powers, and privileges of the [Enterprises], and of *any stockholder*, officer, or director of [the Enterprises].” 12 U.S.C. § 4617(b)(2)(A)(i) (emphasis added).

As Conservator, FHFA has statutory authority to take any action that is “necessary to put [the Enterprises] in a sound and solvent condition” and “appropriate to carry on the business of [the Enterprises].” *Id.* § 4617(b)(2)(D). FHFA thus has express plenary authority as Conservator to:

- “conduct all business of the [Enterprises],” *id.* § 4617(b)(2)(B)(i);

- “perform all functions of the [Enterprises] in the name of the [Enterprises] which are consistent with the appointment as conservator,” *id.* § 4617(b)(2)(B)(iii);
- “preserve and conserve the assets and property of the [Enterprises],” *id.* § 4617(b)(2)(B)(iv);
- “take over the assets of and operate the [Enterprises] with all the powers of the shareholders, the directors, and the officers,” *id.* § 4617(b)(2)(B)(i);
- “transfer or sell any asset or liability of the [Enterprises] without any approval, assignment, or consent with respect to such transfer or sale,” *id.* § 4617(b)(2)(G); and
- “take any [authorized action], which the Agency determines is in the best interests of the [Enterprises] or the Agency,” *id.* § 4617(b)(2)(J)(ii).

Reinforcing and facilitating the exercise of the Conservator’s plenary authority, Congress insulated the Conservator’s actions from judicial review. Under 12 U.S.C. § 4617(f), “no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator.”

III. The PSPAs Are Structured to Provide Unprecedented, Massive and Continuing Financial Support While Fulfilling the Congressional Mandate to Protect the Interests of Federal Taxpayers

A. Treasury Agrees to Exercise its Newly Granted Congressional Authority to Provide Unprecedented Financial Support to the Enterprises Through the PSPAs

In connection with FHFA’s conservatorship appointments, Treasury and FHFA—expressly in its capacity as Conservator of the Enterprises—entered into a Senior Preferred Stock Purchase Agreement for each Enterprise (together, the “PSPAs”).² Am. Compl. ¶ 8. Treasury, through the PSPAs, agreed to commit and infuse into the Enterprises billions of taxpayer dollars

² HERA specifically amended the statutory charters of the Enterprises to grant Treasury the authority to enter into such transactions for the purchase of securities issued by the Enterprises, so long as Treasury and the Enterprises reached a “mutual agreement” for such a purchase. *See* 12 U.S.C. § 1719(g)(1)(A) (Fannie Mae); *id.* § 1455(l)(1)(A) (Freddie Mac).

as necessary, providing the capital support that would allow the Enterprises to remain in operation and avoid mandatory receivership and liquidation. *See* Amended and Restated Senior Preferred Stock Purchase Agreement (Sept. 26, 2008) (attached with amendments as Exhibit A); *see also* Certificate of Designation of Terms of Variable Liquidation Preference Senior Preferred Stock, Series 2008-2 (September 7, 2008) (“Treasury Stock Certificate”) (attached as Exhibit B).³

If in any calendar quarter an Enterprise’s net worth is negative—defined as liabilities exceeding assets in accordance with GAAP—then the PSPAs required Treasury to invest additional funds in the Enterprise in the amount necessary to cure its negative net worth and bring it back up to zero. Ex. A at 5, 19 (PSPAs § 2.2). By late 2008, the Enterprises’ liabilities exceeded their assets as measured by GAAP. Accordingly, Treasury was required to infuse billions of dollars, ultimately a total of \$187 billion, pursuant to the PSPAs. *See* Am. Compl. ¶ 73. Had Treasury not cured each and every one of the post-conservatorship net worth deficiencies reported by the Enterprises, one or both of the Enterprises would have been immediately forced into mandatory receivership and liquidation. *See* 12 U.S.C. § 4617(a)(4).

While the PSPAs initially capped Treasury’s commitment at \$100 billion per Enterprise, the parties subsequently amended the PSPAs (via the “First Amendment”) to double the cap to \$200 billion per Enterprise. Ex. A at 30-31, 35-36 (Amendment to PSPAs (May 6, 2009)); Am. Compl. ¶ 66. Thereafter, the parties again amended the PSPAs (via the “Second Amendment”)

³ Because the PSPAs and Treasury Stock Certificates are “central to the claim[s],” and thereby incorporated by reference into the Complaint, the Court may consider the PSPAs in resolving this motion to dismiss. *Bassett v. Nat’l Collegiate Athletic Ass’n*, 528 F.3d 426, 430 (6th Cir. 2008).

to increase the amount of funds available under the commitment pursuant to a formula that resulted in a commitment to fund an additional \$117.6 billion (over and above the \$116.1 billion already infused) for Fannie Mae, and an additional \$140.5 billion (over and above the \$71.3 billion already infused) for Freddie Mac. *See* Am. Compl. ¶ 67. Accordingly, to this day and for the indefinite future, Treasury has committed an additional \$258 billion, for a total of \$455 billion, to the Enterprises.

B. The Conservator Agrees to Terms in the PSPAs That Facilitate Treasury’s Satisfaction of Its Statutory Obligation to “Protect the Taxpayer”

In consideration of its unprecedented commitment to invest hundreds of billions of dollars into the Enterprises, the PSPAs gave Treasury a comprehensive and integrated bundle of rights, entitlements, and financial commitments. Indeed, the statutory authority by which Treasury is permitted to provide funding to the Enterprises specifically requires that any such investment by Treasury be structured so as to “protect the taxpayer.” 12 U.S.C. § 1719(g)(1)(B)-

(C). Accordingly, the original PSPAs granted Treasury the following entitlements:

- Initial Commitment Fee: consisting of (a) an initial senior liquidation preference of \$1 billion for each Enterprise and (b) warrants to acquire 79.9% of the Enterprises’ common stock for a nominal payment. Ex. A at 7, 21 (PSPAs § 3.1).
- Senior Liquidation Preference: equal to the total amount of Enterprise draws on Treasury funds, plus the \$1 billion initial liquidation preference (*id.* (PSPAs § 3.3))—currently \$189 billion. Thus, if the Enterprises are liquidated through receivership, Treasury must be paid \$189 billion from the proceeds of the liquidation before other shareholders recover anything.
- Dividends: requiring the Enterprises to pay Treasury a 10% annual dividend, assessed quarterly, based on the total amount of the liquidation preference. Ex. B at 2-4 (Treasury Stock Certificate § 2). The dividend was cumulative, and if the Enterprises failed to pay the dividend in cash, then the dividend would accrue at a rate of 12% and add to Treasury’s outstanding liquidation preference. *Id.* at 3 (Treasury Stock Certificate § 2(c)).
- Periodic Commitment Fee: payment to Treasury, *over and above the dividends*, of an annual fee “intended to fully compensate [Treasury] for the support provided by the ongoing Commitment.” Ex. A at 7, 21 (PSPAs § 3.2(b)). The amount of the periodic

commitment fee, to be imposed beginning January 2010, was to reflect “the market value of the Commitment as then in effect.” *Id.* The PSPAs gave Treasury the right, in its sole discretion, to waive the periodic commitment fee for a year at a time “based on adverse conditions in the United States mortgage market.” *Id.* The fee was deferred from 2010 to 2011 by the Second Amendment, Ex. A at 43, 49, and Treasury waived the fee in 2011 and 2012. Am. Compl. ¶ 62.

- PSPA Covenants: imposing a series of covenants that preclude the Enterprises from paying dividends on common stock and preferred stock, redeeming stock, or exiting from conservatorship (other than through receivership) without Treasury consent, and that make clear that shareholders are not third-party beneficiaries to the PSPAs. *See* Ex. A at 9-12, 23-26 (PSPAs §§ 5.1, 5.3, 5.6, 6.1).

In sum, the PSPAs—consistent with Treasury’s statutory obligation to “protect the taxpayer”—are intended to assure that federal taxpayers are fully compensated for their ongoing actions and commitments to sustain the Enterprises’ operations after they were placed in conservatorships.

IV. The Third Amendment Replaces the Dividend and Periodic Commitment Fee with a Variable Dividend Based on Net Worth

On August 17, 2012, FHFA and Treasury executed the Third Amendment to the PSPAs, which (1) eliminated the 10% fixed annual dividend, (2) added a quarterly variable dividend in the amount (if any) of each Enterprise’s positive net worth, and (3) suspended the periodic commitment fee for as long as the quarterly variable dividend is in effect. Ex. A at 52-67 (Third Amendment to PSPAs (Aug. 17, 2012)). The Third Amendment thus exchanged future payments (a variable dividend equal to profits earned, which historically averaged well below \$19 billion⁴) for relief from future obligations (fixed dividends of at least \$19 billion annually plus commitment fees). The Third Amendment thus made it unnecessary to calculate and impose the periodic commitment fee going forward. Am. Compl. ¶ 102.

⁴ Fannie Mae, Quarterly Report (Form 10-Q) (Aug. 8, 2012); Freddie Mac, Quarterly Report (Form 10-Q) (Aug. 7, 2012).

RELATED ACTIONS

Plaintiff's complaint follows ten nearly identical complaints filed in the U.S. District Court of the District of Columbia (the "D.D.C. Actions"), in which other shareholders of the Enterprises challenged the Third Amendment by asserting various claims—including the same APA claims asserted here. On September 30, 2014, Judge Lamberth dismissed the D.D.C. Actions and all claims asserted therein. *See Perry Capital LLC v. Lew*, 70 F. Supp. 3d 208, 246 (D.D.C. 2014).

Likewise, on February 3, 2015, Judge Pratt of the U.S. District Court for the Southern District of Iowa dismissed another shareholder complaint challenging the Third Amendment, holding that the claims were barred by issue preclusion in light of the *Perry Capital* decision. *Cont'l W. Ins. Co. v. FHFA*, 83 F. Supp. 3d 828, 840 (S.D. Iowa 2015). Judge Pratt also concluded that the claims should be dismissed for the same reasons as set forth in the *Perry Capital* decision. *Id.* at 840 n.6.⁵

The *Perry Capital* decision currently is on appeal in the U.S. Court of Appeals for the D.C. Circuit. *See Perry Capital LLC v. Lew*, Nos. 14-5243, 14-5254, 14-5260, 14-5262 (D.C. Cir.). The plaintiff in *Continental Western* did not appeal.

⁵ There are also a series of actions concerning the Third Amendment pending in the U.S. Court of Federal Claims (the "C.F.C. Actions"). *See Fairholme Funds, Inc. v. United States*, No. 1:13-cv-00465C (Fed. Cl. filed Jul. 9, 2013); *Cacciapalle v. United States*, No. No. 1:13-cv-466C (Fed. Cl. filed Jul. 10, 2013); *American European Ins. Co. v. United States*, No. No. 1:13-cv-496C (Fed. Cl. filed Jul. 19, 2013); *Arrowood Indemnity Co. v. United States*, No. 1:13-cv-698C (Fed. Cl. filed Sept. 18, 2013); *Dennis v. United States*, No. 1:13-cv-542C (Fed. Cl. filed Aug. 5, 2013); *Fisher v. United States*, No. 1:13-cv-608C (Fed. Cl. filed Aug. 26, 2013); *Reid v. United States*, No. 1:14-cv-152C (Fed. Cl. filed Feb. 26, 2014); *Rafter v. United States*, No. 1:14-cv-740C (Fed. Cl. filed Aug. 14, 2014).

Similar lawsuits have been filed by other Enterprise shareholders in the Northern District of Iowa and the District of Delaware. *Saxton v. FHFA*, No. 1:15-cv-00047 (N.D. Iowa filed May 28, 2015); *Jacobs v. FHFA*, No. 1:15-cv-00708-GMS (D. Del. filed Aug. 17, 2015). Defendants have moved to dismiss the complaints in both actions.

STANDARD OF REVIEW

FHFA moves to dismiss all claims pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Where, as here, a motion to dismiss for lack of jurisdiction is limited to a facial attack on the pleadings, it is subject to the same standard as a motion brought under Rule 12(b)(6). *See United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir.1994). “While factual attacks focus on the factual existence of subject matter jurisdiction, facial attacks challenge the sufficiency of the pleadings.” *Fenn v. Philips Elecs. N. Am. Corp.*, No. CIV.A. 14-96-DLB-JGW, 2015 WL 632154, at *2 (E.D. Ky. Feb. 13, 2015) (citing *Ritchie*, 15 F.3d at 598). “Facial attacks are evaluated under the same standard applicable to Rule 12(b)(6) motions.” *Id.* Accordingly, the Court “accept[s] all well-pled factual allegations as true,” but “[c]onclusory allegations or legal conclusions masquerading as factual allegations will not suffice.” *Bishop v. Lucent Techs., Inc.*, 520 F.3d 516, 519 (6th Cir. 2008). “The ‘[f]actual allegations must be enough to raise a right to relief above the speculative level’; they must ‘state a claim to relief that is plausible on its face.’” *Id.* (alteration in original) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

ARGUMENT

I. Section 4617(f) Bars Plaintiff’s Complaint

To enable the Conservator to carry out its functions, Congress expressly insulated the Conservator’s actions from all judicial review, mandating that “no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator.” 12 U.S.C.

§ 4617(f). Courts across the country consistently apply Section 4617(f) to bar all claims, such as those advanced in this action, seeking relief that would “restrain or affect” the exercise of the powers of FHFA as Conservator of the Enterprises.⁶ See, e.g., *Cnty. of Sonoma v. FHFA*, 710 F.3d 987, 993 (9th Cir. 2013); *Leon Cnty. v. FHFA*, 700 F.3d 1273, 1278-79 (11th Cir. 2012); *Town of Babylon v. FHFA*, 699 F.3d 221, 228 (2d Cir. 2012); *Massachusetts v. FHFA*, 54 F. Supp. 3d 94, 102 (D. Mass. 2014); *Gail C. Sweeney Estate Marital Trust v. U.S. Treasury Dep’t*, 68 F. Supp. 3d 116 (D.D.C. 2014).

These decisions under HERA are consistent with the substantial body of case law interpreting the materially identical provision governing Federal Deposit Insurance Corporation (“FDIC”) conservatorships and receiverships, 12 U.S.C. § 1821(j), which “‘effect[s] a sweeping ouster of courts’ power to grant equitable remedies’ . . . regardless of the claimant’s likelihood of success on the merits of his underlying claims.” *Hanson v. FDIC*, 113 F.3d 866, 871 (8th Cir. 1997) (quoting *Freeman v. FDIC*, 56 F.3d 1394, 1399 (D.C. Cir. 1995)).⁷ The statutory jurisdiction-withdrawal language is to be “construed broadly to constrain the court’s equitable powers.” *Dittmer Props., L.P. v. FDIC*, 708 F.3d 1011, 1016 (8th Cir. 2013). Indeed, “given the breadth of the statutory language . . . the statute would appear to bar a court from acting in

⁶ Plaintiff seeks only equitable and declaratory relief in her complaint. She asks the court *inter alia* to declare the Third Amendment a violation of HERA and arbitrary and capricious, to vacate the Third Amendment, to enjoin Treasury to return to the Enterprises all payments made pursuant to the Third Amendment, and to enjoin FHFA and Treasury from “taking any action whatsoever” pursuant to the Third Amendment. Am. Compl. ¶ 165(a)-(f).

⁷ Section 1821(j) provides that “no court may take any action . . . to restrain or affect the exercise of powers or functions of the [FDIC] as a conservator or a receiver.” 12 U.S.C. § 1821(j). “In analyzing the limits of the Court’s authority under § 4617(f), the Court may turn to precedent relating to [Section 1821(j)].” *Kuriakose v. Fed. Home Loan Mortg. Corp.*, 674 F. Supp. 2d 483, 493 (S.D.N.Y. 2009) (collecting cases).

virtually all circumstances.” *Nat’l Trust for Historic Preserv. in U.S. v. FDIC*, 21 F.3d 469, 472 (D.C. Cir. 1994) (Wald, J., concurring).

The analysis required to determine whether Section 4617(f) precludes judicial review is straightforward and “quite narrow.” *Bank of Am. Nat’l Ass’n v. Colonial Bank*, 604 F.3d 1239, 1243 (11th Cir. 2010) (discussing 12 U.S.C. § 1821(j)). The court “must first determine whether the challenged action is within the [Conservator]’s power or function” under HERA. *Dittmer Props., L.P.*, 708 F.3d at 1017 (citing *Bank of Am.*, 604 F.3d at 1243). If so, the Conservator “is protected from all court action that would ‘restrain or affect’ the exercise of those powers or functions.” *Bank of Am.*, 604 F.3d at 1243; *see also Cnty. of Sonoma*, 710 F.3d at 992 (“If the [challenged action] falls within FHFA’s conservator powers, it is insulated from review and th[e] case must be dismissed.”); *Town of Babylon*, 699 F.3d at 228 (“A conclusion that the challenged acts were directed to an institution in conservatorship and within the powers given to the conservator ends the [4617(f)] inquiry.”); *Furgatch v. RTC*, No. 93-20304 SW, 1993 WL 149084, at *2 (N.D. Cal. Apr. 30, 1993) (“[T]he only relevant question” is “whether the conservator or receiver is carrying out a statutory function or power. If so, no injunction may issue.”). Indeed, even allegations that a conservator or receiver acted improperly or unlawfully—or in breach of contract—“do[] not alter the calculus” so long as it is carrying out one of its statutory powers or functions. *Volges v. RTC*, 32 F.3d 50, 52 (2d Cir. 1994).

By definition, conservators are appointed only in difficult circumstances where hard choices must be made—here, two entities critical to the national economy required the investment of billions of taxpayer dollars to remain solvent and continue to perform their charter purposes. Inevitably, shareholders will disagree with some of the Conservator’s decisions, as Plaintiff does here. But if conservators can be hauled into court and put through the rigors of

protracted litigation every time a shareholder questions a conservator's decision, conservators will spend an inordinate and unnecessary amount of time litigating past decisions. Jurisdiction-withdrawal statutes such as Section 4617(f) embody Congress's policy judgment that enabling conservators to focus on the work Congress empowered them to do without the distraction of litigation is more important than leaving the courthouse doors open to all claims. As the court in *Perry Capital* observed: "Requiring the Court to evaluate the merits of FHFA's decision-making each time it considers HERA's jurisdictional bar would render the anti-injunction provision hollow, disregarding Congress' express intention to divest the Court of jurisdiction to restrain FHFA's 'exercise of [its] powers or functions' under HERA—*i.e.*, *how* FHFA employs its powers or functions." *Perry Capital*, 70 F. Supp. 3d at 226. Undermining Section 4617(f)'s jurisdictional bar, as Plaintiff seeks to do here, would impermissibly overturn this Congressional decision.

A. The Third Amendment Was an Exercise of the Conservator's Power to Operate the Enterprises

In HERA, Congress gave the Conservator "broad powers to operate Fannie and Freddie" as it sees fit, to "assume complete control" over the Enterprises and to exercise "exclusive authority over [their] business operations." *FHFA v. City of Chicago*, 962 F. Supp. 2d 1044, 1058, 1060 (N.D. Ill. 2013); *see also Cnty. of Sonoma*, 710 F.3d at 989 (recognizing FHFA's "broad powers" as Conservator); *Leon Cnty.*, 700 F.3d at 1279 (same). Of particular relevance here, Congress empowered the Conservator to "operate" the Enterprises, "carry on the business" of the Enterprises, enter into contracts on behalf of the Enterprises, and "transfer or sell any [Enterprise] asset or liability . . . without any approval, assignment, or consent." 12 U.S.C. § 4617(b)(2). Moreover, Congress authorized the Conservator to exercise all of these powers in

the manner the Conservator “*determines* is in the best interests of the [Enterprises] or the Agency.” *Id.* § 4617(b)(2)(J)(ii) (emphasis added).

By executing the Third Amendment, the Conservator did precisely that; it exercised its power to “operate the [Enterprises]” and to “conduct all business of the [Enterprises].” 12 U.S.C. § 4617(b)(2)(B)(i), (B)(iv). The PSPAs are funding agreements that provide the Enterprises with a capital backstop of hundreds of billions of dollars—an essential backstop for the confidence of financial markets and to the Enterprises’ ongoing operations. Securing essential funding is a quintessential act for the conservator of a financial institution.

The Conservator not only had authority to execute the PSPAs at their inception—which authority Plaintiff does not dispute—the Conservator likewise has ongoing authority to modify the PSPAs in a manner the Conservator believes, in its judgment, is in the best interests of the Enterprises or FHFA. By executing the Third Amendment, the Conservator modified the manner in which the Enterprises satisfy their obligations under the PSPAs—namely, by trading the Enterprises’ annual fixed dividend and periodic commitment fee obligations in exchange for the payment of a variable dividend based on net worth. This decision, reflecting the business and operational judgments of the Conservator, fits squarely within the Conservator’s plenary power under HERA. Section 4617(f) applies to preclude any judicial second-guessing of the Conservator’s execution of that plenary authority and therefore bars Plaintiff’s claims.

The courts in *Perry Capital* and *Continental Western* recognized this, holding that the Conservator acted within its statutory powers and functions in executing the Third Amendment. In *Perry Capital*, the court held that FHFA acted “within its broad statutory authority as a conservator” under HERA, which “grants the agency expansive discretion to act as it sees fit,” and “wide latitude to flexibly operate the GSEs over time.” 70 F. Supp. 3d at 227-28 & n.20; *see*

also id. at 225 (describing HERA as “a statute of exceptional scope that gave immense discretion to FHFA as a conservator”). The Court found that, by executing the Third Amendment, the Conservator exercised its “uncontested authority to determine how to conserve the viability of the GSEs” and how to “carry on the business of the institution[s].” *Id.* at 222-23. Likewise, in *Continental Western*, the court concluded that FHFA “did not act outside the power granted to [it] by HERA.” 83 F. Supp. 3d at 840 n.6. Moreover, both courts rightly reached their conclusions by reviewing the Conservator’s actions “on their face,” *id.*, considering “*what* the Third Amendment entails, rather than *why* FHFA executed [it],” *Perry Capital*, 70 F. Supp. 3d at 225, because “it is not the role of this Court to wade into the merits or motives of FHFA[’s] actions,” *Cont’l W. Ins. Co.*, 83 F. Supp. 3d at 840 n.6.

B. Section 4617(f) Bars Plaintiff’s Attempts to Second Guess the Conservator’s Decision Regarding How to Address the Enterprises’ Dividend Obligations

Seeking to avoid Section 4617(f), Plaintiff includes a variety of allegations challenging the merits of FHFA’s decision to enter into the Third Amendment; Plaintiff alleges the Third Amendment was unnecessary, harmful to the Enterprises and their shareholders, “inimical” to the Conservator’s duty to preserve and conserve assets, motivated to benefit the federal government, and directed by Treasury. *See, e.g.*, Am. Compl. ¶¶ 18, 25, 138, 141. Further, Plaintiff asserts that the Conservator should have utilized alternatives to the Third Amendment—such as accruing the PSPA dividends at a 12% rate rather than paying them in cash at 10%—that supposedly would have been more favorable to the Enterprises and their private shareholders (including Plaintiff). *See, e.g., id.* ¶ 119 (alleging that the “problem” the Third Amendment tried to solve, “a cash dividend too high to be serviced by earnings, could be addressed by other means”); *see also id.* ¶¶ 56-61, 101.

