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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
_____)	

**DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), AND (m) AND
FED R. BANKR. P. 2002, 6004, AND 9007 FOR ORDERS: (A)(I) AUTHORIZING AND
APPROVING SALE PROCEDURES; (II) SCHEDULING BID DEADLINE AND SALE
HEARING; (III) APPROVING FORM AND MANNER OF NOTICE THEREOF; AND
(IV) GRANTING RELATED RELIEF AND (B)(I) AUTHORIZING THE SALE OF
CERTAIN FHA LOANS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS; (II) AUTHORIZING AND APPROVING MORTGAGE
LOAN PURCHASE AND INTERIM SERVICING AGREEMENT; AND
(III) GRANTING RELATED RELIEF**

TABLE OF CONTENTS

	Page
JURISDICTION AND VENUE	2
PRELIMINARY STATEMENT	2
BACKGROUND	4
A. FHA Loans	4
B. The Mortgage Loan Purchase and Interim Servicing Agreement	6
DESCRIPTION OF PROPOSED SALE PROCEDURES.....	6
A. The Sale Procedures	8
B. Extraordinary Provisions of the Sale	10
APPLICABLE AUTHORITY	11
A. The Sale Is an Exercise of the Debtors' Sound Business Judgment and Should Be Approved	11
B. The Sale Should Be Approved Free and Clear of All Liens, Claims, Encumbrances, and Other Interests Because the Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code	13
C. No Consumer Privacy Ombudsman Is Required.....	15
D. Relief From the Fourteen-Day Waiting Periods Under Bankruptcy Rule 6004(h) Is Appropriate	16
NO PREVIOUS REQUEST	17
LOCAL RULE 9013-1(B).....	17
CONCLUSION	18

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Am. Living Sys. v. Bonapfel (In re All Am. of Ashburn, Inc.)</i> , 56 B.R. 186 (Bankr. N.D. Ga. 1986), <i>aff'd sub nom.</i> , <i>Griffin v. Bonapfel (In re All Am. of Ashburn, Inc.)</i> , 805 F.2d 1515 (11th Cir. 1986).....	14
<i>Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)</i> , 60 B.R. 612 (Bankr. S.D.N.Y. 1986)	12
<i>Comm. of Equity Sec. Holders v. Lionel Corp. (In re The Lionel Corp.)</i> , 722 F.2d 1063 (2d Cir. 1983)	12
<i>In re Borders Grp., Inc.</i> , 453 B.R. 477 (Bankr. S.D.N.Y. 2011)	14
<i>In re Boston Generating, LLC</i> , 440 B.R. 302 (Bankr. S.D.N.Y. 2010)	12
<i>In re Chrysler LLC</i> , 405 B.R. 84 (Bankr. S.D.N.Y.), <i>aff'd</i> , 576 F.3d 108 (2d Cir. 2009).....	14
<i>In re Grubb and Ellis Co.</i> , No. 12-10685 (MG), 2012 Bankr. LEXIS 1279 (Bankr. S.D.N.Y. Mar. 27, 2012).....	12
<i>In re MF Global Inc.</i> , 467 B.R. 726 (Bankr. S.D.N.Y. 2012)	12
<i>In re Trans World Airlines, Inc.</i> , 322 F.3d 283 (3d Cir. 2003)	14
<i>Rubinstein v. Alaska Pac. Consortium (In re New England Fish Co.)</i> , 19 B.R. 323 (Bankr. W.D. Wash. 1982).....	14
<i>Smart World Techs., LLC v. Juno Online Servs., Inc. (In re Smart World Techs., LLC)</i> , 423 F.3d 166 (2d Cir. 2005)	13
STATUTES	
11 U.S.C. §§:	
105(a).....	2
363(b)	1, 2, 11
363(b)(1).....	11, 12
363(f)	2, 13, 14
363 (m)	2

28 U.S.C. §§:
157 2
157(b) 2
1334 2
1408 2
1409 2

OTHER AUTHORITIES

10 COLLIER ON BANKRUPTCY ¶ 6004.11 (Alan N. Resnick & Henry J. Sommers eds.,
16th ed.) 17

Fed. R. Bankr. P.:

2002 1, 2
6004 1, 2
6004(h) 11, 16, 17
6006 1, 2
9007 1, 2
9008 1, 2

*In re Matter of Adoption of Amended Guidelines for the Conduct of Assets Sales (General
Order Amending M-331 (M-383))
(Bankr. S.D.N.Y. Nov. 18, 2009) (the “Sale Guidelines”)* 1

Local Bankruptcy Rule 9013-1(b) 17

**TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:**

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”)¹ hereby move this Court (the “Motion”)² for approval of a sale transaction pursuant to sections 105(a) and 363 of Title 11, United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and entry of two orders to be considered at two hearings:³

(A) The first order, substantially in the form annexed hereto as Exhibit 1 (the “Sale Procedures Order”), pursuant to 11 U.S.C. §§ 105(a) and 363 and Fed. R. Bankr. P. 2002, 6004, and 9007, which requests approval of the following sale procedures:

- (i) authorizing and approving procedures (the “Sale Procedures”), annexed to the Sale Procedures Order as Exhibit 1, with respect to a proposed sale pursuant to Bankruptcy Code section 363(b) (the “Sale”) of certain loans in the Debtors’ portfolio that are insured by the Federal Housing Administration (the “FHA”) (collectively, the “FHA Loans”);
- (ii) scheduling a deadline by which interested bidders may submit bids for the FHA Loans (the “Bid Deadline”) and a hearing to consider approval of the Sale (the “Sale Hearing”) and setting objection deadlines with respect to the Sale;

¹ The names of the Debtors in these cases and their respective tax identification numbers are identified on Exhibit 1 to the Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital, LLC in Support of the Chapter 11 Petitions and First Day Pleadings [Docket No. 6] (the “Whitlinger Affidavit”).