These allegations constitute pure second-guessing of the *merits* of the Conservator's decision-making and the *means* by which the Conservator exercised its discretion in operating the Enterprises. They run directly into the jurisdictional bar of Section 4617(f), which precludes a court from reviewing whether the Conservator did a bad job or took action based on an improper motive. So long as Conservator action is not "clearly outside" its statutory powers and functions, *Gross v. Bell Savs. Bank PA SA*, 974 F.2d 403, 407 (3d Cir. 1992), Section 4617(f) applies and "immuniz[es]" the Conservator from all "outside second-guessing," *Nat'l Trust for Historic Preservation in U.S. v. FDIC*, 995 F.2d 238, 240-41 (D.C. Cir. 1993). Put simply, the application of Section 4617(f) "does not hinge on [the court's] view of the proper exercise of otherwise-legitimate powers." *Gross*, 974 F.2d at 408 (applying Section 1821(j)). "[I]t is not [the court's] place to substitute our judgment for FHFA's" as Conservator. *Cnty. of Sonoma*, 710 F.3d at 993.⁸

The courts in *Perry Capital* and *Continental Western* rightly dismissed claims based on similar allegations as barred by Section 4617(f). In *Perry Capital*, the court explained that "[i]t is not [the Court's] place to substitute [its] judgment for FHFA's . . . let alone in the face of HERA's sweeping ouster of courts' power to grant equitable remedies[.]" 70 F. Supp. 3d at 226

⁸ See also *Ward v. Resolution Trust Corp.*, 996 F.2d 99, 103 (5th Cir. 1993) (applying Section 1821(j) and recognizing the "difference between the exercise of a function or power that is clearly outside the statutory authority of the [conservator or receiver] on the one hand, and improperly or even unlawfully exercising a function or power that is clearly authorized by statute on the other"); *Bank of Am. N.A.*, 604 F.3d at 1244 (same, because allegations concerning a receiver's "improper performance of its legitimate receivership functions" are "immaterial"); *Volges*, 32 F.3d at 52 (holding "the fact that the [conservator or receiver's] actions might violate some other provision of law does not render the anti-injunction provision inapplicable"); *Hindes v. FDIC*, No. CIV. A. 94-2355, 1995 WL 82684, at *1 (E.D. Pa. Feb. 28, 1995), *aff'd*, 137 F.3d 148 (3d Cir. 1998) (holding that allegations of "misconduct and derelictions of duty" by conservator or receiver "do not give the Court jurisdiction to issue the injunction plaintiffs seek here").

(internal citations omitted, alterations in original). The court thus “[r]ecogniz[ed] its role in the constitutional system,” declining “to evaluate the merits of whether the Third Amendment is sound financial—or even moral—policy.” *Id.* at 246; *see also Cnty. of Sonoma*, 710 F.3d at 993 (applying Section 4617(f) and observing “it is not our place to substitute our judgment for FHFA’s”); *Leon Cnty.*, 700 F.3d at 1279 (same, despite plaintiff’s “disagreement with [the Conservator’s] business assessment regarding the level of an investment risk”); *Massachusetts v. FHFA*, 54 F. Supp. 3d at 101 n.7 (“Congress has removed from the purview of the court the power to second-guess the FHFA’s business judgment”). And the court in *Continental Western* also recognized the significance of Section 4617(f), observing that “it is not the role of this Court to wade into the merits or motives of FHFA and Treasury’s actions.” *Cont’l W. Ins. Co.*, 83 F. Supp. 3d at 840 n.6.

In addition, the *Perry Capital* court correctly rejected arguments that the Third Amendment was improperly motivated—*i.e.*, to increase payments to Treasury—explaining that “FHFA’s underlying motives or opinions . . . do not matter for the purposes of § 4617(f)” because HERA “narrows the Court’s jurisdictional analysis to *what* the Third Amendment entails, rather than *why* FHFA executed the Third Amendment.” 70 F. Supp. 3d at 225-26; *see also Leon Cnty. v. FHFA*, 816 F. Supp. 2d 1205, 1208 (N.D. Fla. 2011) (“Congress barred judicial review of the conservator’s actions without making an exception for actions said to be taken from an improper motive.”), *aff’d*, 700 F.3d 1273 (11th Cir. 2012).

Equally ineffective are Plaintiff’s allegations that Section 4617(f) is inapplicable because Treasury allegedly “supervised” or “directed” the Conservator, purportedly in violation of 12 U.S.C. § 4617(a)(7). *See, e.g.*, Am. Compl. ¶¶ 25, 116, 141. Section 4617(a)(7) states that the Conservator “shall not be subject to the direction or supervision of any other agency of the

United States or any State in the exercise of [the Conservator's] rights, powers, and privileges.”

This provision is plainly meant to protect the Conservator from interference, not constrain the Conservator's own decision-making. Accordingly, this provision exempts the Conservator from being *involuntarily* subjected to legally binding directives of other federal agencies or states; it does not preclude the Conservator from *voluntarily* negotiating and executing agreements with other federal agencies or states. *See, e.g., Gail C. Sweeney Estate Marital Trust*, 68 F. Supp. 3d at 123-24 (observing that, in the PSPAs, FHFA and Treasury “occupy opposite sides of a contract, which is supported by consideration and requires each to perform in accordance with its terms”).⁹ Indeed, HERA expressly authorizes the Conservator to enter into contracts on behalf of the Enterprises, *see* 12 U.S.C. § 4617(b)(2)(B)(v), and to do so in a manner the Conservator “determines is in the best interests of the [Enterprises] or the Agency,” *id.* § 4617(b)(2)(J)(ii). The Conservator did just that, so Section 4617(a)(7) is inapposite. *See Perry Capital*, 70

⁹ *See also City of Chicago*, 962 F. Supp. 2d at 1056-57, 1061 (holding Section 4617(a)(7) impliedly preempts city ordinances that city was attempting to impose on the Conservator's operations); *Branch Banking & Trust Co. v. Frank*, No. 2:11-cv-1366, 2013 WL 6669100, at *11-12 (D. Nev. Dec. 17, 2013) (holding materially identical provision in FIRREA preempts state laws that plaintiff was trying to impose on receiver).

F. Supp. 3d at 226-27 (rejecting identical “direction and supervision” argument as based on “subjective, conclusory allegations”).¹⁰

Finally, Plaintiff also alleges that by executing the Third Amendment the Conservator intended to “wind up” the affairs of the Enterprises, which supposedly “cannot be reconciled with the agency’s statutory obligations as conservator of Fannie and Freddie.” Am. Compl. ¶ 121. That is wrong. HERA expressly authorizes the Conservator to “wind[] up the affairs” of the Enterprises if the Conservator elects to do so. 12 U.S.C. § 4617(a)(2). In all events, the Enterprises have not been wound up; they remain in operation and are not in receivership or liquidation. Indeed, this lawsuit is predicated on the *increased* revenues the Enterprises have earned while operating in conservatorship. *See* Am. Compl. ¶ 124 (alleging that but for the Third Amendment, “[p]rivate shareholders would have had an economic interest” in the \$59.5 billion of Fannie Mae’s first quarter 2013 profits that would have remained following payment of Treasury’s 10% dividend); *see also Perry Capital*, 70 F. Supp. 3d at 228 & n.21 (holding that the

¹⁰ Moreover, Plaintiff’s reliance on Section 4617(a)(7) fails for the additional reason that Plaintiff is not within the “zone of interests” of that provision. To state an APA claim, a plaintiff must be within the “zone of interests” intended to be protected by the specific statutory provision on which the APA claim is based. *See Ass’n of Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970); 5 U.S.C. § 702 (limiting APA claims to those “aggrieved . . . within the meaning of a relevant statute”). To determine whether a plaintiff is within the zone, the court must “consider the purposes of the specific statutory provision that is at issue,” and consider “who in practice can be expected to police the interests that the statute protects.” *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074-75 (D.C. Cir. 1998). Here, the purpose of Section 4617(a)(7) is to provide the Conservator a preemption defense to free it from any unwanted state or federal interference. *See City of Chicago*, 962 F. Supp. 2d at 1059 (describing Section 4617(a)(7) as “HERA’s preemption provision” that reflects “Congress[’s] inten[t] for FHFA to be the sole entity responsible for operating Fannie and Freddie’s nationwide business”); *Branch Banking*, 2013 WL 6669100, at *11 (in enacting materially identical provision applicable to FDIC conservators, “Congress expressly established its intent for the FDIC not to be subject to limitations imposed by states when acting in its capacity as a [conservator or] receiver of a failed bank”). As such, it is the Conservator—not the Enterprises’ shareholders—who is the party best positioned to “police” the interests of the statute and determine whether and when to assert Section 4617(a)(7) as a defense.

Enterprises are not in *de facto* liquidation because they “maintain an operational mortgage finance business and are, once again, profitable,” which created the “fundamental justification” for the lawsuits).

By executing the Third Amendment, the Conservator acted squarely within its statutory powers and functions. Accordingly, Section 4617(f) bars Plaintiff’s claims seeking equitable and declaratory relief—that is, all of the claims in the complaint—notwithstanding Plaintiff’s allegations concerning the efficacy, wisdom, and intent of the Third Amendment. Were the rule otherwise, a plaintiff easily could haul FHFA as Conservator into court and subject it to intrusive discovery—notwithstanding Congress’s clear withdrawal of jurisdiction—simply by making boilerplate allegations challenging the efficacy, wisdom, or intent of any Conservator action.¹¹

C. Newly Enacted Federal Legislation Confirms that FHFA and Treasury Acted Within Their Statutory Authority in Executing the Third Amendment

Recently enacted federal legislation, the Consolidated Appropriations Act, 2016 (the “Act”), provides further support for the conclusion that the statutory powers invested in FHFA and Treasury under HERA authorized them to execute the Third Amendment. Pub. L. 114-113, § 702, Tit. VII, Div. O, 129 Stat. 2242 (Dec. 18, 2015). Specifically, Section 702 of the Act amends certain aspects of the PSPAs, leaving other aspects intact. *Id.* § 702(b). Under HERA

¹¹ In addition, the APA expressly does not apply to challenges to agency actions (1) “to the extent that . . . statutes preclude judicial review,” 5 U.S.C. § 701(a)(1), or (2) when the “agency action[s] are committed to agency discretion by law,” *id.*, § 701(a)(2). *See Heckler v. Chaney*, 470 U.S. 821, 828 (1985) (“[B]efore any review at all may be had, a party must first clear the hurdle of § 701(a).”) Plaintiff’s complaint fails for both reasons. First, HERA explicitly precludes judicial review of Conservator action. *See* 12 U.S.C. § 4617(f). Second, HERA commits the operation of the Enterprises to the Conservator’s discretion. *See id.* § 4617(b)(2)(J)(ii). In *State of North Dakota v. Yeutter*, the Eighth Circuit examined a statute with provisions that apply if “*the Secretary determines*” that certain conditions are present, and it held that this language was not actionable under the APA because it “gives the Secretary extremely broad discretion and supplies no objective criteria” that could be used to evaluate the Secretary’s action. 914 F.2d 1031, 1035 (8th Cir. 1990).

and the PSPAs, Treasury had unfettered authority to sell or otherwise dispose of its preferred shares in the Enterprises. The Act limits that authority, barring Treasury from disposing of its preferred stock until 2018. *Id.* However, the Act otherwise leaves in place Treasury's rights under the Third Amendment to the PSPAs, including specifically the net worth dividend. *Id.*

The fact that Congress circumscribed Treasury's authority in one area—the right to sell the shares—but left Treasury's entitlement to the net worth dividend intact, demonstrates that the scope of the Conservator's and Treasury's powers includes the authority to execute the Third Amendment. As the Supreme Court has held, “[w]here an agency’s statutory construction has been fully brought to the attention of the public and the Congress, and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned.” *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 535 (1982) (internal quotation marks and citation omitted); *see also Doe v. Bin Laden*, 663 F.3d 64, 69 (2d Cir. 2011) (“‘Congress is presumed to be aware of a judicial interpretation of a statu[tory section]’ and partial amendment of a statute without touching the previously interpreted section ‘constitutes an implicit adoption of [the prior] interpretation,’ absent a clear indication to the contrary.” (quoting *Elkimya v. Dep’t of Homeland Security*, 484 F.3d 151, 154 (2d Cir. 2007))).

There can be no doubt that the PSPAs, including each of the three amendments thereto, have “been fully brought to the attention of . . . Congress.” *N. Haven Bd. of Ed.*, 456 U.S. at 535. Indeed, in the Act, Congress expressly referenced the Third Amendment’s August 17, 2012 revisions to the PSPAs in the “Definitions” provision of Section 702(a). And Treasury has reported to Congress about the Enterprises’ fulfillment of its payment obligations under the PSPAs. *See, e.g.*, 12 U.S.C. §1455(l)(1)(D).

Moreover, officials of both FHFA and Treasury have testified before Congress about the operation and effect of the net worth dividend,¹² and specifically about whether the then-proposed “Jumpstart GSE Reform Act,” ultimately adopted as part of the Consolidated Appropriations Act, would affect the PSPAs, which by that time already had been amended to include the net worth dividend.¹³ Specifically, on April 18, 2013, a Senate Banking Committee member asked then Acting FHFA Director DeMarco how the proposed legislation would affect the PSPAs. Mr. DeMarco explained that the then-proposed legislation would not affect the operation of the Conservatorships under the PSPAs as revised by the Third Amendment, or the continued payments to Treasury for the benefit of taxpayers:

[It] does not have any effect on the current state of conservatorship or the terms of the Preferred Stock Purchase Agreements (PSPAs). The bill will ensure that the returns on investment that the taxpayers funded through the PSPAs with each Enterprise continue to benefit the taxpayers¹⁴

Finally, Congress is also aware of the Third Amendment litigation.¹⁵ Thus, when it enacted the Consolidated Appropriations Act, Congress was fully informed regarding the PSPAs,

¹² See, e.g., *Sustainable Hous. Fin.: An Update from the Dir. of the Fed. Hous. Fin. Agency: Hearing Before the Comm. on Fin. Servs.*, 114th Cong. 21-22 (2015) (statement of Melvin L. Watt), available at <https://goo.gl/BWKay4>.

¹³ *Oversight of Fed. Hous. Fin. Agency: Evaluating FHFA as Regulator and Conservator: Hearing Before the Comm. on Banking, Hous., and Urban Affairs*, 113th Cong. 56-57 (2013) (statement of Edward DeMarco), available at <https://goo.gl/2w6awm>.

¹⁴ *Id.*

¹⁵ In a speech on the Senate floor prior to passage of the Act, Senator Corker rejected as “totally inappropriate” the recapitalization and release of the Enterprises, noting that passage of this legislation “put[s] to bed the idea that returning to the status quo is an option.” 161 Cong. Rec. S8760-61 (daily ed. Dec. 17, 2015) (statement of Sen. Corker). Senator Corker recognized “that the hedge funds still have claims to deal with in court” noting that the now just-passed legislation “does not prejudice those claims.” *Id.* at S8760; see also *id.* at S8857 (daily ed. Dec. 18, 2015) (statement of Sen. Brown). The new legislation does not directly address the ongoing litigation, but it supports the conclusion that Congress views the net worth dividend as within the statutory authority of FHFA and Treasury. See *N. Haven Bd. of Ed.*, 456 U.S. at 535.

the net worth dividend, and the litigation surrounding it. Congress considered whether the Act would affect the Third Amendment, was assured that the Third Amendment would not be disturbed, and enacted the statute. In these circumstances, passage of the Act serves as congressional confirmation that the Third Amendment was within the statutory authority of the Conservator and Treasury, and therefore Plaintiff's challenge to the net worth dividend is precluded by § 4617(f). *See N. Haven Bd. of Ed.*, 456 U.S. at 535.

* * *

Because Plaintiff seeks exclusively equitable and declaratory relief in her complaint, and Section 4617(f) bars the Court from awarding any such relief, the complaint may be dismissed on this ground alone and the Court need not proceed with any further analysis. In all events, the complaint also fails for several additional, independently dispositive reasons, as described below.

II. HERA Bars Shareholder Claims During Conservatorship

In addition to barring all claims seeking equitable and declaratory relief, HERA also bars prosecution of all shareholder claims during conservatorship. Congress provided that when FHFA is appointed Conservator, it “immediately succeed[s] to . . . *all rights*, titles, powers, and privileges of the [Enterprises], and *of any stockholder*” of the Enterprises. 12 U.S.C. § 4617(b)(2)(A)(i) (emphases added). Here, Plaintiff purports to assert “rights . . . of [a] stockholder”—all of her claims relate to shareholder interests—but the Conservator now holds materially “all” such rights exclusively, leaving Plaintiff with no interest to assert and no enforceable claim.

A. The Conservator Succeeds to All Shareholder Rights

Congress could not have been more clear: upon its appointment, the Conservator “immediately succeed[ed] to . . . *all rights, titles, powers, and privileges* of the [Enterprises], and *of any stockholder*, officer, or director *of [the Enterprises]* with respect to the [Enterprises] and

the assets of the [Enterprises].” 12 U.S.C. § 4617(b)(2)(A)(i) (emphases added). This broad, unequivocal language evidences Congress’s intent to ensure “that nothing was missed” and to “transfer[] everything it could to the [Conservator].” *Kellmer v. Raines*, 674 F.3d 848, 851 (D.C. Cir. 2012) (quoting *Pareto v. FDIC*, 139 F.3d 696, 700 (9th Cir. 1998)); see also *Hennepin Cnty. v. Fed. Nat’l Mortg. Ass’n*, 742 F.3d 818, 822 (8th Cir. 2014) (applying the “interpretive rule[]” of “all means all” to HERA’s exemption of FHFA from “all taxation”) (internal citation omitted). Accordingly, “[t]he shareholders’ rights are now the FHFA’s.” *Esther Sadowsky Testamentary Trust v. Syron*, 639 F. Supp. 2d 347, 351 (S.D.N.Y. 2009).

Additionally, HERA provides that only the Conservator can “determine[] [what] is in the best interests” of the Enterprises, 12 U.S.C. § 4617(b)(2)(J)(ii), and bars courts from “restrain[ing]” or “affect[ing]” the Conservator’s exercise of its statutory power, *id.* § 4617(f). Together, these provisions vest all control over the Enterprises exclusively in the Conservator, without sharing this control with shareholders. Numerous courts have held that Section 4617(f) itself displaces shareholder Plaintiff’s attempts to pursue derivative claims. See *Sweeney*, 68 F. Supp. 3d at 126 (concluding “plaintiff’s lawsuit would ‘affect’ and ‘interfere’ with the Conservator’s exercise of its powers”); *In re Fed. Home Loan Mortg. Corp. Derivative Litig.*, 643 F. Supp. 2d 790, 799 (E.D. Va. 2009) (“*In re Freddie Mac*”) (“find[ing] that allowing the [shareholder] plaintiffs to remain in this action would violate § 4617(f)”; *In re Fed. Nat’l Mortg. Ass’n Sec., Derivative, ERISA Litig.*, 629 F. Supp. 2d 1, 4 n. 4 (D.D.C. 2009) (“allowing [shareholder] plaintiffs to continue to pursue derivative claims independent of FHFA would require this Court to take action that would ‘restrain or affect’ FHFA’s discretion, which HERA explicitly prohibits”), *aff’d sub nom. Kellmer*, 674 F.3d 848; *Sadowsky*, 639 F. Supp. 2d at 351

(concluding “the suit brought by the [shareholder] would interfere with and potentially usurp precisely the powers granted to the FHFA by HERA”).

Indeed, courts uniformly have interpreted the provision of HERA transferring shareholder rights to the Conservator as barring the Enterprises’ shareholders from asserting claims during the conservatorships. For example, in *Kellmer*, the D.C. Circuit affirmed the district court’s substitution of the Conservator in place of the plaintiffs—shareholders of Fannie Mae—who had asserted a variety of shareholder derivative claims, including breach of fiduciary duty. The Court held:

[T]o resolve this issue, we need only heed Professor Frankfurter’s timeless advice: “ ‘(1) Read the statute; (2) read the statute; (3) read the statute!’ ” See Henry J. Friendly, *Mr. Justice Frankfurter and the Reading of Statutes*, in *Benchmarks* 196, 202 (1967). HERA provides that FHFA “shall, as conservator or receiver, and by operation of law, immediately succeed to . . . all rights, titles, powers, and privileges . . . of any stockholder.” 12 U.S.C. § 4617(b)(2)(A). ***This language plainly transfers shareholders’ ability to bring derivative suits—a “right[], title[], power[], [or] privilege[]”—to FHFA.***

674 F.3d at 850 (emphasis added). Numerous other courts are in accord.¹⁶ Thus, *Perry Capital* held unequivocally that “HERA’s plain language bars shareholder derivative suits, without exception.” *Perry Capital*, 70 F. Supp. 3d at 232; see also *Cont’l W. Ins. Co.*, 83 F. Supp. 3d at

¹⁶ See, e.g., *Gail C. Sweeney Estate Marital Trust*, 68 F. Supp. 3d at 119 (substituting FHFA in place of shareholder plaintiffs, observing “[i]t is undisputed that the plain language of HERA provides that only the Conservator may bring suit on behalf of Fannie Mae”); *In re Freddie Mac*, 643 F. Supp. 2d at 795 (same, holding that “the plain meaning of the statute is that *all* rights previously held by Freddie Mac’s stockholders, including the right to sue derivatively, now belong exclusively to the FHFA”); *Sadowsky*, 639 F. Supp. 2d at 351 (same, holding that “Congress has clearly announced that the FHFA has inherited all rights and powers of the Freddie Mac shareholders . . . [including] the right to substitute for shareholders in suits such as this one.”).

840 n.6 (“HERA grants all shareholder rights, including the right to bring a derivative suit, to FHFA.”).

Moreover, whether Plaintiff’s claims are characterized as derivative (*i.e.*, brought on behalf of the Enterprises) or direct (*i.e.*, brought on behalf of the shareholders themselves) is irrelevant for purposes of the inquiry under HERA; the Conservator succeeded to “all” shareholder rights and, when interpreting HERA, “all means all.” *Hennepin Cnty*, 742 F.3d at 822. To read a “direct claims” exception into the statutory language would render part of the statute meaningless. The Conservator already can pursue claims on behalf of the Enterprises by its succession to “all” rights of the Enterprises themselves. For the language all “rights . . . of any stockholder” to have any meaning, it must also encompass succession to direct claims that arise out of shareholders’ interests.

Thus, because Plaintiff’s claims are based on her alleged rights as a shareholder of the Enterprises, those claims are barred. The Conservator alone holds “all” shareholder rights during conservatorship.

B. The Conservator Succeeds to Shareholder Rights to Pursue Derivative Claims on Behalf of the Enterprises, Such as Those that Plaintiff Advances Here

Courts uniformly hold that the Conservator succeeds to any shareholder right or ability to pursue derivative claims on behalf of the Enterprises. *See, e.g., Kellmer*, 674 F.3d at 850 (holding “the statutory language [of HERA] bars shareholder derivative actions”); *In re Freddie Mac*, 643 F. Supp. 2d at 795 (holding that “the plain meaning of the statute is that *all* rights previously held by Freddie Mac’s stockholders, including the right to sue derivatively, now belong exclusively to the FHFA”). Because Plaintiff’s claims are derivative, the Conservator succeeds to these claims—requiring their dismissal—and the Court need not resolve whether the Conservator also succeeds to any direct shareholder claims. *See Perry Capital*, 70 F. Supp. at

229 & n.24, 233-39 (declining to address whether the Conservator succeeds to direct claims, having dismissed all purportedly direct claims on other grounds).