² Creditors and parties-in-interest with questions or concerns regarding the Debtors’ chapter 11 cases or the relief requested in this Motion may refer to <http://www.kccllc.net/rescap> for additional information.

³ See *In re Matter of Adoption of Amended Guidelines for the Conduct of Assets Sales (General Order Amending M-331 (M-383))* (Bankr. S.D.N.Y. Nov. 18, 2009) (“General Order M-383”).

- (iii) approving the form of notice of the Bid Deadline and the Sale Hearing (the “Sale Notice”), annexed to the Sale Procedures Order as Exhibit 2; and
- (iv) granting related relief.

(B) The second order, substantially in the form annexed hereto as Exhibit 2, subject to the terms of the Sale Procedures Order (the “Sale Order”), pursuant to sections 105(a), 363(b), (f), and (m) of the Bankruptcy Code and Bankruptcy Rule 6004, authorizing the Sale pursuant to a mortgage loan purchase and interim servicing agreement (the “MLPISA”) between GMAC Mortgage, LLC (the “Seller”) and the Purchaser (as defined in the MLPISA), free and clear of liens, claims, encumbrances, and other interests.

In support of this Motion, the Debtors rely on (i) the Whitlinger Affidavit, (ii) the *Declaration of Marc D. Puntus in Support of the Debtors’ FHA Loan Sale*, filed contemporaneously herewith; and (iii) the *Amended Declaration of Peter Giamporcaro in Support of the Sale of the Nationstar Purchased Assets Without a Privacy Ombudsman* [Docket No. 189] (the “Giamporcaro Declaration”). In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105 and 363, as supplemented by Bankruptcy Rules 2002, 6004, and 9007, and General Order M-383.

PRELIMINARY STATEMENT

2. Since the Petition Date, the Debtors have expended tremendous effort to preserve and maximize the value of the Debtors’ assets for the benefit of their estates. In furtherance of

this goal, the Debtors entered into sale agreements for their servicing and origination platform and a number of their whole loan assets for an aggregate amount of approximately \$4.5 billion. These sales have been approved by the Court, and the Debtors and the purchasers are working diligently towards an expeditious closing of the transactions.

3. Following the closing of the sales, the Debtors will still have material assets remaining that will require monetization, and significant operations will be required to do so. Specifically, the primary assets remaining in the Debtors' estates are approximately \$1 billion of loans insured by the FHA or the U.S. Department of Veterans Affairs (the "VA"). Holding and liquidating these loans requires the Debtors to maintain certain licenses and regulatory approvals. In light of the substantial expertise and operational complexity required to monetize these assets, the Debtors believe it is in the best interests of their estates to sell a portion of these loans in the near term (subject to receiving an acceptable price). Thus, the Debtors now seek to sell a material and valuable portion of their remaining assets consisting of a subset of mortgage loans that are insured by the FHA. While, in the ordinary course of the Debtors' business, the Debtors have routinely sold pools of loans, they are seeking Court authority for this proposed marketing and sale process out of an abundance of caution because the unpaid principal balance of the pool of loans the Debtors are seeking to sell is meaningful—approximately \$130 million. The FHA Loans that are proposed to be sold pursuant to this Motion were selected because the Debtors believe that the loan pool will be attractive to a number of prospective bidders, which will result in the highest average market price for the loans sold.

4. The Debtors believe that the proposed Sale Procedures are the best way to maximize the value of these assets for the benefit of the Debtors' estates.

BACKGROUND

A. FHA Loans

5. The Debtors have historically originated or purchased loans insured by the FHA for purposes of securitizing and selling them to securitized trusts sponsored by Ginnie Mae. FHA insurance protects lenders against losses resulting from homeowner defaults on mortgage loans by covering 100% of a lender's principal loss. The FHA pays mortgage lenders the difference between the price obtained for a repossessed home and the outstanding loan balance with insurance proceeds that are paid after the foreclosure process is completed.

6. The Debtors currently hold approximately \$1 billion by UPB of loans insured by the FHA or guaranteed by the VA and are seeking to sell \$130 million by UPB of the FHA-insured loans. These FHA Loans were sold into Ginnie Mae securitizations, and later became non-performing loans, which the Debtors were required to repurchase under the applicable Ginnie Mae guidelines. With respect to many of the loans the Debtors repurchase, they are able to perform modifications on such loans that would enable the loans to become performing and then resell the loans into Ginnie Mae securitization pools. Loans that the Debtors are unable to modify are typically held on the Debtors' books until the foreclosure process is completed and an insurance claim is submitted to the FHA, or until the loan becomes current and the Debtors are able to resell the loan into Ginnie Mae securitization pools.

7. In the ordinary course of business, the Debtors generally sell pools of loans as a standard practice to provide balance sheet relief, reduce servicing costs, or monetize assets that could otherwise require significant time to liquidate in the normal course. The Debtors now seek to sell the FHA Loans in accordance with their prepetition practice. The Debtors have identified those loans that will be attractive to a number of prospective bidders, which are expected to result in the highest average market price for the loans sold. Specifically, these loans are those

for which the collateral documentation is readily available and has been reviewed to confirm that such loans adhere to acceptable industry standards. In addition, the Successful Bidder (as defined in the Sale Procedures) can be assured that the FHA Loans will qualify for the FHA insurance payment in the event the collateral securing the loan does not fully cover the loan.

8. Outside of a section 363 sale, the FHA Loans would typically monetize over a period of approximately 30-36 months on average. Though 30-36 months is the average timeline to monetization, due to extended foreclosure timelines in several states and borrower bankruptcy proceedings, certain loans insured by the FHA could take significantly longer to monetize. By allowing the loans insured by the FHA to monetize in the ordinary course, the Debtors believe they would likely realize close to the carry value on the FHA Loans over time.⁴ Nonetheless, the Debtors believe it may be in the best interest of their estates and creditors to expedite the monetization of those assets. Importantly, however, if the Debtors are unable to achieve an acceptable target value (as determined in consultation with the Interested Parties (as defined below)) for these assets under the Sale Procedures, the Debtors will retain the FHA Loans and allow them to monetize in the ordinary course or seek to sell them at a later time.

9. The Debtors have consulted with the Official Committee of Unsecured Creditors (the "Committee"), the advisors to the Ad Hoc Group of Junior Secured Noteholders (the "JSBs"), and the advisors to Ally Financial Inc. and Ally Bank (collectively, "AFI," and together with the Committee and the JSBs, the "Interested Parties") regarding the Sale, and have received the support of the Interested Parties to pursue a sale of the FHA Loans.

10. Subject to the foregoing, the Debtors, in their business judgment, have determined that the sale of the FHA Loans and related Sale Procedures will maximize value and are in the best interest of the Debtors' estates.

⁴ Carry value per the Debtors' books and records.

B. The Mortgage Loan Purchase and Interim Servicing Agreement

11. Subject to the Court's approval, GMAC Mortgage LLC, a Debtor, will enter into the MLPISA with the Purchaser. The Debtors are finalizing a proposed form of the MLPISA, which will be filed with the Court before the hearing on the Sale Procedures. The Debtors and the Purchaser, subject to the Sale Procedures, will agree upon a revised form of MLPISA that will be filed not later than 14 days before the Sale Hearing.

DESCRIPTION OF PROPOSED SALE PROCEDURES

12. While the Debtors do not intend to utilize a typical bankruptcy auction process, the Sale Procedures will allow the Debtors to market the FHA Loans to a broad pool of potential purchasers and seek the highest and best bid for the FHA Loans. Accordingly, the Debtors seek this Court's approval of the following Sale Procedures, which are also attached as Exhibit 1 to the proposed Sale Procedures Order.⁵

13. The Debtors have identified approximately 15-20 parties who will receive an offering memorandum for the FHA Loans. These parties include those who have previously purchased loans from the Debtors in the ordinary course of business, those who expressed an interest in purchasing the whole loan assets sold to Berkshire Hathaway Inc., and those parties who are known to purchase similar assets in the whole loan market.

14. The Debtors' proposed Sale Procedures require two stages of diligence. First, the Debtors will allow potential bidders to review loan tapes for the FHA Loans in order to enable potential bidders to formulate a bid. This stage is intended to require potential bidders to expend minimal time to encourage bidder participation. Second, once the Successful Bidder is selected (which selection will be made in consultation with the Interested Parties), the Debtors will allow

⁵ To the extent the description of the Sale Procedures set forth herein differs from those set forth in Exhibit 1 to the Sale Procedures Order, the terms of Exhibit 1 to the Sale Procedures Order shall control.

that bidder to engage in more extensive diligence on each individual loan. The second stage of diligence will allow the Successful Bidder to review servicing, credit, and mortgage files to further assess the value of each loan, the validity of FHA insurance, and compliance with federal and local guidelines.

15. Based on its diligence, the Successful Bidder will submit a final bid on a loan-by-loan basis. The Debtors may then remove loans from the portfolio to be sold if the Debtors determine such bid does not maximize the value of the individual loan. This removal process allows the Debtors to select a loan pool that will realize the highest and best value for each individual loan. If the Debtors, in consultation with the Interested Parties, determine that either (i) the bids submitted after the first diligence stage, or (ii) the final bid do not allow the Debtors to realize sufficient value for the FHA Loans, the Debtors reserve their right, upon consultation with the Interested Parties, to monetize the FHA Loans in the ordinary course or to terminate the Sale without prejudice to the Debtors' right to seek Court approval of a sale of the FHA Loans at a later date.

16. The Debtors submit that pursuing the Sale outside of a traditional bankruptcy auction process and allowing for the proposed dual-stage due diligence process will encourage participation and prevent "bid chilling" because interested bidders will not be required to incur extensive diligence expenses at a preliminary stage in the sale process without certainty of entry into a purchase agreement. In addition, because the FHA Loans can be monetized at substantial value without the need to sell the loans, the Debtors believe they face little downside in the event certain loans are removed from the sale as result of diligence occurring following selection of the winning bidder.

A. The Sale Procedures

17. The Sale Procedures are designed to mirror the loan sale process utilized by the Debtors in the ordinary course of business, which the Debtors believe will maximize buyer interest and ensure that the Debtors receive the highest and best value for the FHA Loans.