Whether federal law claims, like Plaintiff's, are direct or derivative is governed by federal law. See Wright & Miller, Federal Practice & Procedure § 1821; cf. *Rifkin v. Bear Stearns & Co.*, 248 F.3d 628, 631 (7th Cir. 2001) (“[S]tanding to bring a federal claim in federal court is exclusively a question of federal law . . .”). However, where standing turns on the “allocation of governing power within [a] corporation,” federal law often looks to state-law principles. *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 92 (1991); see, e.g., *Strougo v. Bassini*, 282 F.3d 162, 167-69 (2d Cir. 2002) (applying state law in addressing shareholder standing under federal statute); *Lapidus v. Hecht*, 232 F.3d 679, 682 (9th Cir. 2000) (“[We] rely upon state law to determine whether the plaintiffs’ claims are direct or derivative.”).

The principles for distinguishing direct from derivative claims are well-established and appear consistent across federal and state law.¹⁷ The analysis is governed by two questions: “(1) who suffered the alleged harm (the corporation or the suing stockholders, individually); and (2) who would receive the benefit of any recovery or other remedy (the corporation or the stockholders, individually)?” *Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031, 1033 (Del. 2004). To answer the first *Tooley* prong, the Court need look no further than Plaintiff's own complaint, which alleges that the Third Amendment “forces the Companies to operate on

¹⁷ Pursuant to their bylaws and 12 C.F.R. § 1710.10(a)-(b), Fannie Mae follows Delaware law, and Freddie Mac follows Virginia law, but only to the extent those laws are not inconsistent with federal law. Fannie Mae, Bylaws, Corporate Governance Practices & Procedures, Art. 1, § 1.05, www.fanniemae.com/resources/file/aboutus/pdf/bylaws.pdf; Freddie Mac, Bylaws, Corporate Governance Practices & Procedures, Art. 11, § 11.3, www.freddiemac.com/governance/pdf/bylaws_1009.pdf. Here, FHFA assumes that the principles for distinguishing between direct and derivative claims are consistent across federal and state law.

the edge of insolvency,” “requires the dissipation of [the Enterprises’] assets,” and renders the Enterprises “fundamentally unsafe and unsound.” Am. Compl. ¶¶ 25, 99. Indeed, Plaintiff’s central theory of the case is that the Third Amendment “unlawfully usurped” and distributed Enterprise assets, allegedly “preventing Plaintiff and other minority shareholders from receiving any dividends or value from their stock.” *Id.* ¶¶ 109, 163; *see also id.* ¶ 124 (alleging that the Third Amendment injured Plaintiff’s “economic interest” in residual first quarter 2013 profits that would have been credited to Fannie Mae’s capital). But allegations regarding the depletion of corporate assets assert a “classically derivative” injury. *In re J.P. Morgan Chase & Co. S’holder Litig.*, 906 A.2d 766, 771 (Del. 2006). Because Plaintiff cannot “prevail without showing an injury to the corporation[s]”—indeed, they allege injury to the corporations—Plaintiff’s claims are derivative. *Tooley*, 845 A.2d at 1036.¹⁸

Further confirming that Plaintiff’s claims are based on alleged harm to the Enterprises is the fact that the complaint is predicated on allegations that Plaintiff’s shares have lost “value” or that the price of the shares has declined as a result of the Third Amendment. *See, e.g.*, Am. Compl. ¶¶ 12, 95, 102, 150, 157. But it is well established that reduction in stock value is an

¹⁸ In an apparent effort to camouflage the derivative nature of her claims, Plaintiff’s Amended Complaint deletes statements about harm to the Enterprises that were in her original Complaint, even though her allegations otherwise remain unchanged. For example, whereas the original Complaint discussed “[t]he dramatically negative impact of the Net Worth Sweep on the Companies’ *balance sheets*,” Compl. ¶ 96 (emphasis added), the Amended Complaint discusses “[t]he dramatically negative impact of the Net Worth Sweep on the Companies’ *private shareholders . . .*,” Am. Compl. ¶ 124 (emphasis added). *Compare also, e.g.*, Compl. ¶ 111 (FHFA has expropriated the Companies’ entire net worth . . . to the detriment of *the Companies* and private shareholders such as Plaintiff” (emphasis added)) *with* Am. Compl. ¶ 139 (“FHFA has expropriated the Companies’ entire net worth . . . to the detriment of *private shareholders* such as Plaintiff” (emphasis added)). Despite Plaintiff’s perfunctory effort to delete the most obvious allegations of harm to the Enterprises, the theory of her case remains that Net Worth Sweep depleted the assets of the Enterprises, and all of the alleged harm to shareholders is a result of—and inseparable from—this alleged harm to the Enterprises.

“indirect injury” that is contingent upon an injury to the company itself; “[i]t does not arise out of any independent or direct harm to the stockholders, individually.” *Tooley*, 845 A.2d at 1037. Accordingly, where, as here, alleged wrongdoing “deplete[d] corporate assets that might otherwise [have] be[en] used to benefit the stockholders, such as through a dividend,” the claims are derivative because the wrongdoing “harms the stockholders only derivatively so far as their stock loses value.” *Protas v. Cavanagh*, No. CIV.A. 6555-VCG, 2012 WL 1580969, at *6 (Del. Ch. May 4, 2012); *see also Perry Capital*, 70 F. Supp. 3d at 229 n.24, 235 n.39 (claims alleging “damage to the price of their [Enterprise] shares, as valued by the market . . . are considered derivative under Delaware law”); *id.* 239 n.45 (claims alleging “*present* damage to the ‘value’ of the plaintiffs’ investment . . . [are] considered derivative and barred under HERA”).

Plaintiff’s claims also are derivative under the second *Tooley* prong, which provides that a claim is direct only if the relief sought “flows directly to the stockholders, not to the corporation.” *Tooley*, 845 A.2d at 1036. Here, the *only* “relief” sought—rescinding the Third Amendment and returning its resulting dividends from Treasury to the Enterprises—obviously would flow directly to the Enterprises. *See* Am. Compl. ¶ 165 (seeking an injunction requiring Treasury to “return to Fannie and Freddie all dividend payments made pursuant to the Net Worth Sweep”). The court in *Perry Capital* agreed, finding claims seeking the exact same relief to be derivative because the recovery sought would “not flow ‘directly to the stockholders,’” but instead “would flow first and foremost to the [Enterprises].” *See Perry Capital*, 70 F. Supp. 3d at 229 n.24 (citations omitted). The same is true here.

In sum, HERA bars each of Plaintiff’s claims, whether considered direct or derivative, because they are based on Plaintiff’s purported “rights” as an Enterprise shareholder and the Conservator has succeeded to “all” such “rights” during conservatorship. 12 U.S.C.

§ 4617(b)(2)(A)(i). In all events, Plaintiff's claims are—in substance—derivative, and thus are barred for that reason as well. *See id.*; *Kellmer*, 674 F.3d at 850.

C. There is No “Conflict of Interest” Exception to the Clear Statutory Language

In an unsuccessful effort to evade the clear statutory language transferring “all” shareholder rights to the Conservator, other shareholders have argued that courts should create a “conflict of interest” exception to HERA that would allow shareholders to assert claims during conservatorship. *Perry Capital* and *Continental Western* flatly rejected this argument. *See Perry Capital*, 70 F. Supp. at 231-32 (holding that no “conflict of interest” exception applies); *Cont'l W. Ins. Co.*, 83 F. Supp. 3d at 840 n.6 (agreeing with *Perry Capital*'s analysis).

To support their argument, plaintiffs have cited an exception that a couple of courts created in very limited circumstances under the Financial Institutions Reform, Recovery, and Enforcement Act (“FIRREA”) for FDIC receiverships. *First Hartford Corp. Pension Plan & Trust v. United States*, 194 F.3d 1279, 1295-96 (Fed. Cir. 1999); *Delta Savs. Bank v. United States*, 265 F.3d 1017, 1021-24 (9th Cir. 2001). *First Hartford* and *Delta Savings* were incorrectly decided because they interpreted FIRREA in a manner that is contrary to its plain text. *Perry Capital* refused to follow *First Hartford* and *Delta Savings*, finding that neither case provides a persuasive reason to create a judicial exception to the plain language of FIRREA (and HERA) that transfers “all” shareholder rights to the Conservator. 70 F. Supp. 3d at 231-32. As *Perry Capital* explained, these cases improperly relied on the historic rationale for shareholder derivative actions while disregarding the statutory language that barred such actions. *Id.* at 231. Moreover, even assuming *arguendo* that they were decided correctly under their own facts, their limited holdings should not be expanded to HERA conservatorships. As *Perry Capital* explained, *First Hartford* and *Delta Savings* involved receiverships, and their flawed rationale

“makes still less sense in the conservatorship context, where FHFA enjoys even greater power free from judicial intervention.” *Id.* at 231 n.30.

III. The Judgment in the D.D.C. Actions Precludes Plaintiff’s Complaint

Finally, Plaintiff’s complaint is also barred by the doctrine of issue preclusion, or collateral estoppel. As described above, Plaintiff’s claims, asserted derivatively on behalf of the Enterprises, were dismissed by the decision in *Perry Capital*. See 70 F. Supp. 3d 208.

Under the doctrine of issue preclusion, a final judgment “bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim.” *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (internal quotation marks and citation omitted). Issue preclusion has four elements: “(1) the precise issue raised in the present case must have been raised and actually litigated in the prior proceeding; (2) determination of the issue must have been necessary to the outcome of the prior proceeding; (3) the prior proceeding must have resulted in a final judgment on the merits; and (4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding.” *Smith v. SEC*, 129 F.3d 356, 362 (6th Cir. 2001) (en banc) (quoting *Detroit Police Officers Ass’n v. Young*, 824 F.2d 512, 515 (6th Cir. 1987)).

Precluding a party from disputing issues that it already has litigated “protects [its] adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” *Montana v. United States*, 440 U.S. 147, 153-54 (1979). Where another court already has decided an issue, this Court may not pass judgment on whether that holding was correct with respect to a party whose interests were litigated to conclusion in the prior proceeding. Issue preclusion prevents plaintiffs from re-litigating a decision against them,

regardless of how strongly they believe that decision is incorrect. *See B&B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 1308 (2015) (“[I]ssue preclusion prevent[s] relitigation of wrong decisions just as much as right ones.” (internal quotation marks omitted, alteration in original)). Each element of issue preclusion is met here.

First, the same-party requirement is satisfied because both *Perry Capital* and the present action were brought derivatively on behalf of the Enterprises, the real parties in interest in both cases. Where a second shareholder derivative action follows the resolution of a prior shareholder derivative action, the corporation—and thus all of its shareholders—necessarily are bound by the issues decided in the first action. The reason for this is obvious: “if the shareholder can sue on the corporation’s behalf, it follows that the corporation is bound by the results of the suit in subsequent litigation, even if different shareholders prosecute the suits.” *In re Sonus Networks, Inc., S’holder Derivative Litig.*, 499 F.3d 47, 64 (1st Cir. 2007) (internal citations omitted); *see also Nathan v. Rowan*, 651 F.2d 1223, 1225 (6th Cir. 1981) (holding that shareholder was precluded “from relitigating matters already decided in a prior shareholder’s derivative action against the same corporation and its directors.”). Indeed, where, as here, the issue to be litigated would be the same “no matter which shareholder served as nominal plaintiff,” then “defendants have already been put to the trouble of litigating the very question at issue, and the policy of repose strongly militates in favor of preclusion.” *Sonus*, 499 F.3d at 64.¹⁹

Although the plaintiffs in *Perry Capital* brought an array of claims concerning the Third Amendment, some of which the plaintiffs argued (incorrectly) were direct claims, the plaintiffs

¹⁹ *See also Arduini v. Hart*, 774 F.3d 622, 633-34 (9th Cir. 2014) (similar); *Respler ex rel. Magnum Hunter Res. Corp. v. Evans*, 17 F. Supp. 3d 418, 421 (D. Del. 2014) (similar); *Hanson v. Odyssey Healthcare, Inc.*, No. 3:04-CV-2751-N, 2007 WL 5186795, at *5 (N.D. Tex. Sept. 21, 2007) (similar).

also brought *expressly* derivative claims. *See* 70 F. Supp. 3d at 218 (“The class plaintiffs have brought . . . derivative claims for breach of fiduciary duty.”); *id.* at 229 (“The class plaintiffs bring derivative claims against both FHFA and Treasury on behalf of Fannie Mae and Freddie Mac.”). And here, as described above (*supra* Sec. II.B), Plaintiff’s claims are also derivative, not direct. Accordingly, because the Enterprises (not their shareholders) were the real parties in interest in both *Perry Capital* and the present case, the same party requirement is satisfied.

Second, the precise issues Plaintiff seeks to litigate here were raised and actually litigated in *Perry Capital*. There, the court considered whether HERA bars plaintiffs from asserting derivative claims against FHFA or Treasury during conservatorship. *Perry Capital*, 70 F. Supp. 3d at 229-32. The court held that HERA barred such claims, even where the Conservator allegedly has a “conflict of interest.” *Id.* at 231-32 (rejecting “conflict of interest” exception as contrary to HERA). On this basis, the Court dismissed the plaintiffs’ avowedly derivative claims. *Id.* at 233. Because these issues would be the same “no matter which shareholder served as nominal plaintiff,” and “defendants have already been put to the trouble of litigating the very question at issue, . . . the policy of repose strongly militates in favor of preclusion.” *Sonus*, 499 F.3d at 64.

Third, the dismissal of *Perry Capital* is a “final judgment on the merits” for purposes of issue preclusion. It does not matter that the action was dismissed for lack of subject-matter jurisdiction, rather than on the merits. “[W]hile a dismissal for lack of jurisdiction does not constitute an adjudication upon the merits, it does constitute a binding determination on the jurisdictional question, which is not subject to collateral attack,” and it therefore precludes a second cause of action plagued by the same jurisdictional defect. *Shaw v. Merritt-Chapman & Scott Corp.*, 554 F.2d 786, 789 (6th Cir. 1977); *see also Commodities Export Co. v. U.S.*

Customs Serv., 957 F.2d 223, 226 (6th Cir. 1992) (recognizing that jurisdictional determinations have preclusive effect).²⁰

Fourth, *Perry Capital*'s determination of these issues was "necessary to the outcome." See *Perry Capital*, 70 F. Supp. 3d at 219-39 (describing bases for dismissal of each of the counts raised by the plaintiffs in that action).

In sum, each element for issue preclusion has been satisfied. Plaintiff accordingly is bound by the resolution of these issues against the shareholder plaintiffs bringing derivative claims in *Perry Capital*, and her complaint should be dismissed.

CONCLUSION

For the foregoing reasons, as well as the reasons stated in Treasury's motion to dismiss, FHFA respectfully requests the Court dismiss with prejudice all claims asserted against it.

²⁰ The *Perry Capital* judgment is "final" notwithstanding the fact that an appeal of that judgment is pending in the D.C. Circuit. See *Cont'l W. Ins. Co.*, 83 F. Supp. 3d at 840. Under federal law, "the pendency of an appeal does not destroy the finality of the judgment for the purposes of issue preclusion . . ." *Epps Chevrolet Co. v. Nissan N. Am.*, 99 F. Supp. 3d 692, 701-02 (E.D. Ky. 2015) (citation omitted); see also *Smith v. SEC*, 129 F.3d 356, 362 n.7 (6th Cir. 1997); *Restatement (Second) of Judgments* § 13 cmt. f (1982).

Dated: January 11, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon the parties to this action by serving a copy upon each party listed below on January 11, 2016, by the Electronic Filing System.

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EXHIBIT A

AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT (this “Agreement”) dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY (“Purchaser”) and FEDERAL NATIONAL MORTGAGE ASSOCIATION (“Seller”), acting through the Federal Housing Finance Agency (the “Agency”) as its duly appointed conservator (the Agency in such capacity, “Conservator”). Reference is made to Article 1 below for the meaning of capitalized terms used herein without definition.

Background

A. The Agency has been duly appointed as Conservator for Seller pursuant to Section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as amended, the “FHE Act”). Conservator has determined that entry into this Agreement is (i) necessary to put Seller in a sound and solvent condition; (ii) appropriate to carry on the business of Seller and preserve and conserve the assets and property of Seller; and (iii) otherwise consistent with its powers, authorities and responsibilities.

B. Purchaser is authorized to purchase obligations and other securities issued by Seller pursuant to Section 304(g) of the Federal National Mortgage Association Charter Act, as amended (the “Charter Act”). The Secretary of the Treasury has determined, after taking into consideration the matters set forth in Section 304(g)(1)(C) of the Charter Act, that the purchases contemplated herein are necessary to (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer.

C. Purchaser and Seller executed and delivered the Senior Preferred Stock Purchase Agreement dated as of September 7, 2008 (the “Original Agreement”), and the parties thereto desire to amend and restate the Original Agreement in its entirety as set forth herein.

THEREFORE, the parties hereto agree as follows:

Terms and Conditions

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

“*Affiliate*” means, when used with respect to a specified Person (i) any direct or indirect holder or group (as defined in Sections 13(d) and 14(d) of the Exchange Act) of holders of 10.0% or more of any class of capital stock of such Person and (ii) any current or former director or officer of such Person, or any other current or former employee of such Person that currently exercises or formerly exercised a material degree of Control over such Person, including without limitation each current or former Named Executive Officer of such Person.

“*Available Amount*” means, as of any date of determination, the lesser of (a) the Deficiency Amount as of such date and (b) the Maximum Amount as of such date.

“*Business Day*” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under United States federal law and the law of the State of New York.

“*Capital Lease Obligations*” of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“*Control*” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“*Deficiency Amount*” means, as of any date of determination, the amount, if any, by which (a) the total liabilities of Seller exceed (b) the total assets of Seller (such assets excluding the Commitment and any unfunded amounts thereof), in each case as reflected on the balance sheet of Seller as of the applicable date set forth in this Agreement, prepared in accordance with GAAP; provided, however, that:

(i) for the avoidance of doubt, in measuring the Deficiency Amount liabilities shall exclude any obligation in respect of any capital stock of Seller, including the Senior Preferred Stock contemplated herein;

(ii) in the event that Seller becomes subject to receivership or other liquidation process or proceeding, “Deficiency Amount” shall mean, as of any date of determination, the amount, if any, by which (a) the total allowed claims against the receivership or other applicable estate (excluding any liabilities of or transferred to any LLRE (as defined in Section 5.4(a)) created by a receiver) exceed (b) the total assets of such receivership or other estate (excluding the Commitment, any unfunded amounts thereof and any assets of or transferred to any LLRE, but including the value of the receiver’s interest in any LLRE);

(iii) to the extent Conservator or a receiver of Seller, or any statute, rule, regulation or court of competent jurisdiction, specifies or determines that a liability of Seller (including without limitation a claim against Seller arising from rescission of a purchase or sale of a security issued by Seller (or guaranteed by Seller or with respect to which Seller is otherwise liable) or for damages arising from the purchase, sale or retention of such a security) shall be subordinated (other than pursuant to a contract providing for such subordination) to all other liabilities of Seller or shall be treated on par with any class of equity of Seller, then such liability shall be excluded in the calculation of Deficiency Amount; and

(iv) the Deficiency Amount may be increased above the otherwise applicable amount by the mutual written agreement of Purchaser and Seller, each acting in its sole discretion.

“*Designated Representative*” means Conservator or (a) if Conservator has been superseded by a receiver pursuant to Section 1367(a) of the FHE Act, such receiver, or (b) if Seller is not in conservatorship or receivership pursuant to Section 1367(a) of the FHE Act, Seller’s chief financial officer.

“*Director*” shall mean the Director of the Agency.

“*Effective Date*” means the date on which this Agreement shall have been executed and delivered by both of the parties hereto.

“*Equity Interests*” of any Person shall mean any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity, ownership or profits of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“*GAAP*” means generally accepted accounting principles in effect in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time.

“*Indebtedness*” of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers’ acceptances and similar instruments and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing any Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations.

“*Liquidation End Date*” means the date of completion of the liquidation of Seller’s assets.

“*Maximum Amount*” means, as of any date of determination, \$100,000,000,000 (one hundred billion dollars), less the aggregate amount of funding under the Commitment prior to such date.

“*Mortgage Assets*” of any Person means assets of such Person consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such Person in accordance with GAAP as in effect as of the date hereof (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).

“*Mortgage Guarantee Obligations*” means guarantees, standby commitments, credit enhancements and other similar obligations of Seller, in each case in respect of Mortgage Assets.

“*Named Executive Officer*” has the meaning given to such term in Item 402(a)(3) of Regulation S-K under the Exchange Act, as in effect on the date hereof.

“*Person*” shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, estate, unincorporated organization or government or any agency or political subdivision thereof, or any other entity whatsoever.

“*SEC*” means the Securities and Exchange Commission.

“*Senior Preferred Stock*” means the Variable Liquidation Preference Senior Preferred Stock of Seller, substantially in the form of Exhibit A hereto.

“*Warrant*” means a warrant for the purchase of common stock of Seller representing 79.9% of the common stock of Seller on a fully-diluted basis, substantially in the form of Exhibit B hereto.

2. COMMITMENT

2.1. *Commitment.* Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the “Commitment”); provided, that in no event shall the aggregate amount funded under the Commitment exceed \$100,000,000,000 (one hundred billion dollars). The liquidation preference of the Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

2.2. *Quarterly Draws on Commitment.* Within fifteen (15) Business Days following the termination of the Deficiency Amount, if any, as of the end of each fiscal quarter of Seller which ends on or before the Liquidation End Date, the Designated Representative may, on behalf of Seller, request that Purchaser provide immediately available funds to Seller in an amount up to but not in excess of the Available Amount as of the end of such quarter. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains a certification of the Designated Representative that the requested amount does not exceed the Available Amount as of the end of the applicable quarter. Purchaser shall provide such funds within sixty (60) days of its receipt of such request or, following any determination by the Director that the Director will be mandated by law to appoint a receiver for Seller if such funds are not received sooner, such shorter period as may be necessary

to avoid such mandatory appointment of a receiver if reasonably practicable taking into consideration Purchaser's access to funds.

2.3. Accelerated Draws on Commitment. Immediately following any determination by the Director that the Director will be mandated by law to appoint a receiver for Seller prior to the Liquidation End Date unless Seller's capital is increased by an amount (the "Special Amount") up to but not in excess of the then current Available Amount (computed based on a balance sheet of Seller prepared in accordance with GAAP that differs from the most recent balance sheet of Seller delivered in accordance with Section 5.9(a) or (b)) on a date that is prior to the date that funds will be available to Seller pursuant to Section 2.2, Conservator may, on behalf of Seller, request that Purchaser provide to Seller the Special Amount in immediately available funds. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains certifications of Conservator that (i) the requested amount does not exceed the Available Amount (including computations in reasonable detail and satisfactory to Purchaser of the then existing Deficiency Amount) and (ii) the requested amount is required to avoid the imminent mandatory appointment of a receiver for Seller. Purchaser shall provide such funds within thirty (30) days of its receipt of such request or, if reasonably practicable taking into consideration Purchaser's access to funds, any shorter period as may be necessary to avoid mandatory appointment of a receiver.

2.4. Final Draw on Commitment. Within fifteen (15) Business Days following the determination of the Deficiency Amount, if any, as of the Liquidation End Date (computed based on a balance sheet of Seller as of the Liquidation End Date prepared in accordance with GAAP), the Designated Representative may, on behalf of Seller, request that Purchaser provide immediately available funds to Seller in an amount up to but not in excess of the Available Amount as of the Liquidation End Date. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains a certification of the Designated Representative that the requested amount does not exceed the Available Amount (including computations in reasonable detail and satisfactory to Purchaser of the Deficiency Amount as of the Liquidation End Date). Purchaser shall provide such funds within sixty (60) days of its receipt of such request.