18. The Sale Procedures provide in relevant part, as follows:

(a) **Notice:** Not later than five days after the entry of the Sale Procedures Order, the Debtors will serve copies of the Sale Notice, the Sale Procedures, and the Sale Procedures Order on the following parties by overnight, postage prepaid to: (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys for the Debtors' prepetition secured credit facilities, (iv) the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement, (v) the attorneys for the Committee, (vi) the attorneys for the JSBs, (vii) the attorneys for AFI, (viii) the attorneys for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, (ix) any party who, in the past year, expressed in writing to the Debtors an interest in the FHA Loans and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated by the proposed sale, (x) all parties who are known to have asserted or believed by the Debtors to hold any lien, claim, encumbrance, or interest in or on the FHA Loans, (xi) the Securities and Exchange Commission, (xii) the Internal Revenue Service, (xiii) all applicable state attorneys' general, and local authorities, (xiv) all applicable state and local taxing authorities, (xv) the Federal Trade Commission, (xvi) the United States Department of Justice, (xvii) the United States Attorney's Office, (xviii) the office of the New York Attorney General; and (xix) all entities that requested notice in these chapter 11 cases under Bankruptcy Rule 2002; and not later than one day after the entry of the Sale Procedures Order, the Sale Procedures Order will be posted on the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultants, at <http://kccllc.net/rescap>, which methods shall be deemed proper notice to any interested parties whose identities are unknown to the Debtors.

(b) **Participation Requirements:** The Debtors will distribute an offering memorandum not later than two business days after the entry of the Sale Procedures Order. In order to participate in the bidding process, a person or entity interested in purchasing the FHA Loans must first deliver an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, to the following parties: (i) the Debtors, c/o Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Gary S. Lee and Todd M. Goren) and Centerview Partners, 31 West 52nd Street, New York, NY 10019 (Attn: Marc D. Puntus and Karn Chopra); (ii) the Committee, c/o Kramer

Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Kenneth H. Eckstein and Douglas H. Mannal), and Moelis & Company, 399 Park Ave, 5th Floor, New York, NY 10022 (Attn: Jared Dermont and Syed Hasan); (iii) the JSBs, c/o White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036 (Attn: J. Christopher Shore, and Harrison L. Denman) and Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, NY 10005 (Attn: Gerard Uzzi); and (iv) AFI, c/o Kirkland & Ellis LLP, 601 Lexington Ave New York, NY 10022 (Attn: Richard M. Cieri, Ray C. Schrock, and Stephen E. Hessler).

(c) **Due Diligence**: Bidders executing a confidentiality agreement will be afforded the opportunity to conduct preliminary due diligence, including the ability to review loan data tapes for the FHA Loans.

(d) **Bid Deadline**: **The deadline for submitting Bid Packages (as defined below) by a bidder shall be February 6, 2013, at 5:00 p.m. (Eastern Time) (the “Bid Deadline”).**

On or prior to the Bid Deadline, a bidder that desires to make a bid shall deliver to the Debtors and the Interested Parties the following (collectively, a “Bid Package”): (i) one written copy of its bid (a “Bid Proposal”); (ii) a copy of such bidder’s proposed MLPISA that has been marked to show amendments and modifications to the MLPISA filed with the Court, including price and terms, with respect to which the bidder agrees to be bound (the “Marked Agreement”); (iii) a copy of such bidder’s proposed sale order that has been marked to show amendments and modifications to the Proposed Sale Order (the “Marked Proposed Sale Order”); (iv) evidence of corporate authority to commit to the Sale, including the most current audited and latest unaudited financial statements (collectively, the “Financials”) of such person or entity, or, if the bidder is an entity formed for the purpose of the Sale: (a) Financials of the equity holder(s) of the entity or such other form of financial disclosure as is acceptable to the Debtors, and (b) a written commitment acceptable to the Debtors of the equity holder(s) of the entity to be responsible for the entity’s obligations in connection with the Sale; (v) evidence that such bidder is a HUD-approved mortgagee with all licenses and regulatory approvals necessary to own and service (either itself or through a sub-servicer) the FHA Loans; and (vi) evidence that such bidder (either itself or through a sub-servicer) has entered into a Servicer Participation Agreement (as defined in the MLPISA) with Fannie Mae (or, if applicable another government entity), that will enable such bidder to service the FHA Loans in accordance with the guidelines for HUD and HAMP, and such agreement is in full force and effect.

(e) **Review of Bids**: A timely Bid Package received from a bidder that meets the requirements set forth above shall be reviewed by the Debtors, in consultation with the Interested Parties, to determine which Bid Package, if any, offers the highest and best bid for the FHA Loans. If the Debtors, in consultation with the Interested Parties, determine that no Bid Package offers sufficient value for the

FHA Loans, the Debtors reserve their right to terminate the Sale without prejudice to the Debtors' right to monetize the FHA Loans in the ordinary course or seek Court approval of a sale of the FHA Loans at a later date.

(f) **Acceptance of the Highest and Best Bid**: If the Debtors, in consultation with the Interested Parties, determine that a Bid Package offers sufficient value for the FHA Loans and is the highest and best bid, such bid shall be deemed the "Successful Bid" and such bidder shall be deemed the "Successful Bidder," and the Debtors shall promptly notify all bidders of such determination. The Debtors and the Successful Bidder shall execute a trade confirmation and the Successful Bidder shall provide loan level prices within one business day of designation of the Successful Bid.

The Debtors reserve their right in their sole and absolute discretion, in consultation with the Interested Parties, to (i) reject any and all bids and to accept any bid prior to the execution of a definitive MLPISA, and (ii) to withdraw any FHA Loan from the Sale at any time on or prior to the closing of the Sale. The Debtors may also, in their sole discretion, exclude any FHA Loans that do not satisfy certain servicing and/or documentation criteria.

(g) **Post-Bid Due Diligence Access**: The Successful Bidder shall be afforded the opportunity to conduct further due diligence of the FHA Loans, including a review of collateral documents and loan servicing files for a period of 4 weeks (the "Post-Bid Diligence Period"). The Successful Bidder will be permitted to reduce the bid on individual FHA Loans as a result of the Post-Bid Diligence, but will not be permitted to cancel the Sale entirely. No adjustments to the purchase price will be permitted for any reason other than those that can be documented by the Purchaser as a result of the Post-Bid Diligence. After the Post-Bid Diligence is complete, the Successful Bidder will distribute a revised purchase price schedule on a loan-by-loan basis to the Debtors. The Debtors will determine, in consultation with the Interested Parties, whether any individual FHA Loan should be removed from the Sale.

(h) **Preservation of Rights**: All of the Interested Parties' rights are preserved to object to a sale of the FHA Loans notwithstanding the above-described consultation rights provided in these procedures.

B. Extraordinary Provisions of the Sale

19. General Order M-383 requires that a debtor highlight certain provisions requested as part of its sale or sale procedures conspicuously in the sale motion (the "Extraordinary Provisions"). Below are the relevant Extraordinary Provisions of which the Debtors are seeking approval:

- **Private Sale/No Competitive Bidding.** No formal auction is contemplated. However, the Debtors are actively soliciting bids from a broad pool of potential purchasers in order to obtain the highest and best offer for the FHA Loans. The Sale Procedures allow the Debtors to sell the FHA Loans if a value-maximizing price can be achieved through a bulk sale rather than simply allowing the FHA Loans to monetize in the ordinary course. However, should the bidding process result in a bid, or bids, that the Debtors, in consultation with the Interested Parties, determine does, or do, not sufficiently reflect the value of the FHA Loans, the Debtors can elect to terminate the Sale and allow the FHA Loans to monetize in the ordinary course or pursue a Court-approved sale at a later date.
- **Successor Liability.** The Debtors request a finding that neither the Purchaser, nor any of its successors, assigns, nor any affiliates shall have any successor liability. As detailed below, the Debtors' notice protocol will apprise all interested parties of the proposed successor liability provisions of the Sale Order. In addition, the Debtors will be publishing the Sale Notice on the website of the Debtors' claims and noticing agent Kurtzman Carson Consultants, LLC at <http://www.kccllc.net/rescap>. The Sale Notice appraises parties that the Sale will be free and clear of all claims, liabilities, interests, liens, obligations and encumbrances, including those that are based upon, without limitation, any successor or transferee theory of liability. Accordingly, the Debtors submit that no further notice concerning this provision need be provided and that good cause exists for the approval of the Sale Order's successor liability findings.
- **Relief from Bankruptcy Rule 6004(h).** The Debtors request relief from the 14-day stay imposed by Bankruptcy Rule 6004(h). Industry standards dictate that loan sales of this kind typically close shortly after the parties have finalized the loan pool to be sold and entered into a purchase agreement. In order to ensure interest and participation in the Sale, the Debtors submit that such relief is necessary and supported by legitimate business reasons because the Debtors believe that a potential purchaser will not be willing to deviate from industry standards in closing a sale of this kind.

APPLICABLE AUTHORITY

A. **The Sale Is an Exercise of the Debtors' Sound Business Judgment and Should Be Approved**

20. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a trustee or debtor-in-possession "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . ." 11 U.S.C. § 363(b)(1). To sell property under section 363(b), the Debtors must demonstrate to the Court a legitimate business justification for the proposed Sale. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re The*

Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); *see also In re Grubb and Ellis Co.*, No. 12-10685 (MG), 2012 Bankr. LEXIS 1279, at *10-11 (Bankr. S.D.N.Y. Mar. 27, 2012) (“In approving a transaction conducted pursuant to section 363(b)(1), courts consider whether the debtor exercised sound business judgment.”). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). The Sale should be approved if the Court is satisfied that (a) the Debtors exercised sound business judgment; (b) the Debtors provided adequate notice; (c) the purchasers proceeded in good faith; and (d) the purchase price is fair. *See In re MF Global Inc.*, 467 B.R. 726, 730 (Bankr. S.D.N.Y. 2012); *In re Boston Generating, LLC*, 440 B.R. 302, 329-30 (Bankr. S.D.N.Y. 2010) (citing *In re General Motors Corp.*, 407 B.R. 463, 489-93 (Bankr. S.D.N.Y. 2009)).

21. The Debtors submit that ample business justification exists to sell the FHA Loans to the Successful Bidder pursuant to the Sale Procedures. The Debtors believe that selling the FHA Loans at an acceptable price pursuant to a section 363 sale and recognizing immediate value for their estates, rather than allowing the FHA Loans to monetize in the ordinary course is in the best interest of their estates. The Debtors also believe that a targeted sale process involving a broad pool of bidders for the FHA Loans is most likely to achieve the highest and best price for the FHA Loans.

22. **Adequate and Reasonable Notice.** The notice described herein and the Sale Procedures are designed to provide adequate notice to all potentially interested parties, including those who have previously expressed an interest in purchasing the FHA Loans. All creditors and

parties in interest will receive notice of the Sale and a reasonable opportunity to object or be heard with respect to the Sale Procedures. Accordingly, the proposed Sale Procedures satisfy the notice requirement under section 363 of the Bankruptcy Code.

23. **Fair and Reasonable Price.** The Sale Procedures, including the Sale Notice, are designed to maximize the value received for the FHA Loans. The Sale Procedures are designed to ensure that the FHA Loans will be sold for the highest or otherwise best possible purchase price. The Debtors are subjecting the value of the FHA Loans to market testing. Under the Sale Procedures, the Debtors may reject bids in the aggregate or on a loan-by-loan basis for those loans where the Debtors determine the bid does not sufficiently reflect the value of the loans.