2.5. Termination of Purchaser's Obligations. Subject to earlier termination pursuant to Section 6.7, all of Purchaser's obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser's obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate of \$100,000,000,000 (one hundred billion dollars). For the avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

3. PURCHASE OF SENIOR PREFERRED STOCK AND WARRANT; FEES

3.1. *Initial Commitment Fee.* In consideration of the Commitment, and for no additional consideration, on the Effective Date (or as soon thereafter as is practicable) Seller shall sell and issue to Purchaser, and Purchaser shall purchase from Seller, (a) one million (1,000,000) shares of Senior Preferred Stock, with an initial liquidation preference equal to \$1,000 per share (\$1,000,000,000 (one billion dollars) liquidation preference in the aggregate), and (b) the Warrant.

3.2. *Periodic Commitment Fee.* (a) Commencing March 31, 2010, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2010.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2009. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2009 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

3.3. *Increases of Senior Preferred Stock Liquidation Preference as a Result of Funding under the Commitment.* The aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall be automatically increased by an amount equal to the amount of each draw on the Commitment pursuant to Article 2 that is funded by Purchaser to Seller, such increase to occur simultaneously with such funding and ratably with respect to each share of Senior Preferred Stock.

3.4. *Notation of Increase in Liquidation Preference.* Seller shall duly mark its records to reflect each increase in the liquidation preference of the Senior Preferred Stock contemplated

herein (but, for the avoidance of doubt, such increase shall be effective regardless of whether Seller has properly marked its records).

4. REPRESENTATIONS

Seller represents and warrants as of the Effective Date, and shall be deemed to have represented and warranted as of the date of each request for and funding of an advance under the Commitment pursuant to Article 2, as follows:

4.1. *Organization and Good Standing.* Seller is a corporation, chartered by the Congress of the United States, duly organized, validly existing and in good standing under the laws of the United States and has all corporate power and authority to carry on its business as now conducted and as proposed to be conducted.

4.2. *Organizational Documents.* Seller has made available to Purchaser a complete and correct copy of its charter and bylaws, each as amended to date (the “Organizational Documents”). The Organizational Documents are in full force and effect. Seller is not in violation of any provision of its Organizational Documents.

4.3. *Authorization and Enforceability.* All corporate or other action on the part of Seller or Conservator necessary for the authorization, execution, delivery and performance of this Agreement by Seller and for the authorization, issuance and delivery of the Senior Preferred Stock and the Warrant being purchased under this Agreement, has been taken. This Agreement has been duly and validly executed and delivered by Seller and (assuming due authorization, execution and delivery by the Purchaser) shall constitute the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the extent the enforceability thereof may be limited by bankruptcy laws, insolvency laws, reorganization laws, moratorium laws or other laws of general applicability affecting creditors’ rights generally or by general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law). The Agency is acting as conservator for Seller under Section 1367 of the FHE Act. The Board of Directors of Seller, by valid action at a duly called meeting of the Board of Directors on September 6, 2008, consented to the appointment of the Agency as conservator for purposes of Section 1367(a)(3)(I) of the FHE Act, and the Director of the Agency has appointed the Agency as Conservator for Seller pursuant to Section 1367(a)(1) of the FHE Act, and each such action has not been rescinded, revoked or modified in any respect.

4.4. *Valid Issuance.* When issued in accordance with the terms of this Agreement, the Senior Preferred Stock and the Warrant will be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens and preemptive rights. The shares of common stock to which the holder of the Warrant is entitled have been duly and validly reserved for issuance. When issued and delivered in accordance with the terms of this Agreement and the Warrant, such shares will be duly authorized, validly issued, fully paid and nonassessable, free and clear of all liens and preemptive rights.

4.5. *Non-Contravention.*

(a) The execution, delivery or performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not and will not (i) conflict with or violate any provision of the Organizational Documents of Seller; (ii) conflict with or violate any law, decree or regulation applicable to Seller or by which any property or asset of Seller is bound or affected, or (iii) result in any breach of, or constitute a default (with or without notice or lapse of time, or both) under, or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a lien upon any of the properties or assets of Seller, pursuant to any note, bond, mortgage, indenture or credit agreement, or any other contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Seller is a party or by which Seller is bound or affected, other than, in the case of clause (iii), any such breach, default, termination, amendment, acceleration, cancellation or lien that would not have and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, property, operations or condition of the Seller, the authority of the Conservator or the validity or enforceability of this Agreement (a “Material Adverse Effect”).

(b) The execution and delivery of this Agreement by Seller does not, and the consummation by Seller of the transactions contemplated by this Agreement will not, require any consent, approval, authorization, waiver or permit of, or filing with or notification to, any governmental authority or any other person, except for such as have already been obtained.

5. COVENANTS

From the Effective Date until such time as the Senior Preferred Stock shall have been repaid or redeemed in full in accordance with its terms:

5.1. *Restricted Payments.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, declare or pay any dividend (preferred or otherwise) or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of Seller’s Equity Interests (other than with respect to the Senior Preferred Stock or the Warrant) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of Seller’s Equity Interests (other than the Senior Preferred Stock or the Warrant), or set aside any amount for any such purpose.

5.2. *Issuance of Capital Stock.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, sell or issue Equity Interests of Seller or any of its subsidiaries of any kind or nature, in any amount, other than the sale and issuance of the Senior Preferred Stock and Warrant on the Effective Date and the common stock subject to the Warrant upon exercise thereof, and other than as required by (and pursuant to) the terms of any binding agreement as in effect on the date hereof.

5.3. *Conservatorship.* Seller shall not (and Conservator, by its signature below, agrees that it shall not), without the prior written consent of Purchaser, terminate, seek termination of or permit to be terminated the conservatorship of Seller pursuant to Section 1367 of the FHE Act, other

than in connection with a receivership pursuant to Section 1367 of the FHE Act.

5.4. *Transfer of Assets.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, sell, transfer, lease or otherwise dispose of (in one transaction or a series of related transactions) all or any portion of its assets (including Equity Interests in other persons, including subsidiaries), whether now owned or hereafter acquired (any such sale, transfer, lease or disposition, a “Disposition”), other than Dispositions for fair market value:

(a) to a limited life regulated entity (“LLRE”) pursuant to Section 1367(i) of the FHE Act;

(b) of assets and properties in the ordinary course of business, consistent with past practice;

(c) in connection with a liquidation of Seller by a receiver appointed pursuant to Section 1367(a) of the FHE Act;

(d) of cash or cash equivalents for cash or cash equivalents; or

(e) to the extent necessary to comply with the covenant set forth in Section 5.7 below.

5.5. *Indebtedness.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, incur, assume or otherwise become liable for (a) any Indebtedness if, after giving effect to the incurrence thereof, the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis would exceed 110.0% of the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis as of June 30, 2008 or (b) any Indebtedness if such Indebtedness is subordinated by its terms to any other Indebtedness of Seller or the applicable subsidiary. For purposes of this covenant the acquisition of a subsidiary with Indebtedness will be deemed to be the incurrence of such Indebtedness at the time of such acquisition.

5.6. *Fundamental Changes.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, (i) merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, (ii) effect a reorganization or recapitalization involving the common stock of Seller, a reclassification of the common stock of Seller or similar corporate transaction or event or (iii) purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or substantially all of the assets of any other Person or any division, unit or business of any Person.

5.7. *Mortgage Assets.* Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, \$850 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets of Seller as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than \$250 billion in Mortgage Assets.

5.8. *Transactions with Affiliates.* Seller shall not, and shall not permit any of its subsidiaries to, without the prior written consent of Purchaser, engage in any transaction of any kind or nature with an Affiliate of Seller unless such transaction is (i) pursuant to this Agreement, the Senior Preferred Stock or the Warrant, (ii) upon terms no less favorable to Seller than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of Seller or (iii) a transaction undertaken in the ordinary course or pursuant to a contractual obligation or customary employment arrangement in existence as of the date hereof.

5.9. *Reporting.* Seller shall provide to Purchaser:

(a) not later than the time period specified in the SEC's rules and regulations with respect to issuers as to which Section 13 and 15(d) of the Exchange Act apply, annual reports on Form 10-K (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form);

(b) not later than the time period specified in the SEC's rules and regulations with respect to issuers as to which Section 13 and 15(d) of the Exchange Act apply, reports on Form 10-Q (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form);

(c) promptly from time to time after the occurrence of an event required to be therein reported (and in any event within the time period specified in the SEC's rules and regulations), such other reports on Form 8-K (or any successor or comparable form);

(d) concurrently with any delivery of financial statements under paragraphs (a) or (b) above, a certificate of the Designated Representative, (i) certifying that Seller is (and since the last such certificate has at all times been) in compliance with each of the covenants contained herein and that no representation made by Seller herein or in any document delivered pursuant hereto or in connection herewith was false or misleading in any material respect when made, or, if the foregoing is not true, specifying the nature and extent of the breach of covenant and/or representation and any corrective action taken or proposed to be taken with respect thereto, and (ii) setting forth computations in reasonable detail and satisfactory to the Purchaser of the Deficiency Amount, if any;

(e) promptly, from time to time, such other information regarding the operations, business affairs, plans, projections and financial condition of Seller, or compliance with the terms of this Agreement, as Purchaser may reasonably request; and

(f) as promptly as reasonably practicable, written notice of the following:

(i) the occurrence of the Liquidation End Date;

(ii) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any governmental authority or in arbitration, against Conservator, Seller or any other Person which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(iii) any other development that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect.

5.10. *Executive Compensation.* Seller shall not, without the consent of the Director, in consultation with the Secretary of the Treasury, enter into any new compensation arrangements with, or increase amounts or benefits payable under existing compensation arrangements of, any Named Executive Officer of Seller.

6. MISCELLANEOUS

6.1. *No Third-Party Beneficiaries.* Until the termination of the Commitment, at any time during the existence and continuance of a payment default with respect to debt securities issued by Seller and/or a default by Seller with respect to any Mortgage Guarantee Obligations, any holder of such defaulted debt securities or beneficiary of such Mortgage Guarantee Obligations (collectively, the “Holders”) may (a) deliver notice to the Seller and the Designated Representative requesting exercise of all rights available to them under this Agreement to draw on the Commitment up to the lesser of the amount necessary to cure the outstanding payment defaults and the Available Amount as of the last day of the immediately preceding fiscal quarter (the “Demand Amount”), (b) if Seller and the Designated Representative fail to act as requested within thirty (30) days of such notice, seek judicial relief for failure of the Seller to draw on the Commitment, and (c) if Purchaser shall fail to perform its obligations in respect of any draw on the Commitment, and Seller and/or the Designated Representative shall not be diligently pursuing remedies in respect of such failure, file a claim in the United States Court of Federal Claims for relief requiring Purchaser to pay Seller the Demand Amount in the form of liquidated damages. Any payment of liquidated damages to Seller under the previous sentence shall be treated for all purposes, including the provisions of the Senior Preferred Stock and Section 3.3 of this Agreement, as a draw and funding of the Commitment pursuant to Article 2. The Holders shall have no other rights under or in respect of this Agreement, and the Commitment shall not otherwise be enforceable by any creditor of Seller or by any other Person other than the parties hereto, and no such creditor or other Person is intended to be, or shall be, a third party beneficiary of any provision of this Agreement.

6.2. *Non-Transferable; Successors.* The Commitment is solely for the benefit of Seller and shall not inure to the benefit of any other Person (other than the Holders to the extent set forth in Section 6.1), including any entity to which the charter of Seller may be transferred, to any LLRE or to any other successor to the assets, liabilities or operations of Seller. The Commitment may not be assigned or otherwise transferred, in whole or in part, to any Person (including, for the avoidance of doubt, any LLRE to which a receiver has assigned all or a portion of Seller’s assets) without the prior written consent of Purchaser (which may be withheld in its sole discretion). In no event shall any successor to Seller (including such an LLRE) be entitled to the benefit of the Commitment without the prior written consent of Purchaser. Seller and Conservator, for themselves and on behalf of their permitted successors, covenant and agree not to transfer or purport to transfer the Commitment in contravention of the terms hereof, and any such attempted transfer shall be null and void *ab initio*. It is the expectation of the parties that, in the event Seller were placed into receivership and an LLRE formed to purchase certain of its assets and assume certain of its liabilities, the Commitment would remain with Seller for the benefit of the holders of the

debt of Seller not assumed by the LLRE.

6.3. *Amendments; Waivers.* This Agreement may be waived or amended solely by a writing executed by both of the parties hereto, and, with respect to amendments to or waivers of the provisions of Sections 5.3, 6.2 and 6.11, the Conservator; provided, however, that no such waiver or amendment shall decrease the aggregate Commitment or add conditions to funding the amounts required to be funded by Purchaser under the Commitment if such waiver or amendment would, in the reasonable opinion of Seller, adversely affect in any material respect the holders of debt securities of Seller and/or the beneficiaries of Mortgage Guarantee Obligations, in each case in their capacities as such, after taking into account any alternative arrangements that may be implemented concurrently with such waiver or amendment. In no event shall any rights granted hereunder prevent the parties hereto from waiving or amending in any manner whatsoever the covenants of Seller hereunder.

6.4. *Governing Law; Jurisdiction; Venue.* This Agreement and the Warrant shall be governed by, and construed in accordance with, the federal law of the United States of America if and to the extent such federal law is applicable, and otherwise in accordance with the laws of the State of New York. The Senior Preferred Stock shall be governed as set forth in the terms thereof. Except as provided in section 6.1 and as otherwise required by law, the United States District Court for the District of Columbia shall have exclusive jurisdiction over all civil actions arising out of this Agreement, the Commitment, the Senior Preferred Stock and the Warrant, and venue for any such civil action shall lie exclusively in the United States District Court for the District of Columbia.

6.5. *Notices.* Any notices delivered pursuant to or in connection with this Agreement shall be delivered to the applicable parties at the addresses set forth below:

If to Seller:

Federal National Mortgage Association
c/o Federal Housing Finance Authority
1700 G Street, NW
4th Floor
Washington, DC 20552
Attention: General Counsel

If to Purchaser:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220
Attention: Under Secretary for Domestic Finance

with a copy to:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220
Attention: General Counsel

If to Conservator:

Federal Housing Finance Authority
1700 G Street, NW
4th Floor
Washington, DC 20552
Attention: General Counsel

All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail. All notices hereunder shall be effective upon receipt.

6.6. *Disclaimer of Guarantee.* This Agreement and the Commitment are not intended to and shall not be deemed to constitute a guarantee by Purchaser or any other agency or instrumentality of the United States of the payment or performance of any debt security or any other obligation, indebtedness or liability of Seller of any kind or character whatsoever.

6.7. *Effect of Order; Injunction; Decree.* If any order, injunction or decree is issued by any court of competent jurisdiction that vacates, modifies, amends, conditions, enjoins, stays or otherwise affects the appointment of Conservator as conservator of Seller or otherwise curtails Conservator's powers as such conservator (except in each case any order converting the conservatorship to a receivership under Section 1367(a) of the FHE Act), Purchaser may by written notice to Conservator and Seller declare this Agreement null and void, whereupon all transfers hereunder (including the issuance of the Senior Preferred Stock and the Warrant and any funding of the Commitment) shall be rescinded and unwound and all obligations of the parties (other than to effectuate such rescission and unwind) shall immediately and automatically terminate.

6.8. *Business Day.* To the extent that any deadline or date of performance of any right or obligation set forth herein shall fall on a day other than a Business Day, then such deadline or date of performance shall automatically be extended to the next succeeding Business Day.

6.9. *Entire Agreement.* This Agreement, together with the Senior Preferred Stock and Warrant, contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, term sheets, statements, letters of intent or representations, written or oral, with respect thereto.

6.10. *Remedies.* In the event of a breach by Seller of any covenant or representation of Seller set forth herein, Purchaser shall be entitled to specific performance (in the case of a breach of

covenant), damages and such other remedies as may be available at law or in equity; provided, that Purchaser shall not have the right to terminate the Commitment solely as a result of any such breach, and compliance with the covenants and the accuracy of the representations set forth in this Agreement shall not be conditions to funding the Commitment.

6.11. *Tax Reporting.* Neither Seller nor Conservator shall take, or shall permit any of their respective successors or assigns to take, a position for any tax, accounting or other purpose that is inconsistent with Internal Revenue Service Notice 2008-76 (or the regulations to be issued pursuant to such Notice) regarding the application of Section 382 of the Internal Revenue Code of 1986, as amended, a copy of which Notice has been provided to Seller in connection with the execution of this Agreement.

6.12. *Non-Severability.* Each of the provisions of this Agreement is integrated with and integral to the whole and shall not be severable from the remainder of the Agreement. In the event that any provision of this Agreement, the Senior Preferred Stock or the Warrant is determined to be illegal or unenforceable, then Purchaser may, in its sole discretion, by written notice to Conservator and Seller, declare this Agreement null and void, whereupon all transfers hereunder (including the issuance of the Senior Preferred Stock and the Warrant and any funding of the Commitment) shall be rescinded and unwound and all obligations of the parties (other than to effectuate such rescission and unwind) shall immediately and automatically terminate.

[Signature Page Follows]

AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT (this “Agreement”) dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY (“Purchaser”) and FEDERAL HOME LOAN MORTGAGE CORPORATION (“Seller”), acting through the Federal Housing Finance Agency (the “Agency”) as its duly appointed conservator (the Agency in such capacity, “Conservator”). Reference is made to Article 1 below for the meaning of capitalized terms used herein without definition.

Background

A. The Agency has been duly appointed as Conservator for Seller pursuant to Section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (as amended, the “FHE Act”). Conservator has determined that entry into this Agreement is (i) necessary to put Seller in a sound and solvent condition; (ii) appropriate to carry on the business of Seller and preserve and conserve the assets and property of Seller; and (iii) otherwise consistent with its powers, authorities and responsibilities.

B. Purchaser is authorized to purchase obligations and other securities issued by Seller pursuant to Section 306(l) of the Federal Home Loan Mortgage Corporation Act, as amended (the “Charter Act”). The Secretary of the Treasury has determined, after taking into consideration the matters set forth in Section 306(l)(1)(C) of the Charter Act, that the purchases contemplated herein are necessary to (i) provide stability to the financial markets; (ii) prevent disruptions in the availability of mortgage finance; and (iii) protect the taxpayer.

C. Purchaser and Seller executed and delivered the Senior Preferred Stock Purchase Agreement dated as of September 7, 2008 (the “Original Agreement”), and the parties thereto desire to amend and restate the Original Agreement in its entirety as set forth herein.

THEREFORE, the parties hereto agree as follows:

Terms and Conditions

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

“*Affiliate*” means, when used with respect to a specified Person (i) any direct or indirect holder or group (as defined in Sections 13(d) and 14(d) of the Exchange Act) of holders of 10.0% or more of any class of capital stock of such Person and (ii) any current or former director or officer of such Person, or any other current or former employee of such Person that currently exercises or formerly exercised a material degree of Control over such Person, including without limitation each current or former Named Executive Officer of such Person.

“*Available Amount*” means, as of any date of determination, the lesser of (a) the Deficiency Amount as of such date and (b) the Maximum Amount as of such date.

“*Business Day*” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under United States federal law and the law of the State of New York.

“*Capital Lease Obligations*” of any Person shall mean the obligations of such Person to pay rent or other amounts under any lease of (or other similar arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP and, for purposes hereof, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

“*Control*” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“*Deficiency Amount*” means, as of any date of determination, the amount, if any, by which (a) the total liabilities of Seller exceed (b) the total assets of Seller (such assets excluding the Commitment and any unfunded amounts thereof), in each case as reflected on the balance sheet of Seller as of the applicable date set forth in this Agreement, prepared in accordance with GAAP; provided, however, that:

(i) for the avoidance of doubt, in measuring the Deficiency Amount liabilities shall exclude any obligation in respect of any capital stock of Seller, including the Senior Preferred Stock contemplated herein;

(ii) in the event that Seller becomes subject to receivership or other liquidation process or proceeding, “Deficiency Amount” shall mean, as of any date of determination, the amount, if any, by which (a) the total allowed claims against the receivership or other applicable estate (excluding any liabilities of or transferred to any LLRE (as defined in Section 5.4(a)) created by a receiver) exceed (b) the total assets of such receivership or other estate (excluding the Commitment, any unfunded amounts thereof and any assets of or transferred to any LLRE, but including the value of the receiver’s interest in any LLRE);

(iii) to the extent Conservator or a receiver of Seller, or any statute, rule, regulation or court of competent jurisdiction, specifies or determines that a liability of Seller (including without limitation a claim against Seller arising from rescission of a purchase or sale of a security issued by Seller (or guaranteed by Seller or with respect to which Seller is otherwise liable) or for damages arising from the purchase, sale or retention of such a security) shall be subordinated (other than pursuant to a contract providing for such subordination) to all other liabilities of Seller or shall be treated on par with any class of equity of Seller, then such liability shall be excluded in the calculation of Deficiency Amount; and

(iv) the Deficiency Amount may be increased above the otherwise applicable amount by the mutual written agreement of Purchaser and Seller, each acting in its sole discretion.

“*Designated Representative*” means Conservator or (a) if Conservator has been superseded by a receiver pursuant to Section 1367(a) of the FHE Act, such receiver, or (b) if Seller is not in conservatorship or receivership pursuant to Section 1367(a) of the FHE Act, Seller’s chief financial officer.

“*Director*” shall mean the Director of the Agency.

“*Effective Date*” means the date on which this Agreement shall have been executed and delivered by both of the parties hereto.

“*Equity Interests*” of any Person shall mean any and all shares, interests, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity, ownership or profits of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“*GAAP*” means generally accepted accounting principles in effect in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time.

“*Indebtedness*” of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers’ acceptances and similar instruments and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing any Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations.

“*Liquidation End Date*” means the date of completion of the liquidation of Seller’s assets.

“*Maximum Amount*” means, as of any date of determination, \$100,000,000,000 (one hundred billion dollars), less the aggregate amount of funding under the Commitment prior to such date.

“*Mortgage Assets*” of any Person means assets of such Person consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such Person in accordance with GAAP as in effect as of the date hereof (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).

“*Mortgage Guarantee Obligations*” means guarantees, standby commitments, credit enhancements and other similar obligations of Seller, in each case in respect of Mortgage Assets.

“*Named Executive Officer*” has the meaning given to such term in Item 402(a)(3) of Regulation S-K under the Exchange Act, as in effect on the date hereof.

“*Person*” shall mean any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, estate, unincorporated organization or government or any agency or political subdivision thereof, or any other entity whatsoever.

“*SEC*” means the Securities and Exchange Commission.

“*Senior Preferred Stock*” means the Variable Liquidation Preference Senior Preferred Stock of Seller, substantially in the form of Exhibit A hereto.

“*Warrant*” means a warrant for the purchase of common stock of Seller representing 79.9% of the common stock of Seller on a fully-diluted basis, substantially in the form of Exhibit B hereto.

2. COMMITMENT

2.1. *Commitment.* Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the “Commitment”); provided, that in no event shall the aggregate amount funded under the Commitment exceed \$100,000,000,000 (one hundred billion dollars). The liquidation preference of the Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

2.2. *Quarterly Draws on Commitment.* Within fifteen (15) Business Days following the termination of the Deficiency Amount, if any, as of the end of each fiscal quarter of Seller which ends on or before the Liquidation End Date, the Designated Representative may, on behalf of Seller, request that Purchaser provide immediately available funds to Seller in an amount up to but not in excess of the Available Amount as of the end of such quarter. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains a certification of the Designated Representative that the requested amount does not exceed the Available Amount as of the end of the applicable quarter. Purchaser shall provide such funds within sixty (60) days of its receipt of such request or, following any determination by the Director that the Director will be mandated by law to appoint a receiver for Seller if such funds are not received sooner, such shorter period as may be necessary

to avoid such mandatory appointment of a receiver if reasonably practicable taking into consideration Purchaser's access to funds.