24. **Good Faith.** The terms of the MLPISA will be negotiated by the Debtors, the Successful Bidder, and their respective advisors at arm's length and in good faith, in consultation with the Interested Parties. The Sale is proposed in good faith and the Sale Procedures are designed to ensure that the Successful Bidder is a good faith purchaser under section 363(m).

B. The Sale Should Be Approved Free and Clear of All Liens, Claims, Encumbrances, and Other Interests Because the Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code

25. Under section 363(f) of the Bankruptcy Code, a debtor-in-possession may sell all or any part of its property free and clear of any and all liens, claims, or interests in such property if: (1) such a sale is permitted under applicable non-bankruptcy law; (2) the party asserting such a lien, claim, or interest consents to such sale; (3) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (4) the interest is the subject of a *bona fide* dispute; or (5) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.

11 U.S.C. § 363(f). *See also Smart World Techs., LLC v. Juno Online Servs., Inc. (In re Smart World Techs., LLC)*, 423 F.3d 166, 169 n.3 (2d Cir. 2005); (“Section 363 permits sales of assets

free and clear of claims and interests. It thus allows purchasers . . . to acquire assets [from a debtor] without any accompanying liabilities.”). Section 363(f) requires only that one of the five requirements be satisfied with respect to each such interest. *In re Borders Grp., Inc.*, 453 B.R. 477, 483 (Bankr. S.D.N.Y. 2011).

26. The Second Circuit has held that the reference in section 363(f) of the Bankruptcy Code to the sale being free and clear of “any interest” permits the sale of a debtor’s assets free and clear of claims, including successor liability claims. *See, e.g., In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (sale of assets pursuant to section 363(f) barred successor liability claims for employment discrimination and rights under travel voucher program); *see also In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y.), *aff’d*, 576 F.3d 108 (2d Cir. 2009) (sale of assets pursuant to section 363(f) extinguished any potential state successor or transferee liability claims); *Am. Living Sys. v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 56 B.R. 186, 189-90 (Bankr. N.D. Ga. 1986) (sale pursuant to section 363(f) barred successor liability for product defects claims), *aff’d sub nom., Griffin v. Bonapfel (In re All Am. of Ashburn, Inc.)*, 805 F.2d 1515 (11th Cir. 1986); *Rubinstein v. Alaska Pac. Consortium (In re New England Fish Co.)*, 19 B.R. 323, 328 (Bankr. W.D. Wash. 1982) (sale pursuant to section 363(f) was free and clear of successor liability claims for employment discrimination and civil rights violations).

27. The Debtors expect that they will satisfy the second and fifth requirements set forth in section 363(f) of the Bankruptcy Code, if not others as well. Thus, the FHA Loans should be transferred to the purchaser free and clear of all liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability.

C. No Consumer Privacy Ombudsman Is Required

28. Section 363(b)(1) of the Bankruptcy Code states that if a debtor is selling personally identifiable information (“PII”) in bankruptcy and the debtor has a privacy policy in place that limits the transfer of PII to unaffiliated parties, then a debtor must either (i) comply with its privacy policies in connection with the sale, or (ii) a consumer privacy ombudsperson must be appointed. 11 U.S.C. § 363(b)(1).

29. Separately, the Gramm-Leach-Bliley Act (the “GLBA”), as implemented by rules made by the Consumer Financial Protection Bureau, requires that a financial institution deliver to any individual with whom it has a “customer relationship,” an annual notice describing its practices with respect to the disclosure of PII to nonaffiliated third parties. *See* 12 C.F.R. 1016.5. The GLBA prohibits financial institutions from disclosing PII to non-affiliated third parties, except as provided in their privacy notice. *See* 12 C.F.R. 1016.10. The GLBA, however, specifically permits a financial institution to disclose PII to unaffiliated third parties “[i]n connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of [PII] concerns solely consumers of such business or unit.” 12 C.F.R. 1016.15(a)(6).

30. The Court has previously approved sales of the Debtors’ assets and found that the appointment of a consumer privacy ombudsperson was not required under section 363(b) of the Bankruptcy Code because the Debtors’ disclosure of personally identifiable information pursuant to these sales was in compliance with the Gramm-Leach-Bliley Act and was consistent with the privacy notices delivered by the Debtors to mortgage borrowers. *See Order Under 11 U.S.C. §§ 105, 363, and 365 and Fed. Bankr. P. 2002, 6004, 6006, and 9014 (I) Approving (A) Sale of Debtors’ Assets Pursuant to Asset Purchase Agreement with Ocwen Loan Servicing, LLC; (B) Sale of Purchased Assets Free and Clear of Liens, Claims, Encumbrances, and Other*

Interests; (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Thereto; (D) Related Agreements; and (II) Granting Related Relief [Docket No. 2246] and Order Under 11 U.S.C. §§ 105, 363, and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, and 9014 (I) Approving (A) Sale of Debtors' Assets Pursuant to Asset Purchase Agreement with Berkshire Hathaway, Inc.; (B) Sale of Purchased Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests; and (C) Related Agreements; and (II) Granting Related Relief [Docket No. 2247]. As previously set forth in further detail in the Giamporcaro Declaration, the Debtors maintain that in connection with the sale of the FHA Loans pursuant to the MLPISA, the Debtors will be able to comply with existing privacy policies in connection with the Sale. The Debtors also maintain that the disclosure of PII pursuant to the MLPISA will comply with the GLBA and the terms of the privacy notices delivered by the Debtors to mortgage borrowers. In turn, the Debtors believe that borrower data can be disclosed in connection with the Sale without the need for a consumer privacy ombudsperson.⁶

D. Relief From the Fourteen-Day Waiting Periods Under Bankruptcy Rule 6004(h) Is Appropriate

31. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Debtors request that the Sale Procedures Order and the Sale Order be effective immediately by providing that 14-day stays under Bankruptcy Rule 6004(h) be waived.

32. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to

⁶ In the unlikely event it is determined that a consumer privacy ombudsperson must be appointed in this sale, the MLPISA will provide that the sale, if any, of customer lists, customer data and other consumer privacy information pursuant to the MLPISA is subject to and shall conform to the recommendations of any consumer privacy ombudsperson that may be appointed pursuant to section 332 of the Bankruptcy Code.

Fed. R. Bankr. P. 6004(h). Although Bankruptcy Rules 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, Collier on Bankruptcy suggests that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 COLLIER ON BANKRUPTCY ¶ 6004.11 (Alan N. Resnick & Henry J. Sommers eds., 16th ed.).

33. The Debtors submit that the proposed Sale will enable the Debtors to recognize significant value for the estate. However, as industry standards dictate that loan sales close shortly after the parties enter into a sale agreement, the Sale must be consummated as promptly as practicable in order to ensure bidder interest and participation, so that the Debtors may recognize immediate value for the FHA Loans. Therefore, the Debtors hereby request that the Court waive the 14-day stay period under Bankruptcy Rule 6004(h).

NO PREVIOUS REQUEST

34. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

LOCAL RULE 9013-1(b)

35. Because this Motion raises no novel issues of law, and the authorities relied upon are set forth herein, the Debtors respectfully submit that the Motion itself satisfies the requirements of Rule 9013-1(b) of the Local Bankruptcy Rules for the Southern District of New York regarding the submission of a memorandum of law.

CONCLUSION

WHEREFORE the Debtors respectfully request that this Court (i) enter the proposed Sale Procedures Order, substantially in the form attached hereto as Exhibit 1; (ii) enter the proposed Sale Approval Order, substantially in the forms attached hereto as Exhibit 2 or as otherwise agreed upon with the Purchaser; and (iii) grant such other and further relief as this Court deems just and proper.

Dated: January 2, 2013
New York, New York

/s/ Gary S. Lee

Gary S. Lee

Todd M. Goren

Jennifer L. Marines

Melissa M. Crespo

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*Counsel for the Debtors and
Debtors in Possession*

EXHIBIT 1 TO MOTION

SALE PROCEDURES ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
-----)	

PROPOSED ORDER UNDER 11 U.S.C. §§ 105 and 363 AUTHORIZING AND APPROVING SALE PROCEDURES; (II) SCHEDULING BID DEADLINE AND SALE HEARING; AND (III) ESTABLISHING NOTICE PROCEDURES AND APPROVING FORMS OF NOTICE

Upon the motion, dated January 2, 2013 (the “Motion”),¹ of Residential Capital, LLC (“ResCap”) and certain of its affiliates, as debtors in possession (collectively, the “Debtors”) for entry of an order, under Bankruptcy Code sections 105 and 363 of Title 11, United States Code (the “Bankruptcy Code”) and the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 2002, 6004, and 9007 for, among other things: (i) authorization and approval of the proposed sale procedures annexed hereto as Exhibit 1 (the “Sale Procedures”), and (ii) establishing notice procedures and approving the Sale Notice; and upon (i) the Whitlinger Affidavit [Docket No. 6], (ii) the Puntus Declaration [Docket No. ___], and (iii) the Giamporcuro Declaration [Docket No. 187]; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, the Sale Procedures, or the MLPISA (as defined in the Motion). Creditors and parties-in-interest with questions or concerns regarding the Debtors’ chapter 11 cases or the relief granted herein may refer to <http://www.kccllc.net/rescap> for additional information.

appearing that the proceeding on the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and sufficient notice of the Motion having been given under the particular circumstances and it appearing that no further notice need be provided; and a hearing having been held on January 16, 2013, to consider the relief requested in the Motion (the “Sale Procedures Hearing”); and upon the record of the Sale Procedures Hearing, and all of the proceedings before this Court; and this Court having reviewed the Motion and found and determined that the relief sought in the Motion with respect to the Sale Procedures is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefore, it is FOUND AND DETERMINED THAT:²

A. The statutory and legal predicates for the relief requested in the Motion are sections 105 and 363 of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004, and 9007, and Rule 6004-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

B. The Motion and this Order comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Guidelines for the Conduct of Asset Sales established by the Bankruptcy Court on November 18, 2009 pursuant to General Order M-383.

C. The Sale Procedures comply with the requirements of Local Rule 6004-1.

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

D. The Debtors have articulated compelling and sound business justifications for this Court to grant the Sale Procedures, including this Court's (i) approval of the Sale Procedures; and (ii) scheduling of the Bid Deadline and Sale Hearing.

E. The Debtors have set a Sale Hearing (as described below), where they will seek authorization of the sale of FHA Loans, in accordance with the MLPISA, free and clear of all liens, encumbrances, and interests to the Purchaser (as defined in the MLPISA).

F. The Sale Procedures, a copy of which is annexed hereto as Exhibit 1, are fair, reasonable, and appropriate and are designed to maximize recovery with respect to the sale of the FHA Loans that are the subject of the MLPISA.