2.3. Accelerated Draws on Commitment. Immediately following any determination by the Director that the Director will be mandated by law to appoint a receiver for Seller prior to the Liquidation End Date unless Seller's capital is increased by an amount (the "Special Amount") up to but not in excess of the then current Available Amount (computed based on a balance sheet of Seller prepared in accordance with GAAP that differs from the most recent balance sheet of Seller delivered in accordance with Section 5.9(a) or (b)) on a date that is prior to the date that funds will be available to Seller pursuant to Section 2.2, Conservator may, on behalf of Seller, request that Purchaser provide to Seller the Special Amount in immediately available funds. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains certifications of Conservator that (i) the requested amount does not exceed the Available Amount (including computations in reasonable detail and satisfactory to Purchaser of the then existing Deficiency Amount) and (ii) the requested amount is required to avoid the imminent mandatory appointment of a receiver for Seller. Purchaser shall provide such funds within thirty (30) days of its receipt of such request or, if reasonably practicable taking into consideration Purchaser's access to funds, any shorter period as may be necessary to avoid mandatory appointment of a receiver.

2.4. Final Draw on Commitment. Within fifteen (15) Business Days following the determination of the Deficiency Amount, if any, as of the Liquidation End Date (computed based on a balance sheet of Seller as of the Liquidation End Date prepared in accordance with GAAP), the Designated Representative may, on behalf of Seller, request that Purchaser provide immediately available funds to Seller in an amount up to but not in excess of the Available Amount as of the Liquidation End Date. Any such request shall be valid only if it is in writing, is timely made, specifies the account of Seller to which such funds are to be transferred, and contains a certification of the Designated Representative that the requested amount does not exceed the Available Amount (including computations in reasonable detail and satisfactory to Purchaser of the Deficiency Amount as of the Liquidation End Date). Purchaser shall provide such funds within sixty (60) days of its receipt of such request.

2.5. Termination of Purchaser's Obligations. Subject to earlier termination pursuant to Section 6.7, all of Purchaser's obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser's obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate of \$100,000,000,000 (one hundred billion dollars). For the avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

3. PURCHASE OF SENIOR PREFERRED STOCK AND WARRANT; FEES

3.1. *Initial Commitment Fee.* In consideration of the Commitment, and for no additional consideration, on the Effective Date (or as soon thereafter as is practicable) Seller shall sell and issue to Purchaser, and Purchaser shall purchase from Seller, (a) one million (1,000,000) shares of Senior Preferred Stock, with an initial liquidation preference equal to \$1,000 per share (\$1,000,000,000 (one billion dollars) liquidation preference in the aggregate), and (b) the Warrant.

3.2. *Periodic Commitment Fee.* (a) Commencing March 31, 2010, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2010.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2009. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2009 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

3.3. *Increases of Senior Preferred Stock Liquidation Preference as a Result of Funding under the Commitment.* The aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall be automatically increased by an amount equal to the amount of each draw on the Commitment pursuant to Article 2 that is funded by Purchaser to Seller, such increase to occur simultaneously with such funding and ratably with respect to each share of Senior Preferred Stock.

3.4. *Notation of Increase in Liquidation Preference.* Seller shall duly mark its records to reflect each increase in the liquidation preference of the Senior Preferred Stock contemplated

herein (but, for the avoidance of doubt, such increase shall be effective regardless of whether Seller has properly marked its records).

4. REPRESENTATIONS

Seller represents and warrants as of the Effective Date, and shall be deemed to have represented and warranted as of the date of each request for and funding of an advance under the Commitment pursuant to Article 2, as follows:

4.1. *Organization and Good Standing.* Seller is a corporation, chartered by the Congress of the United States, duly organized, validly existing and in good standing under the laws of the United States and has all corporate power and authority to carry on its business as now conducted and as proposed to be conducted.

4.2. *Organizational Documents.* Seller has made available to Purchaser a complete and correct copy of its charter and bylaws, each as amended to date (the “Organizational Documents”). The Organizational Documents are in full force and effect. Seller is not in violation of any provision of its Organizational Documents.

4.3. *Authorization and Enforceability.* All corporate or other action on the part of Seller or Conservator necessary for the authorization, execution, delivery and performance of this Agreement by Seller and for the authorization, issuance and delivery of the Senior Preferred Stock and the Warrant being purchased under this Agreement, has been taken. This Agreement has been duly and validly executed and delivered by Seller and (assuming due authorization, execution and delivery by the Purchaser) shall constitute the valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the extent the enforceability thereof may be limited by bankruptcy laws, insolvency laws, reorganization laws, moratorium laws or other laws of general applicability affecting creditors’ rights generally or by general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law). The Agency is acting as conservator for Seller under Section 1367 of the FHE Act. The Board of Directors of Seller, by valid action at a duly called meeting of the Board of Directors on September 6, 2008, consented to the appointment of the Agency as conservator for purposes of Section 1367(a)(3)(I) of the FHE Act, and the Director of the Agency has appointed the Agency as Conservator for Seller pursuant to Section 1367(a)(1) of the FHE Act, and each such action has not been rescinded, revoked or modified in any respect.

4.4. *Valid Issuance.* When issued in accordance with the terms of this Agreement, the Senior Preferred Stock and the Warrant will be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens and preemptive rights. The shares of common stock to which the holder of the Warrant is entitled have been duly and validly reserved for issuance. When issued and delivered in accordance with the terms of this Agreement and the Warrant, such shares will be duly authorized, validly issued, fully paid and nonassessable, free and clear of all liens and preemptive rights.

4.5. *Non-Contravention.*

(a) The execution, delivery or performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not and will not (i) conflict with or violate any provision of the Organizational Documents of Seller; (ii) conflict with or violate any law, decree or regulation applicable to Seller or by which any property or asset of Seller is bound or affected, or (iii) result in any breach of, or constitute a default (with or without notice or lapse of time, or both) under, or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a lien upon any of the properties or assets of Seller, pursuant to any note, bond, mortgage, indenture or credit agreement, or any other contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Seller is a party or by which Seller is bound or affected, other than, in the case of clause (iii), any such breach, default, termination, amendment, acceleration, cancellation or lien that would not have and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the business, property, operations or condition of the Seller, the authority of the Conservator or the validity or enforceability of this Agreement (a “Material Adverse Effect”).

(b) The execution and delivery of this Agreement by Seller does not, and the consummation by Seller of the transactions contemplated by this Agreement will not, require any consent, approval, authorization, waiver or permit of, or filing with or notification to, any governmental authority or any other person, except for such as have already been obtained.

5. COVENANTS

From the Effective Date until such time as the Senior Preferred Stock shall have been repaid or redeemed in full in accordance with its terms:

5.1. *Restricted Payments.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, declare or pay any dividend (preferred or otherwise) or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of Seller’s Equity Interests (other than with respect to the Senior Preferred Stock or the Warrant) or directly or indirectly redeem, purchase, retire or otherwise acquire for value any of Seller’s Equity Interests (other than the Senior Preferred Stock or the Warrant), or set aside any amount for any such purpose.

5.2. *Issuance of Capital Stock.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, sell or issue Equity Interests of Seller or any of its subsidiaries of any kind or nature, in any amount, other than the sale and issuance of the Senior Preferred Stock and Warrant on the Effective Date and the common stock subject to the Warrant upon exercise thereof, and other than as required by (and pursuant to) the terms of any binding agreement as in effect on the date hereof.

5.3. *Conservatorship.* Seller shall not (and Conservator, by its signature below, agrees that it shall not), without the prior written consent of Purchaser, terminate, seek termination of or permit to be terminated the conservatorship of Seller pursuant to Section 1367 of the FHE Act, other

than in connection with a receivership pursuant to Section 1367 of the FHE Act.

5.4. *Transfer of Assets.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, sell, transfer, lease or otherwise dispose of (in one transaction or a series of related transactions) all or any portion of its assets (including Equity Interests in other persons, including subsidiaries), whether now owned or hereafter acquired (any such sale, transfer, lease or disposition, a “Disposition”), other than Dispositions for fair market value:

- (a) to a limited life regulated entity (“LLRE”) pursuant to Section 1367(i) of the FHE Act;
- (b) of assets and properties in the ordinary course of business, consistent with past practice;
- (c) in connection with a liquidation of Seller by a receiver appointed pursuant to Section 1367(a) of the FHE Act;
- (d) of cash or cash equivalents for cash or cash equivalents; or
- (e) to the extent necessary to comply with the covenant set forth in Section 5.7 below.

5.5. *Indebtedness.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, incur, assume or otherwise become liable for (a) any Indebtedness if, after giving effect to the incurrence thereof, the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis would exceed 110.0% of the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis as of June 30, 2008 or (b) any Indebtedness if such Indebtedness is subordinated by its terms to any other Indebtedness of Seller or the applicable subsidiary. For purposes of this covenant the acquisition of a subsidiary with Indebtedness will be deemed to be the incurrence of such Indebtedness at the time of such acquisition.

5.6. *Fundamental Changes.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, (i) merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge into or consolidate or amalgamate with it, (ii) effect a reorganization or recapitalization involving the common stock of Seller, a reclassification of the common stock of Seller or similar corporate transaction or event or (iii) purchase, lease or otherwise acquire (in one transaction or a series of transactions) all or substantially all of the assets of any other Person or any division, unit or business of any Person.

5.7. *Mortgage Assets.* Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, \$850 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets of Seller as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than \$250 billion in Mortgage Assets.

5.8. *Transactions with Affiliates.* Seller shall not, and shall not permit any of its subsidiaries to, without the prior written consent of Purchaser, engage in any transaction of any kind or nature with an Affiliate of Seller unless such transaction is (i) pursuant to this Agreement, the Senior Preferred Stock or the Warrant, (ii) upon terms no less favorable to Seller than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of Seller or (iii) a transaction undertaken in the ordinary course or pursuant to a contractual obligation or customary employment arrangement in existence as of the date hereof.

5.9. *Reporting.* Seller shall provide to Purchaser:

(a) not later than the time period specified in the SEC's rules and regulations with respect to issuers as to which Section 13 and 15(d) of the Exchange Act apply, annual reports on Form 10-K (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form);

(b) not later than the time period specified in the SEC's rules and regulations with respect to issuers as to which Section 13 and 15(d) of the Exchange Act apply, reports on Form 10-Q (or any successor or comparable form) containing the information required to be contained therein (or required in such successor or comparable form);

(c) promptly from time to time after the occurrence of an event required to be therein reported (and in any event within the time period specified in the SEC's rules and regulations), such other reports on Form 8-K (or any successor or comparable form);

(d) concurrently with any delivery of financial statements under paragraphs (a) or (b) above, a certificate of the Designated Representative, (i) certifying that Seller is (and since the last such certificate has at all times been) in compliance with each of the covenants contained herein and that no representation made by Seller herein or in any document delivered pursuant hereto or in connection herewith was false or misleading in any material respect when made, or, if the foregoing is not true, specifying the nature and extent of the breach of covenant and/or representation and any corrective action taken or proposed to be taken with respect thereto, and (ii) setting forth computations in reasonable detail and satisfactory to the Purchaser of the Deficiency Amount, if any;

(e) promptly, from time to time, such other information regarding the operations, business affairs, plans, projections and financial condition of Seller, or compliance with the terms of this Agreement, as Purchaser may reasonably request; and

(f) as promptly as reasonably practicable, written notice of the following:

(i) the occurrence of the Liquidation End Date;

(ii) the filing or commencement of, or any written threat or notice of intention of any Person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any governmental authority or in arbitration, against Conservator, Seller or any other Person which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(iii) any other development that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect.

5.10. *Executive Compensation.* Seller shall not, without the consent of the Director, in consultation with the Secretary of the Treasury, enter into any new compensation arrangements with, or increase amounts or benefits payable under existing compensation arrangements of, any Named Executive Officer of Seller.

6. MISCELLANEOUS

6.1. *No Third-Party Beneficiaries.* Until the termination of the Commitment, at any time during the existence and continuance of a payment default with respect to debt securities issued by Seller and/or a default by Seller with respect to any Mortgage Guarantee Obligations, any holder of such defaulted debt securities or beneficiary of such Mortgage Guarantee Obligations (collectively, the “Holders”) may (a) deliver notice to the Seller and the Designated Representative requesting exercise of all rights available to them under this Agreement to draw on the Commitment up to the lesser of the amount necessary to cure the outstanding payment defaults and the Available Amount as of the last day of the immediately preceding fiscal quarter (the “Demand Amount”), (b) if Seller and the Designated Representative fail to act as requested within thirty (30) days of such notice, seek judicial relief for failure of the Seller to draw on the Commitment, and (c) if Purchaser shall fail to perform its obligations in respect of any draw on the Commitment, and Seller and/or the Designated Representative shall not be diligently pursuing remedies in respect of such failure, file a claim in the United States Court of Federal Claims for relief requiring Purchaser to pay Seller the Demand Amount in the form of liquidated damages. Any payment of liquidated damages to Seller under the previous sentence shall be treated for all purposes, including the provisions of the Senior Preferred Stock and Section 3.3 of this Agreement, as a draw and funding of the Commitment pursuant to Article 2. The Holders shall have no other rights under or in respect of this Agreement, and the Commitment shall not otherwise be enforceable by any creditor of Seller or by any other Person other than the parties hereto, and no such creditor or other Person is intended to be, or shall be, a third party beneficiary of any provision of this Agreement.

6.2. *Non-Transferable; Successors.* The Commitment is solely for the benefit of Seller and shall not inure to the benefit of any other Person (other than the Holders to the extent set forth in Section 6.1), including any entity to which the charter of Seller may be transferred, to any LLRE or to any other successor to the assets, liabilities or operations of Seller. The Commitment may not be assigned or otherwise transferred, in whole or in part, to any Person (including, for the avoidance of doubt, any LLRE to which a receiver has assigned all or a portion of Seller’s assets) without the prior written consent of Purchaser (which may be withheld in its sole discretion). In no event shall any successor to Seller (including such an LLRE) be entitled to the benefit of the Commitment without the prior written consent of Purchaser. Seller and Conservator, for themselves and on behalf of their permitted successors, covenant and agree not to transfer or purport to transfer the Commitment in contravention of the terms hereof, and any such attempted transfer shall be null and void *ab initio*. It is the expectation of the parties that, in the event Seller were placed into receivership and an LLRE formed to purchase certain of its assets and assume certain of its liabilities, the Commitment would remain with Seller for the benefit of the holders of the

debt of Seller not assumed by the LLRE.

6.3. *Amendments; Waivers.* This Agreement may be waived or amended solely by a writing executed by both of the parties hereto, and, with respect to amendments to or waivers of the provisions of Sections 5.3, 6.2 and 6.11, the Conservator; provided, however, that no such waiver or amendment shall decrease the aggregate Commitment or add conditions to funding the amounts required to be funded by Purchaser under the Commitment if such waiver or amendment would, in the reasonable opinion of Seller, adversely affect in any material respect the holders of debt securities of Seller and/or the beneficiaries of Mortgage Guarantee Obligations, in each case in their capacities as such, after taking into account any alternative arrangements that may be implemented concurrently with such waiver or amendment. In no event shall any rights granted hereunder prevent the parties hereto from waiving or amending in any manner whatsoever the covenants of Seller hereunder.

6.4. *Governing Law; Jurisdiction; Venue.* This Agreement and the Warrant shall be governed by, and construed in accordance with, the federal law of the United States of America if and to the extent such federal law is applicable, and otherwise in accordance with the laws of the State of New York. The Senior Preferred Stock shall be governed as set forth in the terms thereof. Except as provided in section 6.1 and as otherwise required by law, the United States District Court for the District of Columbia shall have exclusive jurisdiction over all civil actions arising out of this Agreement, the Commitment, the Senior Preferred Stock and the Warrant, and venue for any such civil action shall lie exclusively in the United States District Court for the District of Columbia.

6.5. *Notices.* Any notices delivered pursuant to or in connection with this Agreement shall be delivered to the applicable parties at the addresses set forth below:

If to Seller:

Federal Home Loan Mortgage Corporation
c/o Federal Housing Finance Authority
1700 G Street, NW
4th Floor
Washington, DC 20552
Attention: General Counsel

If to Purchaser:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220
Attention: Under Secretary for Domestic Finance

with a copy to:

United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington DC 20220
Attention: General Counsel

If to Conservator:

Federal Housing Finance Authority
1700 G Street, NW
4th Floor
Washington, DC 20552
Attention: General Counsel

All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail. All notices hereunder shall be effective upon receipt.

6.6. *Disclaimer of Guarantee.* This Agreement and the Commitment are not intended to and shall not be deemed to constitute a guarantee by Purchaser or any other agency or instrumentality of the United States of the payment or performance of any debt security or any other obligation, indebtedness or liability of Seller of any kind or character whatsoever.

6.7. *Effect of Order; Injunction; Decree.* If any order, injunction or decree is issued by any court of competent jurisdiction that vacates, modifies, amends, conditions, enjoins, stays or otherwise affects the appointment of Conservator as conservator of Seller or otherwise curtails Conservator's powers as such conservator (except in each case any order converting the conservatorship to a receivership under Section 1367(a) of the FHE Act), Purchaser may by written notice to Conservator and Seller declare this Agreement null and void, whereupon all transfers hereunder (including the issuance of the Senior Preferred Stock and the Warrant and any funding of the Commitment) shall be rescinded and unwound and all obligations of the parties (other than to effectuate such rescission and unwind) shall immediately and automatically terminate.

6.8. *Business Day.* To the extent that any deadline or date of performance of any right or obligation set forth herein shall fall on a day other than a Business Day, then such deadline or date of performance shall automatically be extended to the next succeeding Business Day.

6.9. *Entire Agreement.* This Agreement, together with the Senior Preferred Stock and Warrant, contains the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, term sheets, statements, letters of intent or representations, written or oral, with respect thereto.

6.10. *Remedies.* In the event of a breach by Seller of any covenant or representation of Seller set forth herein, Purchaser shall be entitled to specific performance (in the case of a breach of

covenant), damages and such other remedies as may be available at law or in equity; provided, that Purchaser shall not have the right to terminate the Commitment solely as a result of any such breach, and compliance with the covenants and the accuracy of the representations set forth in this Agreement shall not be conditions to funding the Commitment.

6.11. *Tax Reporting.* Neither Seller nor Conservator shall take, or shall permit any of their respective successors or assigns to take, a position for any tax, accounting or other purpose that is inconsistent with Internal Revenue Service Notice 2008-76 (or the regulations to be issued pursuant to such Notice) regarding the application of Section 382 of the Internal Revenue Code of 1986, as amended, a copy of which Notice has been provided to Seller in connection with the execution of this Agreement.

6.12. *Non-Severability.* Each of the provisions of this Agreement is integrated with and integral to the whole and shall not be severable from the remainder of the Agreement. In the event that any provision of this Agreement, the Senior Preferred Stock or the Warrant is determined to be illegal or unenforceable, then Purchaser may, in its sole discretion, by written notice to Conservator and Seller, declare this Agreement null and void, whereupon all transfers hereunder (including the issuance of the Senior Preferred Stock and the Warrant and any funding of the Commitment) shall be rescinded and unwound and all obligations of the parties (other than to effectuate such rescission and unwind) shall immediately and automatically terminate.

[Signature Page Follows]

**AMENDMENT TO AMENDED AND RESTATED
SENIOR PREFERRED STOCK PURCHASE AGREEMENT**

AMENDMENT dated as of May 6, 2009, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY ("Purchaser"), and FEDERAL NATIONAL MORTGAGE ASSOCIATION ("Seller"), acting through the Federal Housing Finance Agency (the "Agency") as its duly appointed conservator (the Agency in such capacity, "Conservator").

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the "Amended and Restated Agreement").

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding \$100,000,000,000.

C. Purchaser and Seller now desire to enter into an amendment to the Amended and Restated Agreement for the purpose of increasing to \$200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and for the purpose of amending the terms of the Amended and Restated Agreement in certain other respects.

D. Purchaser and Seller are each authorized to enter into this Amendment to the Amended and Restated Agreement ("this Amendment") increasing to \$200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and amending the terms of the Amended and Restated Agreement in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. Definitions.

Capitalized terms used and not defined in this Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement.

2. **Amendment to Section 1 (Relating to Definition of New Defined Term "Executive Officer")**.

Section 1 of the Amended and Restated Agreement is hereby amended to insert the following new defined term and corresponding definition after the definition of the term "Exchange Act":

"Executive Officer" has the meaning given to such term in Exchange Act Rule 3b-7, as in effect on the date hereof.

3. **Amendment to Section 1 (Relating to Definition of "Indebtedness")**.

The definition of "Indebtedness" in Section 1 of the Amended and Restated Agreement is hereby amended to read as follows:

"Indebtedness" of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers' and similar instruments, and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing and Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).

4. **Amendment to Section 1 (Relating to Definition of "Maximum Amount")**.

The definition of "Maximum Amount" in Section 1 of the Amended and Restated Agreement is hereby amended to read as follows:

"Maximum Amount" means, as of any date of determination, \$200,000,000,000 (two hundred billion dollars), less the aggregate amount of funding under the Commitment prior to such date.

5. **Amendment to Section 2.1 (Relating to the Commitment)**.

Section 2.1 of the Amended and Restated Agreement is hereby amended to read as follows:

2.1 *Commitment*. Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the "Commitment"); provided, that in no event shall the aggregate amount funded under the Commitment exceed \$200,000,000,000 (two hundred billion

dollars). The liquidation preference of Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

6. **Amendment to Section 2.5 (Relating to Termination of Purchaser's Obligations).**

Section 2.5 of the Amended and Restated Agreement is hereby amended to read as follows:

2.5 Termination of Purchaser's Obligations. Subject to earlier termination pursuant to Section 6.7, all of Purchaser's obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser's obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate of \$200,000,000,000 (two hundred billion dollars). For avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

7. **Amendment to Section 5.5 (Relating to Indebtedness).**

Section 5.5 of the Amended and Restated Agreement is hereby amended to read as follows:

5.5. Indebtedness. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, incur, assume or otherwise become liable for (a) any Indebtedness if, after giving effect to the incurrence thereof, the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis would exceed (i) through and including December 30, 2010, 120.0% of the amount of Mortgage Assets Seller is permitted by Section 5.7 to own on December 31, 2009; and (ii) beginning on December 31, 2010, and through and including December 30, 2011, and each year thereafter, 120.0% of the amount of Mortgage Assets Seller is permitted by Section 5.7 to own on December 31 of the immediately preceding calendar year, or (b) any Indebtedness if such Indebtedness is subordinated by its terms to any other Indebtedness of Seller or the applicable subsidiary. For purposes of this covenant the acquisition of a subsidiary with Indebtedness will be deemed to be the incurrence of such Indebtedness at the time of such acquisition.

8. **Amendment to Section 5.7 (Relating to Owned Mortgage Assets).**

Section 5.7 of the Amended and Restated Agreement is hereby amended to read as follows:

5.7. Mortgage Assets. Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, \$900 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets of Seller as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than \$250 billion in Mortgage Assets.

9. **Amendment to Section 5.10 (Relating to Executive Compensation).**

Section 5.10 of the Amended and Restated Agreement is hereby amended to read as follows:

5.10. Executive Compensation. Seller shall not, without the consent of the Director, in consultation with the Secretary of the Treasury, enter into any new compensation arrangements with, or increase amounts or benefits payable under existing compensation arrangements of, any Named Executive Officer or other Executive Officer of Seller.

10. **Amended and Restated Agreement to Continue, as Amended.**

Except as expressly modified by this Amendment, the Amended and Restated Agreement shall continue in full force and effect.

11. **Effective Date.**

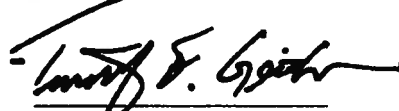
This Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Amendment has been so executed, it shall become effective as of the date first above written.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, by

Federal Housing Finance Agency,
its Conservator


James B. Lockhart III
Director

UNITED STATES DEPARTMENT
OF THE TREASURY


Timothy F. Geithner
Secretary of the Treasury

**AMENDMENT TO AMENDED AND RESTATED
SENIOR PREFERRED STOCK PURCHASE AGREEMENT**

AMENDMENT dated as of May 6, 2009, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY ("Purchaser"), and FEDERAL HOME LOAN MORTGAGE CORPORATION ("Seller"), acting through the Federal Housing Finance Agency (the "Agency") as its duly appointed conservator (the Agency in such capacity, "Conservator").

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the "Amended and Restated Agreement").

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding \$100,000,000,000.

C. Purchaser and Seller now desire to enter into an amendment to the Amended and Restated Agreement for the purpose of increasing to \$200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and for the purpose of amending the terms of the Amended and Restated Agreement in certain other respects.

D. Purchaser and Seller are each authorized to enter into this Amendment to the Amended and Restated Agreement ("this Amendment") increasing to \$200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and amending the terms of the Amended and Restated Agreement in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. Definitions.

Capitalized terms used and not defined in this Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement.

2. **Amendment to Section 1 (Relating to Definition of New Defined Term "Executive Officer")**.

Section 1 of the Amended and Restated Agreement is hereby amended to insert the following new defined term and corresponding definition after the definition of the term "Exchange Act":

"Executive Officer" has the meaning given to such term in Exchange Act Rule 3b-7, as in effect on the date hereof.

3. **Amendment to Section 1 (Relating to Definition of "Indebtedness")**.

The definition of "Indebtedness" in Section 1 of the Amended and Restated Agreement is hereby amended to read as follows:

"Indebtedness" of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers' and similar instruments, and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing and Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).

4. **Amendment to Section 1 (Relating to Definition of "Maximum Amount")**.

The definition of "Maximum Amount" in Section 1 of the Amended and Restated Agreement is hereby amended to read as follows:

"Maximum Amount" means, as of any date of determination, \$200,000,000,000 (two hundred billion dollars), less the aggregate amount of funding under the Commitment prior to such date.

5. **Amendment to Section 2.1 (Relating to the Commitment)**.

Section 2.1 of the Amended and Restated Agreement is hereby amended to read as follows:

2.1 *Commitment*. Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the "Commitment"); provided, that in no event shall the aggregate amount funded under the Commitment exceed \$200,000,000,000 (two hundred billion

dollars). The liquidation preference of Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

6. **Amendment to Section 2.5 (Relating to Termination of Purchaser's Obligations).**

Section 2.5 of the Amended and Restated Agreement is hereby amended to read as follows:

2.5 Termination of Purchaser's Obligations. Subject to earlier termination pursuant to Section 6.7, all of Purchaser's obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser's obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate of \$200,000,000,000 (two hundred billion dollars). For avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

7. **Amendment to Section 5.5 (Relating to Indebtedness).**

Section 5.5 of the Amended and Restated Agreement is hereby amended to read as follows:

5.5. Indebtedness. Seller shall not, and shall not permit any of its subsidiaries to, in each case without the prior written consent of Purchaser, incur, assume or otherwise become liable for (a) any Indebtedness if, after giving effect to the incurrence thereof, the aggregate Indebtedness of Seller and its subsidiaries on a consolidated basis would exceed (i) through and including December 30, 2010, 120.0% of the amount of Mortgage Assets Seller is permitted by Section 5.7 to own on December 31, 2009; and (ii) beginning on December 31, 2010, and through and including December 30, 2011, and each year thereafter, 120.0% of the amount of Mortgage Assets Seller is permitted by Section 5.7 to own on December 31 of the immediately preceding calendar year, or (b) any Indebtedness if such Indebtedness is subordinated by its terms to any other Indebtedness of Seller or the applicable subsidiary. For purposes of this covenant the acquisition of a subsidiary with Indebtedness will be deemed to be the incurrence of such Indebtedness at the time of such acquisition.

8. **Amendment to Section 5.7 (Relating to Owned Mortgage Assets).**

Section 5.7 of the Amended and Restated Agreement is hereby amended to read as follows:

5.7. *Mortgage Assets.* Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, \$900 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets of Seller as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than \$250 billion in Mortgage Assets.

9. **Amendment to Section 5.10 (Relating to Executive Compensation).**

Section 5.10 of the Amended and Restated Agreement is hereby amended to read as follows:

5.10. *Executive Compensation.* Seller shall not, without the consent of the Director, in consultation with the Secretary of the Treasury, enter into any new compensation arrangements with, or increase amounts or benefits payable under existing compensation arrangements of, any Named Executive Officer or other Executive Officer of Seller.

10. **Amended and Restated Agreement to Continue, as Amended.**

Except as expressly modified by this Amendment, the Amended and Restated Agreement shall continue in full force and effect.

11. **Effective Date.**

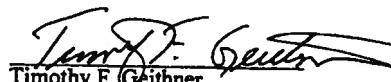
This Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Amendment has been so executed, it shall become effective as of the date first above written.

FEDERAL HOME LOAN MORTGAGE
CORPORATION, by

Federal Housing Finance Agency,
its Conservator


James B. Lockhart III
Director

UNITED STATES DEPARTMENT
OF THE TREASURY


Timothy F. Geithner
Secretary of the Treasury

SECOND AMENDMENT TO AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

SECOND AMENDMENT dated as of December 24, 2009, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY (“Purchaser”), and FEDERAL NATIONAL MORTGAGE ASSOCIATION (“Seller”), acting through the Federal Housing Finance Agency (the “Agency”) as its duly appointed conservator (the Agency in such capacity, “Conservator”).

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the “Amended and Restated Agreement”).

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding \$100,000,000,000.

C. Purchaser and Seller have heretofore entered into the Amendment dated as of May 6, 2009, to the Amended and Restated Agreement (the “First Amendment”).

D. In the First Amendment, Purchaser increased to \$200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and amended the terms of the Amended and Restated Agreement in certain other respects.

E. Purchaser and Seller are each authorized to enter into this Second Amendment to the Amended and Restated Agreement (“this Second Amendment”) (i) modifying the Treasury’s funding commitment to Seller to provide it with additional funding in amounts not to exceed the new formulaic maximum amount specified herein, and (ii) amending the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. **Definitions.**

Capitalized terms used and not defined in this Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement, as amended by the First Amendment (the Amended and Restated Agreement, as amended by the First Amendment, being the "Existing Agreement").

2. **Amendment to Section 1 (Relating to Definition of "Indebtedness").**

The definition of "Indebtedness" in Section 1 of the Existing Agreement is hereby amended to read as follows:

"Indebtedness" of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers' and similar instruments, and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing and Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140, 166, or 167, or any similar accounting standard). Indebtedness balances or amounts shall be measured at par value for purposes of Section 5.5 only.

3. **Amendment to Section 1 (Relating to Definition of "Maximum Amount").**

The definition of "Maximum Amount" in Section 1 of the Existing Agreement is hereby amended to read as follows:

"Maximum Amount" means, as of any date of determination, the greater of (a) \$200,000,000,000 (two hundred billion dollars), or (b) \$200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012, and in the case of either (a) or (b), less the aggregate amount of funding under the Commitment prior to such date.

4. **Amendment to Section 1 (Relating to Definition of "Mortgage Assets").**

The definition of "Mortgage Assets" in Section 1 of the Existing Agreement is hereby amended to read as follows:

"Mortgage Assets" of any Person means assets of such Person consisting of mortgages, mortgage loans, mortgage-related securities, participation

certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such Person in accordance with GAAP as in effect as of the date hereof (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140, 166, or 167, or any similar accounting standard). Mortgage Asset balances or amounts shall be measured at unpaid principal balance for purposes of Section 5.7 only.

5. **Amendment to Section 1 (Adding Definition for New Defined Term “Surplus Amount”).**

Section 1 of the Existing Agreement is hereby amended by inserting after the definition of the term “Senior Preferred Stock” the following:

“*Surplus Amount*” means, as of the date of determination, the amount if any by which (a) the total assets of Seller (such assets excluding the Commitment and any unfunded amounts thereof) exceed (b) the total liabilities of Seller, in each case as reflected on the balance sheet of Seller as of the applicable date set forth in the Agreement, prepared in accordance with GAAP.

6. **Amendment to Section 2.1 (Relating to the Commitment).**

Section 2.1 of the Existing Agreement is hereby amended to read as follows:

2.1 *Commitment.* Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the “Commitment”); provided, that in no event shall the aggregate amount funded under the Commitment exceed the greater of (a) \$200,000,000,000 (two hundred billion dollars), or (b) \$200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012. The liquidation preference of Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

7. **Amendment to Section 2.5 (Relating to Termination of Purchaser’s Obligations).**

Section 2.5 of the Existing Agreement is hereby amended to read as follows:

2.5 *Termination of Purchaser’s Obligations.* Subject to earlier termination pursuant to Section 6.7, all of Purchaser’s obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser’s obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for

unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate equal to the greater of (a) \$200,000,000,000 (two hundred billion dollars), or (b) \$200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012. For avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

8. Amendment to Section 3.2 (Relating to Periodic Commitment Fee).

Section 3.2 of the Existing Agreement is hereby amended to read as follows:

3.2. Periodic Commitment Fee. (a) Commencing March 31, 2011, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2011.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2010. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2010 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

9. Amendment to Section 5.7 (Relating to Owned Mortgage Assets).

Section 5.7 of the Existing Agreement is hereby amended to read as follows:

5.7. Mortgage Assets. Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, \$900 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets that Seller was permitted to own as of December 31 of the immediately

preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than \$250 billion in Mortgage Assets.

10. Existing Agreement to Continue, as Amended.

Except as expressly modified by this Second Amendment, the Existing Agreement shall continue in full force and effect.

11. Effective Date.


This Second Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Second Amendment has been so executed, it shall become effective as of the date first above written.

FEDERAL NATIONAL MORTGAGE
ASSOCIATION, by

Federal Housing Finance Agency,
its Conservator


Edward J. DeMarco
Acting Director

UNITED STATES DEPARTMENT
OF THE TREASURY


Timothy F. Geithner
Secretary of the Treasury

SECOND AMENDMENT TO AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

SECOND AMENDMENT dated as of December 24, 2009, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY (“Purchaser”), and FEDERAL HOME LOAN MORTGAGE CORPORATION (“Seller”), acting through the Federal Housing Finance Agency (the “Agency”) as its duly appointed conservator (the Agency in such capacity, “Conservator”).

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the “Amended and Restated Agreement”).

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding \$100,000,000,000.

C. Purchaser and Seller have heretofore entered into the Amendment dated as of May 6, 2009, to the Amended and Restated Agreement (the “First Amendment”).

D. In the First Amendment, Purchaser increased to \$200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, and amended the terms of the Amended and Restated Agreement in certain other respects.

E. Purchaser and Seller are each authorized to enter into this Second Amendment to the Amended and Restated Agreement (“this Second Amendment”) (i) modifying the Treasury’s funding commitment to Seller to provide it with additional funding in amounts not to exceed the new formulaic maximum amount specified herein, and (ii) amending the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. **Definitions.**

Capitalized terms used and not defined in this Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement, as amended by the First Amendment (the Amended and Restated Agreement, as amended by the First Amendment, being the "Existing Agreement").

2. **Amendment to Section 1 (Relating to Definition of "Indebtedness").**

The definition of "Indebtedness" in Section 1 of the Existing Agreement is hereby amended to read as follows:

"Indebtedness" of any Person means, for purposes of Section 5.5 only, without duplication, (a) all obligations of such Person for money borrowed by such Person, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (d) all obligations of such Person issued or assumed as the deferred purchase price of property or services, other than trade accounts payable, (e) all Capital Lease Obligations of such Person, (f) obligations, whether contingent or liquidated, in respect of letters of credit (including standby and commercial), bankers' and similar instruments, and (g) any obligation of such Person, contingent or otherwise, guaranteeing or having the economic effect of guaranteeing and Indebtedness of the types set forth in clauses (a) through (f) payable by another Person other than Mortgage Guarantee Obligations (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140, 166, or 167, or any similar accounting standard). Indebtedness balances or amounts shall be measured at par value for purposes of Section 5.5 only.

3. **Amendment to Section 1 (Relating to Definition of "Maximum Amount").**

The definition of "Maximum Amount" in Section 1 of the Existing Agreement is hereby amended to read as follows:

"Maximum Amount" means, as of any date of determination, the greater of (a) \$200,000,000,000 (two hundred billion dollars), or (b) \$200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012, and in the case of either (a) or (b), less the aggregate amount of funding under the Commitment prior to such date.

4. **Amendment to Section 1 (Relating to Definition of "Mortgage Assets").**

The definition of "Mortgage Assets" in Section 1 of the Existing Agreement is hereby amended to read as follows:

"Mortgage Assets" of any Person means assets of such Person consisting of mortgages, mortgage loans, mortgage-related securities, participation

certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such Person in accordance with GAAP as in effect as of the date hereof (and, for the avoidance of doubt, without giving effect to any change that may be made hereafter in respect of Statement of Financial Accounting Standards No. 140, 166, or 167, or any similar accounting standard). Mortgage Asset balances or amounts shall be measured at unpaid principal balance for purposes of Section 5.7 only.

5. **Amendment to Section 1 (Adding Definition for New Defined Term “Surplus Amount”).**

Section 1 of the Existing Agreement is hereby amended by inserting after the definition of the term “Senior Preferred Stock” the following:

“*Surplus Amount*” means, as of the date of determination, the amount if any by which (a) the total assets of Seller (such assets excluding the Commitment and any unfunded amounts thereof) exceed (b) the total liabilities of Seller, in each case as reflected on the balance sheet of Seller as of the applicable date set forth in the Agreement, prepared in accordance with GAAP.

6. **Amendment to Section 2.1 (Relating to the Commitment).**

Section 2.1 of the Existing Agreement is hereby amended to read as follows:

2.1 *Commitment.* Purchaser hereby commits to provide to Seller, on the terms and conditions set forth herein, immediately available funds in an amount up to but not in excess of the Available Amount, as determined from time to time (the “Commitment”); provided, that in no event shall the aggregate amount funded under the Commitment exceed the greater of (a) \$200,000,000,000 (two hundred billion dollars), or (b) \$200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012. The liquidation preference of Senior Preferred Stock shall increase in connection with draws on the Commitment, as set forth in Section 3.3 below.

7. **Amendment to Section 2.5 (Relating to Termination of Purchaser’s Obligations).**

Section 2.5 of the Existing Agreement is hereby amended to read as follows:

2.5 *Termination of Purchaser’s Obligations.* Subject to earlier termination pursuant to Section 6.7, all of Purchaser’s obligations under and in respect of the Commitment shall terminate upon the earliest of: (a) if the Liquidation End Date shall have occurred, (i) the payment in full of Purchaser’s obligations with respect to any valid request for funds pursuant to Section 2.4 or (ii) if there is no Deficiency Amount on the Liquidation End Date or if no such request pursuant to Section 2.4 has been made, the close of business on the 15th Business Day following the determination of the Deficiency Amount, if any, as of the Liquidation End Date; (b) the payment in full of, defeasance of or other reasonable provision for all liabilities of Seller, whether or not contingent, including payment of any amounts that may become payable on, or expiry of or other provision for, all Mortgage Guarantee Obligations and provision for

unmatured debts; and (c) the funding by Purchaser under the Commitment of an aggregate equal to the greater of (a) \$200,000,000,000 (two hundred billion dollars), or (b) \$200,000,000,000 plus the cumulative total of Deficiency Amounts determined for calendar quarters in calendar years 2010, 2011, and 2012, less any Surplus Amount determined as of December 31, 2012. For avoidance of doubt, the Commitment shall *not* be terminable by Purchaser solely by reason of (i) the conservatorship, receivership or other insolvency proceeding of Seller or (ii) the Seller's financial condition or any adverse change in Seller's financial condition.

8. Amendment to Section 3.2 (Relating to Periodic Commitment Fee).

Section 3.2 of the Existing Agreement is hereby amended to read as follows:

3.2. Periodic Commitment Fee. (a) Commencing March 31, 2011, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2011.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2010. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2010 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

9. Amendment to Section 5.7 (Relating to Owned Mortgage Assets).

Section 5.7 of the Existing Agreement is hereby amended to read as follows:

5.7. Mortgage Assets. Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2009, \$900 billion, or (ii) on December 31 of each year thereafter, 90.0% of the aggregate amount of Mortgage Assets that Seller was permitted to own as of December 31 of the immediately

preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than \$250 billion in Mortgage Assets.

10. Existing Agreement to Continue, as Amended.

Except as expressly modified by this Second Amendment, the Existing Agreement shall continue in full force and effect.

11. Effective Date.

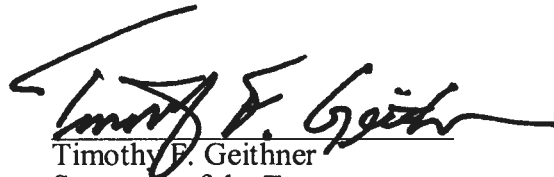
This Second Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Second Amendment has been so executed, it shall become effective as of the date first above written.

FEDERAL HOME LOAN MORTGAGE
CORPORATION, by

Federal Housing Finance Agency,
its Conservator


Edward J. DeMarco
Acting Director

UNITED STATES DEPARTMENT
OF THE TREASURY


Timothy F. Geithner
Secretary of the Treasury

THIRD AMENDMENT TO AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT

THIRD AMENDMENT dated as of August 17, 2012, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY (“Purchaser”), and FEDERAL NATIONAL MORTGAGE ASSOCIATION (“Seller”), acting through the Federal Housing Finance Agency (the “Agency”) as its duly appointed conservator (the Agency in such capacity, “Conservator”).

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the “Amended and Restated Agreement”).

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding \$100,000,000,000.

C. In consideration for Purchaser’s commitment, Seller agreed to sell, and did sell, to Purchaser 1,000,000 shares of senior preferred stock, in the form of the Variable Liquidation Preference Senior Preferred Stock of Seller attached as Exhibit A to the Amended and Restated Agreement, with an initial liquidation preference equal to \$1,000 per share.

D. The Amended and Restated Agreement provides that the aggregate liquidation preference of the outstanding shares of senior preferred stock shall be automatically increased by an amount equal to the amount of each draw under Purchaser’s funding commitment, and the senior preferred stock sold by Seller to Purchaser provides that the senior preferred stock shall accrue dividends at the annual rate per share equal to 10 percent on the then-current liquidation preference.

E. Purchaser and Seller have heretofore entered into the Amendment dated as of May 6, 2009, to the Amended and Restated Agreement (the “First Amendment”).

F. In the First Amendment, Purchaser increased to \$200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated

Agreement, and amended the terms of the Amended and Restated Agreement in certain other respects.

G. Purchaser and Seller have heretofore entered into the Second Amendment dated as of December 24, 2009, to the Amended and Restated Agreement (the "Second Amendment").

H. In the Second Amendment, Purchaser modified the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, as previously amended, by replacing the fixed maximum aggregate amount with the new formulaic maximum amount specified therein, and amended the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

I. Purchaser and Seller are each authorized to enter into this Third Amendment to the Amended and Restated Agreement ("this Third Amendment") that (i) includes an agreement by Seller to modify the dividend rate provision of the senior preferred stock sold by Seller to Purchaser, and (ii) amends the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. Definitions.

Capitalized terms used and not defined in this Third Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement, as amended by the First Amendment and the Second Amendment (the Amended and Restated Agreement, as amended by the First Amendment and the Second Amendment, being the "Existing Agreement").

2. Amendment to Paragraph 2(a) of Senior Preferred Stock (Relating to Dividend Payment Dates and Dividend Periods).

With respect to the Certificate of Designation of Terms of Variable Liquidation Preference Senior Preferred Stock, Series 2008-2, dated September 7, 2008 (the "Senior Preferred Stock Certificate"), sold by Seller to Purchaser and purchased by Purchaser from Seller, Seller agrees either to amend the existing paragraph 2(a) of the Senior Preferred Stock Certificate, or to issue a replacement Senior Preferred Stock Certificate, in either case so that, by not later than September 30, 2012, paragraph 2(a) reads as follows:

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, the amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period through and including December 31, 2012, that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, for each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

3. **Amendment to Paragraph 2(c) of Senior Preferred Stock (Relating to Dividend Rate and Dividend Amount).**

With respect to the Senior Preferred Stock Certificate sold by Seller to Purchaser and purchased by Purchaser from Seller, Seller agrees either to amend the existing paragraph 2(c) of the Senior Preferred Stock Certificate, or to issue a replacement Senior Preferred Stock Certificate, in either case so that, effective September 30, 2012, paragraph 2(c) reads as follows:

(c) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) the "Dividend Rate" shall mean 12.0%.

For each Dividend Period from January 1, 2013, through and including December 31, 2017, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, "Net Worth Amount" means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. "Applicable Capital Reserve Amount" means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

4. **Amendment to Section 3.2 (Relating to the Periodic Commitment Fee).**

Section 3.2 of the Existing Agreement is hereby amended to read as follows:

3.2. *Periodic Commitment Fee.* (a) Commencing March 31, 2011, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2011.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2010. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2010 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

(d) Notwithstanding anything to the contrary in paragraphs (a), (b), or (c) above, and in consideration of the modification made to the Senior Preferred Stock effective September 30, 2012, for each quarter commencing January 1, 2013, and continuing for as long as paragraph 2 of the Senior Preferred Stock remains in form and content substantially the same as the form and content of the Senior Preferred Stock in effect on September 30, 2012, no Periodic Commitment Fee shall be set, accrue, or be payable.

5. Amendment to Section 5.4 (Relating to Transfer of Assets).

Section 5.4 of the Existing Agreement is hereby amended to read as follows:

5.4. *Transfer of Assets.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without prior written consent of Purchaser, sell, transfer, lease or otherwise dispose of (in one transaction or a series of related transactions) all or any portion of its assets (including Equity Interests in other persons, including subsidiaries), whether now owned or hereafter acquired (any such sale, transfer, lease or disposition, a “Disposition”), other than Dispositions for fair market value:

(a) to a limited life regulated entity (“LLRE”) pursuant to Section 1367(i) of the FHE Act;

(b) of assets and properties in the ordinary course of business, consistent with past practice;

(c) of assets and properties having fair market value individually or in aggregate less than \$250,000,000 in one transaction or a series of related transactions;

(d) in connection with a liquidation of Seller by a receiver appointed pursuant to Section 1367(a) of the FHE Act;

(e) of cash or cash equivalents for cash or cash equivalents; or

(f) to the extent necessary to comply with the covenant set forth in Section 5.7 below.

6. Amendment to Section 5.7 (Relating to Owned Mortgage Assets).

Section 5.7 of the Existing Agreement is hereby amended to read as follows:

5.7. *Mortgage Assets.* Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2012, \$650 billion, or (ii) on December 31 of each year thereafter, 85.0% of the aggregate amount of Mortgage Assets that Seller was permitted to own as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than \$250 billion in Mortgage Assets.

7. **Amendment to Section 5 (Adding New Section 5.11 Relating to “Annual Risk Management Plans”)**.

Section 5 of the Existing Agreement is hereby amended by inserting after section 5.10 the following:

5.11. Annual Risk Management Plans. Not later than December 15, 2012, and not later than December 15 of each year thereafter while Seller remains in conservatorship pursuant to Section 1367 of the FHE Act, Seller shall, under the direction of Conservator, deliver a risk management plan to Purchaser. Each annual risk management plan shall set out Seller’s strategy for reducing its enterprise-wide risk profile and shall describe, in reasonable detail, the actions Seller will take, to reduce both the financial and operational risk associated with each reportable business segment of Seller. Plans delivered subsequent to December 15, 2012 shall also include an assessment of Seller’s performance relative to the planned actions described in the prior year’s plan. The submission of annual risk management plans under this section shall not in any way limit or affect the Agency in any of its capacities to carry out its statutory responsibilities, including but not limited to providing direction to and oversight of Seller.”

8. **Existing Agreement to Continue, as Amended.**

Except as expressly modified by this Third Amendment, the Existing Agreement shall continue in full force and effect.

9. **Effective Date.**

This Third Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Third Amendment has been so executed, it shall become effective as of the date first above written.

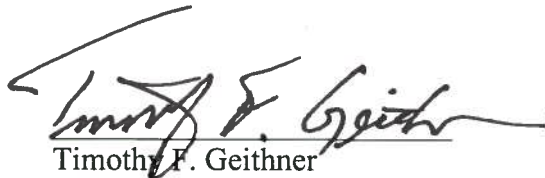
FEDERAL NATIONAL MORTGAGE
ASSOCIATION, by

Federal Housing Finance Agency,
its Conservator



Edward J. DeMarco
Acting Director

UNITED STATES DEPARTMENT
OF THE TREASURY



Timothy F. Geithner
Secretary of the Treasury

**THIRD AMENDMENT TO AMENDED AND RESTATED
SENIOR PREFERRED STOCK PURCHASE AGREEMENT**

THIRD AMENDMENT dated as of August 17, 2012, to the AMENDED AND RESTATED SENIOR PREFERRED STOCK PURCHASE AGREEMENT dated as of September 26, 2008, between the UNITED STATES DEPARTMENT OF THE TREASURY (“Purchaser”), and FEDERAL HOME LOAN MORTGAGE CORPORATION (“Seller”), acting through the Federal Housing Finance Agency (the “Agency”) as its duly appointed conservator (the Agency in such capacity, “Conservator”).

Background

A. Purchaser and Seller have heretofore entered into the Amended and Restated Senior Preferred Stock Purchase Agreement dated as of September 26, 2008 (the “Amended and Restated Agreement”).

B. In the Amended and Restated Agreement, Purchaser committed itself to provide to Seller, on the terms and conditions provided in the Amended and Restated Agreement, immediately available funds in an amount as determined from time to time as provided in the Amended and Restated Agreement, but in no event in an aggregate amount exceeding \$100,000,000,000.

C. In consideration for Purchaser’s commitment, Seller agreed to sell, and did sell, to Purchaser 1,000,000 shares of senior preferred stock, in the form of the Variable Liquidation Preference Senior Preferred Stock of Seller attached as Exhibit A to the Amended and Restated Agreement, with an initial liquidation preference equal to \$1,000 per share.

D. The Amended and Restated Agreement provides that the aggregate liquidation preference of the outstanding shares of senior preferred stock shall be automatically increased by an amount equal to the amount of each draw under Purchaser’s funding commitment, and the senior preferred stock sold by Seller to Purchaser provides that the senior preferred stock shall accrue dividends at the annual rate per share equal to 10 percent on the then-current liquidation preference.

E. Purchaser and Seller have heretofore entered into the Amendment dated as of May 6, 2009, to the Amended and Restated Agreement (the “First Amendment”).

F. In the First Amendment, Purchaser increased to \$200,000,000,000 the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated

Agreement, and amended the terms of the Amended and Restated Agreement in certain other respects.

G. Purchaser and Seller have heretofore entered into the Second Amendment dated as of December 24, 2009, to the Amended and Restated Agreement (the "Second Amendment").

H. In the Second Amendment, Purchaser modified the maximum aggregate amount permitted to be provided to Seller under the Amended and Restated Agreement, as previously amended, by replacing the fixed maximum aggregate amount with the new formulaic maximum amount specified therein, and amended the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

I. Purchaser and Seller are each authorized to enter into this Third Amendment to the Amended and Restated Agreement ("this Third Amendment") that (i) includes an agreement by Seller to modify the dividend rate provision of the senior preferred stock sold by Seller to Purchaser, and (ii) amends the terms of the Amended and Restated Agreement, as previously amended, in certain other respects.

THEREFORE, for and in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser and Seller agree as follows:

Terms and Conditions

1. Definitions.

Capitalized terms used and not defined in this Third Amendment shall have the respective meanings given such terms in the Amended and Restated Agreement, as amended by the First Amendment and the Second Amendment (the Amended and Restated Agreement, as amended by the First Amendment and the Second Amendment, being the "Existing Agreement").

2. Amendment to Paragraph 2(a) of Senior Preferred Stock (Relating to Dividend Payment Dates and Dividend Periods).

With respect to the Certificate of Creation, Designation, Powers, Preferences, Rights, Privileges, Qualifications, Limitations, Restrictions, Terms and Conditions of Variable Liquidation Preference Senior Preferred Stock (Par Value \$1.00 Per Share) dated September 7, 2008 (the "Senior Preferred Stock Certificate"), sold by Seller to Purchaser and purchased by Purchaser from Seller, Seller agrees either to amend the existing paragraph 2(a) of the Senior Preferred Stock Certificate, or to issue a replacement Senior Preferred Stock Certificate, in either case so that, by not later than September 30, 2012, paragraph 2(a) reads as follows:

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. For each Dividend Period from January 1, 2013, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends in an amount equal to the then-current Dividend Amount. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, the amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period through and including December 31, 2012, that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, for each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

3. **Amendment to Paragraph 2(c) of Senior Preferred Stock (Relating to Dividend Rate and Dividend Amount).**

With respect to the Senior Preferred Stock Certificate sold by Seller to Purchaser and purchased by Purchaser from Seller, Seller agrees either to amend the existing paragraph 2(c) of the Senior Preferred Stock Certificate, or to issue a replacement Senior Preferred Stock Certificate, in either case so that, effective September 30, 2012, paragraph 2(c) reads as follows:

(c) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2012, "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) the "Dividend Rate" shall mean 12.0%.

For each Dividend Period from January 1, 2013, through and including December 31, 2017, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter, less the Applicable Capital Reserve Amount, exceeds zero. For each Dividend Period from January 1, 2018, the "Dividend Amount" for a Dividend Period means the amount, if any, by which the Net Worth Amount at the end of the immediately preceding fiscal quarter exceeds zero. In each case, "Net Worth Amount" means (i) the total assets of the Company (such assets excluding the Commitment and any unfunded amounts thereof) as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP, less (ii) the total liabilities of the Company (such liabilities excluding any obligation in respect of any capital stock of the Company, including this Certificate), as reflected on the balance sheet of the Company as of the applicable date set forth in this Certificate, prepared in accordance with GAAP. "Applicable Capital Reserve Amount" means, as of any date of determination, for each Dividend Period from January 1, 2013, through and including December 31, 2013, \$3,000,000,000; and for each Dividend Period occurring within each 12-month period thereafter, \$3,000,000,000 reduced by an equal amount for each such 12-month period through and including December 31, 2017, so that for each Dividend Period from January 1, 2018, the Applicable Capital Reserve Amount shall be zero. For the avoidance of doubt, if the calculation of the Dividend Amount for a Dividend Period does not exceed zero, then no Dividend Amount shall accrue or be payable for such Dividend Period.

4. **Amendment to Section 3.2 (Relating to the Periodic Commitment Fee).**

Section 3.2 of the Existing Agreement is hereby amended to read as follows:

3.2. *Periodic Commitment Fee.* (a) Commencing March 31, 2011, Seller shall pay to Purchaser quarterly, on the last day of March, June, September and December of each calendar year (each a "Periodic Fee Date"), a periodic commitment fee (the "Periodic Commitment Fee"). The Periodic Commitment Fee shall accrue from January 1, 2011.

(b) The Periodic Commitment Fee is intended to fully compensate Purchaser for the support provided by the ongoing Commitment following December 31, 2010. The amount of the Periodic Commitment Fee shall be set not later than December 31, 2010 with respect to the ensuing five-year period, shall be reset every five years thereafter and shall be determined with reference to the market value of the Commitment as then in effect. The amount of the Periodic Commitment Fee shall be mutually agreed by Purchaser and Seller, subject to their reasonable discretion and in consultation with the Chairman of the Federal Reserve; provided, that Purchaser may waive the Periodic Commitment Fee for up to one year at a time, in its sole discretion, based on adverse conditions in the United States mortgage market.

(c) At the election of Seller, the Periodic Commitment Fee may be paid in cash or by adding the amount thereof ratably to the liquidation preference of each outstanding share of Senior Preferred Stock so that the aggregate liquidation preference of all such outstanding shares of Senior Preferred Stock is increased by an amount equal to the Periodic Commitment Fee. Seller shall deliver notice of such election not later than three (3) Business Days prior to each Periodic Fee Date. If the Periodic Commitment Fee is not paid in cash by 12:00 pm (New York time) on the applicable Periodic Fee Date (irrespective of Seller's election pursuant to this subsection), Seller shall be deemed to have elected to pay the Periodic Commitment Fee by adding the amount thereof to the liquidation preference of the Senior Preferred Stock, and the aggregate liquidation preference of the outstanding shares of Senior Preferred Stock shall thereupon be automatically increased, in the manner contemplated by the first sentence of this section, by an aggregate amount equal to the Periodic Commitment Fee then due.

(d) Notwithstanding anything to the contrary in paragraphs (a), (b), or (c) above, and in consideration of the modification made to the Senior Preferred Stock effective September 30, 2012, for each quarter commencing January 1, 2013, and continuing for as long as paragraph 2 of the Senior Preferred Stock remains in form and content substantially the same as the form and content of the Senior Preferred Stock in effect on September 30, 2012, no Periodic Commitment Fee shall be set, accrue, or be payable.

5. Amendment to Section 5.4 (Relating to Transfer of Assets).

Section 5.4 of the Existing Agreement is hereby amended to read as follows:

5.4. *Transfer of Assets.* Seller shall not, and shall not permit any of its subsidiaries to, in each case without prior written consent of Purchaser, sell, transfer, lease or otherwise dispose of (in one transaction or a series of related transactions) all or any portion of its assets (including Equity Interests in other persons, including subsidiaries), whether now owned or hereafter acquired (any such sale, transfer, lease or disposition, a "Disposition"), other than Dispositions for fair market value:

(a) to a limited life regulated entity ("LLRE") pursuant to Section 1367(i) of the FHE Act;

(b) of assets and properties in the ordinary course of business, consistent with past practice;

(c) of assets and properties having fair market value individually or in aggregate less than \$250,000,000 in one transaction or a series of related transactions;

(d) in connection with a liquidation of Seller by a receiver appointed pursuant to Section 1367(a) of the FHE Act;

(e) of cash or cash equivalents for cash or cash equivalents; or

(f) to the extent necessary to comply with the covenant set forth in Section 5.7 below.

6. Amendment to Section 5.7 (Relating to Owned Mortgage Assets).

Section 5.7 of the Existing Agreement is hereby amended to read as follows:

5.7. *Mortgage Assets.* Seller shall not own, as of any applicable date, Mortgage Assets in excess of (i) on December 31, 2012, \$650 billion, or (ii) on December 31 of each year thereafter, 85.0% of the aggregate amount of Mortgage Assets that Seller was permitted to own as of December 31 of the immediately preceding calendar year; provided, that in no event shall Seller be required under this Section 5.7 to own less than \$250 billion in Mortgage Assets.

7. **Amendment to Section 5 (Adding New Section 5.11 Relating to “Annual Risk Management Plans”).**

Section 5 of the Existing Agreement is hereby amended by inserting after section 5.10 the following:

5.11. Annual Risk Management Plans. Not later than December 15, 2012, and not later than December 15 of each year thereafter while Seller remains in conservatorship pursuant to Section 1367 of the FHE Act, Seller shall, under the direction of Conservator, deliver a risk management plan to Purchaser. Each annual risk management plan shall set out Seller’s strategy for reducing its enterprise-wide risk profile and shall describe, in reasonable detail, the actions Seller will take, to reduce both the financial and operational risk associated with each reportable business segment of Seller. Plans delivered subsequent to December 15, 2012 shall also include an assessment of Seller’s performance relative to the planned actions described in the prior year’s plan. The submission of annual risk management plans under this section shall not in any way limit or affect the Agency in any of its capacities to carry out its statutory responsibilities, including but not limited to providing direction to and oversight of Seller.”

8. **Existing Agreement to Continue, as Amended.**

Except as expressly modified by this Third Amendment, the Existing Agreement shall continue in full force and effect.

9. **Effective Date.**

This Third Amendment shall not become effective until it has been executed by both of Purchaser and Seller. When this Third Amendment has been so executed, it shall become effective as of the date first above written.

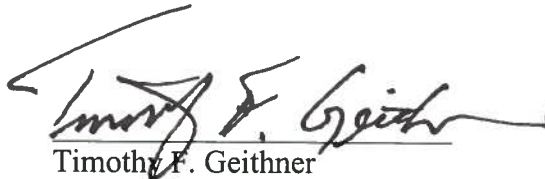
FEDERAL HOME LOAN MORTGAGE
CORPORATION, by

Federal Housing Finance Agency,
its Conservator



Edward J. DeMarco
Acting Director

UNITED STATES DEPARTMENT
OF THE TREASURY



Timothy F. Geithner
Secretary of the Treasury

EXHIBIT B

**CERTIFICATE OF DESIGNATION OF TERMS OF
VARIABLE LIQUIDATION PREFERENCE SENIOR
PREFERRED STOCK, SERIES 2008-2**

1. Designation, Par Value, Number of Shares and Priority

The designation of the series of preferred stock of the Federal National Mortgage Association (the "Company") created by this resolution shall be "Variable Liquidation Preference Senior Preferred Stock, Series 2008-2" (the "Senior Preferred Stock"), and the number of shares initially constituting the Senior Preferred Stock is 1,000,000. Shares of Senior Preferred Stock will have no par value and a stated value and initial liquidation preference per share equal to \$1,000 per share, subject to adjustment as set forth herein. The Board of Directors of the Company, or a duly authorized committee thereof, in its sole discretion, may reduce the number of shares of Senior Preferred Stock, provided such reduction is not below the number of shares of Senior Preferred Stock then outstanding.

The Senior Preferred Stock shall rank prior to the common stock of the Company as provided in this Certificate and shall rank, as to both dividends and distributions upon dissolution, liquidation or winding up of the Company, prior to (a) the shares of preferred stock of the Company designated "5.25% Non-Cumulative Preferred Stock, Series D", "5.10% Non-Cumulative Preferred Stock, Series E", "Variable Rate Non-Cumulative Preferred Stock, Series F", "Variable Rate Non-Cumulative Preferred Stock, Series G", "5.81% Non-Cumulative Preferred Stock, Series H", "5.375% Non-Cumulative Preferred Stock, Series I", "5.125% Non-Cumulative Preferred Stock, Series L", "4.75% Non-Cumulative Preferred Stock, Series M", "5.50% Non-Cumulative Preferred Stock, Series N", "Non-Cumulative Preferred Stock, Series O", "Non-Cumulative Convertible Series 2004-1 Preferred Stock", "Variable Rate Non-Cumulative Preferred Stock, Series P", "6.75% Non-Cumulative Preferred Stock, Series Q", "7.625% Non-Cumulative Preferred Stock, Series R", "Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S", and "8.75% Non-Cumulative Mandatory Convertible Preferred Stock", Series 2008-1", (b) any other capital stock of the Company outstanding on the date of the initial issuance of the Senior Preferred Stock and (c) any capital stock of the Company that may be issued after the date of initial issuance of the Senior Preferred Stock.

2. Dividends

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to

account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. The amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

(b) To the extent not paid pursuant to Section 2(a) above, dividends on the Senior Preferred Stock shall accrue and shall be added to the Liquidation Preference pursuant to Section 8, whether or not there are funds legally available for the payment of such dividends and whether or not dividends are declared.

(c) "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8), the "Dividend Rate" shall mean 12.0%.

(d) Each such dividend shall be paid to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the applicable Dividend Payment Date. The Company may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any common stock or other securities ranking junior to the Senior Preferred Stock unless (i) full cumulative dividends on the outstanding Senior Preferred Stock in respect of the then-current Dividend Period and all past Dividend Periods (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) have been declared and paid in cash (including through any pay down of Liquidation Preference pursuant to Section 3) and (ii) all amounts required to be paid pursuant to Section 4 (without giving effect to any prohibition on such payment under any applicable law) have been paid in cash.

(e) Notwithstanding any other provision of this Certificate, the Board of Directors, in its discretion, may choose to pay dividends on the Senior Preferred Stock without the payment of any dividends on the common stock, preferred stock or any other class or series of stock from time

to time outstanding ranking junior to the Senior Preferred Stock with respect to the payment of dividends.

(f) If and whenever dividends, having been declared, shall not have been paid in full, as aforesaid, on shares of the Senior Preferred Stock, all such dividends that have been declared on shares of the Senior Preferred Stock shall be paid to the holders pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder, and any amounts due but not paid in cash shall be added to the Liquidation Preference pursuant to Section 8.

3. Optional Pay Down of Liquidation Preference

(a) Following termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, in whole or in part, out of funds legally available therefor, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below. Prior to termination of the Commitment, and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, out of funds legally available therefor, but only to the extent of (i) accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference and (ii) Periodic Commitment Fees previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference. Any pay down of Liquidation Preference permitted by this Section 3 shall be paid by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment.

(b) In the event the Company shall pay down of the Liquidation Preference of the Senior Preferred Stock as aforesaid, notice of such pay down shall be given by the Company by first class mail, postage prepaid, mailed neither less than 10 nor more than 45 days preceding the date fixed for the payment, to each holder of record of the shares of the Senior Preferred Stock, at such holder's address as the same appears in the books and records of the Company. Each such notice shall state the amount by which the Liquidation Preference of each share shall be reduced and the pay down date.

(c) If after termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be

outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

4. Mandatory Pay Down of Liquidation Preference Upon Issuance of Capital Stock

(a) If the Company shall issue any shares of capital stock (including without limitation common stock or any series of preferred stock) in exchange for cash at any time while the Senior Preferred Stock is outstanding, then the Company shall, within 10 Business Days, use the proceeds of such issuance net of the direct costs relating to the issuance of such securities (including, without limitation, legal, accounting and investment banking fees) to pay down the Liquidation Preference of all outstanding shares of Senior Preferred Stock pro rata, out of funds legally available therefor, by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below; provided that, prior to the termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), the Liquidation Preference of each share of Senior Preferred Stock shall not be paid down below \$1,000 per share.

(b) If the Company shall not have sufficient assets legally available for the pay down of the Liquidation Preference of the shares of Senior Preferred Stock required under Section 4(a), the Company shall pay down the Liquidation Preference per share to the extent permitted by law, and shall pay down any Liquidation Preference not so paid down because of the unavailability of legally available assets or other prohibition as soon as practicable to the extent it is thereafter able to make such pay down legally. The inability of the Company to make such payment for any reason shall not relieve the Company from its obligation to effect any required pay down of the Liquidation Preference when, as and if permitted by law.

(c) If after the termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such redeemed shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

5. No Voting Rights

Except as set forth in this Certificate or otherwise required by law, the shares of the Senior Preferred Stock shall not have any voting powers, either general or special.

6. No Conversion or Exchange Rights

The holders of shares of the Senior Preferred Stock shall not have any right to convert such shares into or exchange such shares for any other class or series of stock or obligations of the Company.

7. No Preemptive Rights

No holder of the Senior Preferred Stock shall as such holder have any preemptive right to purchase or subscribe for any other shares, rights, options or other securities of any class of the Company which at any time may be sold or offered for sale by the Company.

8. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of the Company, the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive out of the assets of the Company available for distribution to stockholders, before any payment or distribution shall be made on the common stock or any other class or series of stock of the Company ranking junior to the Senior Preferred Stock upon liquidation, the amount per share equal to the Liquidation Preference plus an amount, determined in accordance with Section 2(a) above, equal to the dividend otherwise payable for the then-current Dividend Period accrued through and including the date of payment in respect of such dissolution, liquidation or winding up; provided, however, that if the assets of the Company available for distribution to stockholders shall be insufficient for the payment of the amount which the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive upon such dissolution, liquidation or winding up of the Company as aforesaid, then, all of the assets of the Company available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Senior Preferred Stock pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder.

(b) "Liquidation Preference" shall initially mean \$1,000 per share and shall be:

(i) increased each time a Deficiency Amount (as defined in the Preferred Stock Purchase Agreement) is paid to the Company by an amount per share equal to the aggregate amount so paid to the Company divided by the number of shares of Senior Preferred Stock outstanding at the time of such payment;

(ii) increased each time the Company does not pay the full Periodic Commitment Fee (as defined in the Preferred Stock Purchase Agreement) in cash by an amount per share equal to the amount of the Periodic Commitment Fee that is not paid in cash divided by the number of shares of Senior Preferred Stock outstanding at the time such payment is due;

(iii) increased on the Dividend Payment Date if the Company fails to pay in full the dividend payable for the Dividend Period ending on such date by an amount per share equal to the aggregate amount of unpaid dividends divided by the number of shares of Senior Preferred Stock outstanding on such date; and

(iv) decreased each time the Company pays down the Liquidation Preference pursuant to Section 3 or Section 4 of this Certificate by an amount per share equal to the aggregate amount of the pay down divided by the number of shares of Senior Preferred Stock outstanding at the time of such pay down.

(c) "Preferred Stock Purchase Agreement" means the Preferred Stock Purchase Agreement, dated September 7, 2008, between the Company and the United States Department of the Treasury.

(d) Neither the sale of all or substantially all of the property or business of the Company, nor the merger, consolidation or combination of the Company into or with any other corporation or entity, shall be deemed to be a dissolution, liquidation or winding up for the purpose of this Section 8.

9. Additional Classes or Series of Stock

The Board of Directors shall have the right at any time in the future to authorize, create and issue, by resolution or resolutions, one or more additional classes or series of stock of the Company, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof; provided that, any such class or series of stock may not rank prior to or on parity with the Senior Preferred Stock without the prior written consent of the holders of at least two-thirds of all the shares of Senior Preferred Stock at the time outstanding.

10. Miscellaneous

(a) The Company and any agent of the Company may deem and treat the holder of a share or shares of Senior Preferred Stock, as shown in the Company's books and records, as the absolute owner of such share or shares of Senior Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Senior Preferred Stock and for all other purposes whatsoever, and neither the Company nor any agent of the Company shall be affected by any notice to the contrary. All payments made to or upon the order of any such person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge liabilities for moneys payable by the Company on or with respect to any such share or shares of Senior Preferred Stock.

(b) The shares of the Senior Preferred Stock, when duly issued, shall be fully paid and non-assessable.

(c) The Senior Preferred Stock may be issued, and shall be transferable on the books of the Company, only in whole shares.

(d) For purposes of this Certificate, the term “the Company” means the Federal National Mortgage Association and any successor thereto by operation of law or by reason of a merger, consolidation, combination or similar transaction.

(e) This Certificate and the respective rights and obligations of the Company and the holders of the Senior Preferred Stock with respect to such Senior Preferred Stock shall be construed in accordance with and governed by the laws of the United States, provided that the law of the State of Delaware shall serve as the federal rule of decision in all instances except where such law is inconsistent with the Company’s enabling legislation, its public purposes or any provision of this Certificate.

(f) Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served to or upon the Company shall be given or served in writing addressed (unless and until another address shall be published by the Company) to Fannie Mae, 3900 Wisconsin Avenue NW, Washington, DC 20016, Attn: Executive Vice President and General Counsel. Such notice, demand or other communication to or upon the Company shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by the Company. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by the Company hereunder may be given or served by being deposited first class, postage prepaid, in the United States mail addressed (i) to the holder as such holder’s name and address may appear at such time in the books and records of the Company or (ii) if to a person or entity other than a holder of record of the Senior Preferred Stock, to such person or entity at such address as reasonably appears to the Company to be appropriate at such time. Such notice, demand or other communication shall be deemed to have been sufficiently given or made, for all purposes, upon mailing.

(g) The Company, by or under the authority of the Board of Directors, may amend, alter, supplement or repeal any provision of this Certificate pursuant to the following terms and conditions:

(i) Without the consent of the holders of the Senior Preferred Stock, the Company may amend, alter, supplement or repeal any provision of this Certificate to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Certificate, provided that such action shall not adversely affect the interests of the holders of the Senior Preferred Stock.

(ii) The consent of the holders of at least two-thirds of all of the shares of the Senior Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of the Senior Preferred Stock shall vote together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal (whether by merger, consolidation or otherwise) of the provisions of this Certificate other than as set forth in subparagraph (i) of this paragraph (g). The creation and issuance of any other class or series of stock, or the issuance of additional shares of any existing class or series of stock, of the Company ranking junior to the Senior Preferred Stock shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Senior Preferred Stock shall be entitled to one vote per share on matters on which their consent is required pursuant to subparagraph (ii) of this paragraph (g). In connection with any meeting of such holders, the Board of Directors shall fix a record date, neither earlier than 60 days nor later than 10 days prior to the date of such meeting, and holders of record of shares of the Senior Preferred Stock on such record date shall be entitled to notice of and to vote at any such meeting and any adjournment. The Board of Directors, or such person or persons as it may designate, may establish reasonable rules and procedures as to the solicitation of the consent of holders of the Senior Preferred Stock at any such meeting or otherwise, which rules and procedures shall conform to the requirements of any national securities exchange on which the Senior Preferred Stock may be listed at such time.

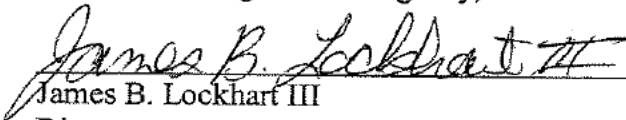
(h) RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE SENIOR PREFERRED STOCK BY OR ON BEHALF OF A HOLDER SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER (AND ALL OTHERS HAVING BENEFICIAL OWNERSHIP OF SUCH SHARE OR SHARES) OF ALL OF THE TERMS AND PROVISIONS OF THIS CERTIFICATE. NO SIGNATURE OR OTHER FURTHER MANIFESTATION OF ASSENT TO THE TERMS AND PROVISIONS OF THIS CERTIFICATE SHALL BE NECESSARY FOR ITS OPERATION OR EFFECT AS BETWEEN THE COMPANY AND THE HOLDER (AND ALL SUCH OTHERS).

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 7th day of September, 2008.

[Seal]

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
by

Federal Housing Finance Agency, its Conservator



James B. Lockhart III
Director

Signature Page to Certificate of Designations of Senior Preferred Stock

FREDDIE MAC

**CERTIFICATE OF CREATION, DESIGNATION, POWERS,
PREFERENCES, RIGHTS, PRIVILEGES, QUALIFICATIONS,
LIMITATIONS, RESTRICTIONS, TERMS AND CONDITIONS
OF
VARIABLE LIQUIDATION PREFERENCE SENIOR PREFERRED STOCK
(PAR VALUE \$1.00 PER SHARE)**

The Federal Housing Finance Agency, as Conservator of the Federal Home Loan Mortgage Corporation, a government-sponsored enterprise of the United States of America (the "Company"), does hereby certify that, pursuant to authority vested in the Board of Directors of the Company by Section 306(f) of the Federal Home Loan Mortgage Corporation Act, and pursuant to the authority vested in the Conservator of the Company by Section 1367(b) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. §4617), as amended, the Conservator adopted Resolution FHLMC 2008-___ on September 7, 2008, which resolution is now, and at all times since such date has been, in full force and effect, and that the Conservator approved the final terms of the issuance and sale of the preferred stock of the Company designated above.

The Senior Preferred Stock shall have the following designation, powers, preferences, rights, privileges, qualifications, limitations, restrictions, terms and conditions:

1. Designation, Par Value, Number of Shares and Seniority

The class of preferred stock of the Company created hereby (the "Senior Preferred Stock") shall be designated "Variable Liquidation Preference Senior Preferred Stock," shall have a par value of \$1.00 per share and shall consist of 1,000,000 shares. The Senior Preferred Stock shall rank prior to the common stock of the Company as provided in this Certificate and shall rank, as to both dividends and distributions upon liquidation, prior to (a) the Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock issued on December 4, 2007, (b) the 6.55% Non-Cumulative Preferred Stock issued on September 28, 2007, (c) the 6.02% Non-Cumulative Preferred Stock issued on July 24, 2007, (d) the 5.66% Non-Cumulative Preferred Stock issued on April 16, 2007, (e) the 5.57% Non-Cumulative Preferred Stock issued on January 16, 2007, (f) the 5.9% Non-Cumulative Preferred Stock issued on October 16, 2006, (g) the 6.42% Non-Cumulative Preferred Stock issued on July 17, 2006, (h) the Variable Rate, Non-Cumulative Preferred Stock issued on July 17, 2006, (i) the 5.81% Non-Cumulative Preferred Stock issued on January 29, 2002, (j) the 5.7% Non-Cumulative Preferred Stock issued on October 30, 2001, (k) the 6% Non-Cumulative Preferred Stock issued on May 30, 2001, (l) the Variable Rate, Non-Cumulative Preferred Stock issued on May 30, 2001 and June 1, 2001, (m) the 5.81% Non-Cumulative Preferred Stock issued on March 23, 2001, (n) the Variable Rate, Non-Cumulative Preferred Stock issued on March 23, 2001, (o) the Variable Rate, Non-Cumulative Preferred Stock issued on January 26, 2001, (p) the Variable Rate, Non-Cumulative Preferred Stock issued on November 5, 1999, (q) the 5.79% Non-Cumulative Preferred Stock issued on July 21, 1999, (r) the 5.1% Non-Cumulative Preferred Stock issued on March 19, 1999, (s) the 5.3% Non-Cumulative Preferred Stock issued on October 28, 1998, (t) the

5.1% Non-Cumulative Preferred Stock issued on September 23, 1998, (u) the Variable Rate, Non-Cumulative Preferred Stock issued on September 23, 1998 and September 29, 1998, (v) the 5% Non-Cumulative Preferred Stock issued on March 23, 1998, (w) the 5.81% Non-Cumulative Preferred Stock issued on October 27, 1997, (x) the Variable Rate, Non-Cumulative Preferred Stock issued on April 26, 1996, (y) any other capital stock of the Company outstanding on the date of the initial issuance of the Senior Preferred Stock, and (z) any capital stock of the Company that may be issued after the date of initial issuance of the Senior Preferred Stock.

2. Dividends

(a) For each Dividend Period from the date of the initial issuance of the Senior Preferred Stock, holders of outstanding shares of Senior Preferred Stock shall be entitled to receive, ratably, when, as and if declared by the Board of Directors, in its sole discretion, out of funds legally available therefor, cumulative cash dividends at the annual rate per share equal to the then-current Dividend Rate on the then-current Liquidation Preference. Dividends on the Senior Preferred Stock shall accrue from but not including the date of the initial issuance of the Senior Preferred Stock and will be payable in arrears when, as and if declared by the Board of Directors quarterly on March 31, June 30, September 30 and December 31 of each year (each, a "Dividend Payment Date"), commencing on December 31, 2008. If a Dividend Payment Date is not a "Business Day," the related dividend will be paid not later than the next Business Day with the same force and effect as though paid on the Dividend Payment Date, without any increase to account for the period from such Dividend Payment Date through the date of actual payment. "Business Day" means a day other than (i) a Saturday or Sunday, (ii) a day on which New York City banks are closed, or (iii) a day on which the offices of the Company are closed.

If declared, the initial dividend will be for the period from but not including the date of the initial issuance of the Senior Preferred Stock through and including December 31, 2008. Except for the initial Dividend Payment Date, the "Dividend Period" relating to a Dividend Payment Date will be the period from but not including the preceding Dividend Payment Date through and including the related Dividend Payment Date. The amount of dividends payable on the initial Dividend Payment Date or for any Dividend Period that is not a full calendar quarter shall be computed on the basis of 30-day months, a 360-day year and the actual number of days elapsed in any period of less than one month. For the avoidance of doubt, in the event that the Liquidation Preference changes in the middle of a Dividend Period, the amount of dividends payable on the Dividend Payment Date at the end of such Dividend Period shall take into account such change in Liquidation Preference and shall be computed at the Dividend Rate on each Liquidation Preference based on the portion of the Dividend Period that each Liquidation Preference was in effect.

(b) To the extent not paid pursuant to Section 2(a) above, dividends on the Senior Preferred Stock shall accrue and shall be added to the Liquidation Preference pursuant to Section 8, whether or not there are funds legally available for the payment of such dividends and whether or not dividends are declared.

(c) "Dividend Rate" means 10.0%; provided, however, that if at any time the Company shall have for any reason failed to pay dividends in cash in a timely manner as required by this Certificate, then immediately following such failure and for all Dividend Periods thereafter until

the Dividend Period following the date on which the Company shall have paid in cash full cumulative dividends (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8), the "Dividend Rate" shall mean 12.0%.

(d) Each such dividend shall be paid to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the applicable Dividend Payment Date. The Company may not, at any time, declare or pay dividends on, make distributions with respect to, or redeem, purchase or acquire, or make a liquidation payment with respect to, any common stock or other securities ranking junior to the Senior Preferred Stock unless (i) full cumulative dividends on the outstanding Senior Preferred Stock in respect of the then-current Dividend Period and all past Dividend Periods (including any unpaid dividends added to the Liquidation Preference pursuant to Section 8) have been declared and paid in cash (including through any pay down of Liquidation Preference pursuant to Section 3) and (ii) all amounts required to be paid pursuant to Section 4 (without giving effect to any prohibition on such payment under any applicable law) have been paid in cash.

(e) Notwithstanding any other provision of this Certificate, the Board of Directors, in its discretion, may choose to pay dividends on the Senior Preferred Stock without the payment of any dividends on the common stock, preferred stock or any other class or series of stock from time to time outstanding ranking junior to the Senior Preferred Stock with respect to the payment of dividends.

(f) If and whenever dividends, having been declared, shall not have been paid in full, as aforesaid, on shares of the Senior Preferred Stock, all such dividends that have been declared on shares of the Senior Preferred Stock shall be paid to the holders pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder, and any amounts due but not paid in cash shall be added to the Liquidation Preference pursuant to Section 8.

3. Optional Pay Down of Liquidation Preference

(a) Following termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, in whole or in part, out of funds legally available therefor, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below. Prior to termination of the Commitment, and subject to any limitations which may be imposed by law and the provisions below, the Company may pay down the Liquidation Preference of all outstanding shares of the Senior Preferred Stock pro rata, at any time, out of funds legally available therefor, but only to the extent of (i) accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference and (ii) Periodic Commitment Fees previously added to the Liquidation

Preference pursuant to Section 8 below and not repaid by any prior pay down of Liquidation Preference. Any pay down of Liquidation Preference permitted by this Section 3 shall be paid by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment.

(b) In the event the Company shall pay down of the Liquidation Preference of the Senior Preferred Stock as aforesaid, notice of such pay down shall be given by the Company by first class mail, postage prepaid, mailed neither less than 10 nor more than 45 days preceding the date fixed for the payment, to each holder of record of the shares of the Senior Preferred Stock, at such holder's address as the same appears in the books and records of the Company. Each such notice shall state the amount by which the Liquidation Preference of each share shall be reduced and the pay down date.

(c) If after termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

4. Mandatory Pay Down of Liquidation Preference Upon Issuance of Capital Stock

(a) If the Company shall issue any shares of capital stock (including without limitation common stock or any series of preferred stock) in exchange for cash at any time while the Senior Preferred Stock is outstanding, then the Company shall, within 10 Business Days, use the proceeds of such issuance net of the direct costs relating to the issuance of such securities (including, without limitation, legal, accounting and investment banking fees) to pay down the Liquidation Preference of all outstanding shares of Senior Preferred Stock pro rata, out of funds legally available therefor, by making a payment in cash to the holders of record of outstanding shares of the Senior Preferred Stock as they appear in the books and records of the Company on such record date as shall be fixed in advance by the Board of Directors, not to be earlier than 45 days nor later than 10 days preceding the date fixed for the payment, with such payment first being used to reduce any accrued and unpaid dividends previously added to the Liquidation Preference pursuant to Section 8 below and, to the extent all such accrued and unpaid dividends have been paid, next being used to reduce any Periodic Commitment Fees (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below) previously added to the Liquidation Preference pursuant to Section 8 below; provided that, prior to the termination of the Commitment (as defined in the Preferred Stock Purchase Agreement referred to in Section 8 below), the Liquidation Preference of each share of Senior Preferred Stock shall not be paid down below \$1,000 per share.

(b) If the Company shall not have sufficient assets legally available for the pay down of the Liquidation Preference of the shares of Senior Preferred Stock required under Section 4(a), the Company shall pay down the Liquidation Preference per share to the extent permitted by law, and shall pay down any Liquidation Preference not so paid down because of the unavailability of legally available assets or other prohibition as soon as practicable to the extent it is thereafter able to make such pay down legally. The inability of the Company to make such payment for any reason shall not relieve the Company from its obligation to effect any required pay down of the Liquidation Preference when, as and if permitted by law.

(c) If after the termination of the Commitment the Company pays down the Liquidation Preference of each outstanding share of Senior Preferred Stock in full, such shares shall be deemed to have been redeemed as of the date of such payment, and the dividend that would otherwise be payable for the Dividend Period ending on the pay down date will be paid on such date. Following such deemed redemption, the shares of the Senior Preferred Stock shall no longer be deemed to be outstanding, and all rights of the holders thereof as holders of the Senior Preferred Stock shall cease, with respect to shares so redeemed, other than the right to receive the pay down amount (which shall include the final dividend for such redeemed shares). Any shares of the Senior Preferred Stock which shall have been so redeemed, after such redemption, shall no longer have the status of authorized, issued or outstanding shares.

5. No Voting Rights

Except as set forth in this Certificate or otherwise required by law, the shares of the Senior Preferred Stock shall not have any voting powers, either general or special.

6. No Conversion or Exchange Rights

The holders of shares of the Senior Preferred Stock shall not have any right to convert such shares into or exchange such shares for any other class or series of stock or obligations of the Company.

7. No Preemptive Rights

No holder of the Senior Preferred Stock shall as such holder have any preemptive right to purchase or subscribe for any other shares, rights, options or other securities of any class of the Company which at any time may be sold or offered for sale by the Company.

8. Liquidation Rights and Preference

(a) Except as otherwise set forth herein, upon the voluntary or involuntary dissolution, liquidation or winding up of the Company, the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive out of the assets of the Company available for distribution to stockholders, before any payment or distribution shall be made on the common stock or any other class or series of stock of the Company ranking junior to the Senior Preferred Stock upon liquidation, the amount per share equal to the Liquidation Preference plus an amount, determined in accordance with Section 2(a) above, equal to the dividend otherwise payable for the then-current Dividend Period accrued through and including the date of payment in respect of such dissolution, liquidation or winding up; provided, however, that if the assets of the Company

available for distribution to stockholders shall be insufficient for the payment of the amount which the holders of the outstanding shares of the Senior Preferred Stock shall be entitled to receive upon such dissolution, liquidation or winding up of the Company as aforesaid, then, all of the assets of the Company available for distribution to stockholders shall be distributed to the holders of outstanding shares of the Senior Preferred Stock pro rata based on the aggregate Liquidation Preference of the shares of Senior Preferred Stock held by each holder.

(b) "Liquidation Preference" shall initially mean \$1,000 per share and shall be:

(i) increased each time a Deficiency Amount (as defined in the Preferred Stock Purchase Agreement) is paid to the Company by an amount per share equal to the aggregate amount so paid to the Company divided by the number of shares of Senior Preferred Stock outstanding at the time of such payment;

(ii) increased each time the Company does not pay the full Periodic Commitment Fee (as defined in the Preferred Stock Purchase Agreement) in cash by an amount per share equal to the amount of the Periodic Commitment Fee that is not paid in cash divided by the number of shares of Senior Preferred Stock outstanding at the time such payment is due;

(iii) increased on the Dividend Payment Date if the Company fails to pay in full the dividend payable for the Dividend Period ending on such date by an amount per share equal to the aggregate amount of unpaid dividends divided by the number of shares of Senior Preferred Stock outstanding on such date; and

(iv) decreased each time the Company pays down the Liquidation Preference pursuant to Section 3 or Section 4 of this Certificate by an amount per share equal to the aggregate amount of the pay down divided by the number of shares of Senior Preferred Stock outstanding at the time of such pay down.

(c) "Preferred Stock Purchase Agreement" means the Preferred Stock Purchase Agreement, dated September 7, 2008, between the Company and the United States Department of the Treasury.

(d) Neither the sale of all or substantially all of the property or business of the Company, nor the merger, consolidation or combination of the Company into or with any other corporation or entity, shall be deemed to be a dissolution, liquidation or winding up for the purpose of this Section 8.

9. Additional Classes or Series of Stock

The Board of Directors shall have the right at any time in the future to authorize, create and issue, by resolution or resolutions, one or more additional classes or series of stock of the Company, and to determine and fix the distinguishing characteristics and the relative rights, preferences, privileges and other terms of the shares thereof; provided that, any such class or series of stock may not rank prior to or on parity with the Senior Preferred Stock without the prior written consent of the holders of at least two-thirds of all the shares of Senior Preferred Stock at the time outstanding.

10. Miscellaneous

(a) The Company and any agent of the Company may deem and treat the holder of a share or shares of Senior Preferred Stock, as shown in the Company's books and records, as the absolute owner of such share or shares of Senior Preferred Stock for the purpose of receiving payment of dividends in respect of such share or shares of Senior Preferred Stock and for all other purposes whatsoever, and neither the Company nor any agent of the Company shall be affected by any notice to the contrary. All payments made to or upon the order of any such person shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge liabilities for moneys payable by the Company on or with respect to any such share or shares of Senior Preferred Stock.

(b) The shares of the Senior Preferred Stock, when duly issued, shall be fully paid and non-assessable.

(c) The Senior Preferred Stock may be issued, and shall be transferable on the books of the Company, only in whole shares.

(d) For purposes of this Certificate, the term "the Company" means the Federal Home Loan Mortgage Corporation and any successor thereto by operation of law or by reason of a merger, consolidation, combination or similar transaction.

(e) This Certificate and the respective rights and obligations of the Company and the holders of the Senior Preferred Stock with respect to such Senior Preferred Stock shall be construed in accordance with and governed by the laws of the United States, provided that the law of the Commonwealth of Virginia shall serve as the federal rule of decision in all instances except where such law is inconsistent with the Company's enabling legislation, its public purposes or any provision of this Certificate.

(f) Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served to or upon the Company shall be given or served in writing addressed (unless and until another address shall be published by the Company) to Freddie Mac, 8200 Jones Branch Drive, McLean, Virginia 22102, Attn: Executive Vice President and General Counsel. Such notice, demand or other communication to or upon the Company shall be deemed to have been sufficiently given or made only upon actual receipt of a writing by the Company. Any notice, demand or other communication which by any provision of this Certificate is required or permitted to be given or served by the Company hereunder may be given or served by being deposited first class, postage prepaid, in the United States mail addressed (i) to the holder as such holder's name and address may appear at such time in the books and records of the Company or (ii) if to a person or entity other than a holder of record of the Senior Preferred Stock, to such person or entity at such address as reasonably appears to the Company to be appropriate at such time. Such notice, demand or other communication shall be deemed to have been sufficiently given or made, for all purposes, upon mailing.

(g) The Company, by or under the authority of the Board of Directors, may amend, alter, supplement or repeal any provision of this Certificate pursuant to the following terms and conditions:

(i) Without the consent of the holders of the Senior Preferred Stock, the Company may amend, alter, supplement or repeal any provision of this Certificate to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Certificate, provided that such action shall not adversely affect the interests of the holders of the Senior Preferred Stock.

(ii) The consent of the holders of at least two-thirds of all of the shares of the Senior Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of the Senior Preferred Stock shall vote together as a class, shall be necessary for authorizing, effecting or validating the amendment, alteration, supplementation or repeal (whether by merger, consolidation or otherwise) of the provisions of this Certificate other than as set forth in subparagraph (i) of this paragraph (g). The creation and issuance of any other class or series of stock, or the issuance of additional shares of any existing class or series of stock, of the Company ranking junior to the Senior Preferred Stock shall not be deemed to constitute such an amendment, alteration, supplementation or repeal.

(iii) Holders of the Senior Preferred Stock shall be entitled to one vote per share on matters on which their consent is required pursuant to subparagraph (ii) of this paragraph (g). In connection with any meeting of such holders, the Board of Directors shall fix a record date, neither earlier than 60 days nor later than 10 days prior to the date of such meeting, and holders of record of shares of the Senior Preferred Stock on such record date shall be entitled to notice of and to vote at any such meeting and any adjournment. The Board of Directors, or such person or persons as it may designate, may establish reasonable rules and procedures as to the solicitation of the consent of holders of the Senior Preferred Stock at any such meeting or otherwise, which rules and procedures shall conform to the requirements of any national securities exchange on which the Senior Preferred Stock may be listed at such time.

(h) RECEIPT AND ACCEPTANCE OF A SHARE OR SHARES OF THE SENIOR PREFERRED STOCK BY OR ON BEHALF OF A HOLDER SHALL CONSTITUTE THE UNCONDITIONAL ACCEPTANCE BY THE HOLDER (AND ALL OTHERS HAVING BENEFICIAL OWNERSHIP OF SUCH SHARE OR SHARES) OF ALL OF THE TERMS AND PROVISIONS OF THIS CERTIFICATE. NO SIGNATURE OR OTHER FURTHER MANIFESTATION OF ASSENT TO THE TERMS AND PROVISIONS OF THIS CERTIFICATE SHALL BE NECESSARY FOR ITS OPERATION OR EFFECT AS BETWEEN THE COMPANY AND THE HOLDER (AND ALL SUCH OTHERS).

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 7th day of September, 2008.

[Seal]

FEDERAL HOME LOAN MORTGAGE CORPORATION,
by

Federal Housing Finance Agency, its Conservator

A handwritten signature in cursive script, reading "James B. Lockhart III", is written over a horizontal line.

James B. Lockhart III
Director