G. The Sale Notice, a copy of which is annexed hereto as Exhibit 2, is reasonably calculated to provide parties in interest with proper notice of the proposed sale of the FHA Loans that are the subject of the MLPISA, the Sale Procedures, the Bid Deadline, and the Sale Hearing, and no other or further notice is required.

H. Due, sufficient, and adequate notice of the relief requested in the Motion and granted herein has been given to parties in interest and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 6004.

I. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Sale Procedures relief requested in the Motion is granted.

2. [The Objections that have not been adjourned, withdrawn, or resolved are overruled.]

Sale Procedures

3. The Sale Procedures, attached hereto as Exhibit 1, which are incorporated herein by reference, are approved and shall govern all bids and sale procedures relating to the FHA Loans. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Sale Procedures.

4. This Order and the Sale Procedures shall govern the sale of the FHA Loans.

5. The deadline for submitting a Bid Package shall be February 6, 2013 at 5:00 p.m. (Prevailing Eastern Time) (the "Bid Deadline"), as further described in the Sale Procedures.

Notice Procedures

6. The Sale Notice is sufficient to provide effective notice to all interested parties of the Sale Procedures and the Sale, pursuant to Bankruptcy Rules 2002(a)(2) and 6004, and is hereby approved.

7. The notice procedures described in subparagraphs (a)-(b) below are approved and shall be good and sufficient, and no other or further notice shall be required if given as follows:

- (a) The Debtors (or their agent) serve, within five days after entry of this Order, by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a copy of this Order and the Sale Notice upon: (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys

for the Debtors' prepetition secured credit facilities, (iv) the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement, (v) the attorneys for the Committee, (vi) the attorneys for the JSBs, (vii) the attorneys for AFI, (viii) the attorneys for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, (ix) any party who, in the past year, expressed in writing to the Debtors an interest in the FHA Loans and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated by the proposed sale, (x) all parties who are known to have asserted or believed by Debtors to hold any lien, claim, encumbrance, or interest in or on the FHA Loans, (xi) the Securities and Exchange Commission, (xii) the Internal Revenue Service, (xiii) all applicable state attorneys' general, and local authorities, (xiv) all applicable state and local taxing authorities, (xv) the Federal Trade Commission, (xvi) the United States Department of Justice, (xvii) the United States Attorney's Office, (xviii) the office of the New York Attorney General; and (xix) all entities that requested notice in these chapter 11 cases under Bankruptcy Rule 2002.

- (b) Within one day of entry of this order, the Debtors shall cause the Sale Procedures Order and Sale Notice, to be published on the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultants, LLC, at <http://www.kccllc.net/rescap>.
- (c) The Debtors and the Purchaser, subject to the Sale Procedures, will agree upon a revised form of MLPISA that will be filed not later than 14 days before the Sale Hearing.

Objection Deadline

8. Any party that seeks to object to the relief requested in the Motion pertaining to approval of the Sale shall file a formal objection that complies with the objection procedures in accordance with the terms hereof. Each objection shall state the legal and factual basis of such objection.

9. Any and all objections as contemplated by this Order must be: (i) in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the

Bankruptcy Rules, the Local Rules, and the *Order Under Bankruptcy Code Sections 102(2), 105(a) and 105(d), Bankruptcy Rules 1015(c), 2002(m) and 9007 and Local Bankruptcy Rule 2002-2 Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 141] (the “CMO”); (iv) filed with the Bankruptcy Court; and (v) served on (a) the Debtors, c/o Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Gary S. Lee and Todd M. Goren) and Centerview Partners, 31 West 52nd Street, New York, NY 10019 (Attn: Marc Puntus and Karn Chopra); (b) the Committee, c/o Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, N Y 10036 (Attn: Kenneth H. Eckstein and Douglas H. Mannal), and Moelis & Company, 399 Park Ave, 5th Floor, New York, NY 10022 (Attn: Jared Dermont and Syed Hasan); (c) the JSBs, c/o White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036 (Attn: J. Christopher Shore, and Harrison L. Denman) and Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, NY 10005 (Attn: Gerard Uzzi); (d) AFI, c/o Kirkland & Ellis LLP, 601 Lexington Ave New York, NY 10022 (Attn: Richard M. Cieri, Ray C. Schrock, and Stephen E. Hessler); and (e) the Notice Parties in accordance with the CMO (the “Objection Notice Parties”) so as to be received on or before the appropriate deadline as set forth below.

10. The deadline for objecting to approval of the Sale of the FHA Loans, including that such Sale shall be free and clear of liens, claims, encumbrances, and interests (including rights or claims based on any successor or transferee liability) shall be **April 4, 2013, at 5:00 p.m.** (Prevailing Eastern Time).

11. Failure to object to the relief requested in the Motion shall be deemed to be “consent” for purposes of section 363(f) of the Bankruptcy Code and shall be a bar to the

assertion, at the Sale Hearing or thereafter, of any objection to the Motion, and to the consummation and performance of the Sale as contemplated by the MLPISA (including the transfer free and clear of all liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability, of each of the FHA Loans transferred as part of the Sale).

12. The Court shall conduct the Sale Hearing on **April 11, 2013 at 10:00 a.m.** (Prevailing Eastern Time), at which time the Court will consider approval of the Sale to the Successful Bidder.

13. The Sale Hearing may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Sale Hearing or by the filing of a hearing agenda.

Other Relief Granted

14. The Debtors will segregate cash generated from the Sale in accordance with the *Final Order Under Bankruptcy Code Sections 105(a), 345, 363, 364, and 503(b)(1) and Bankruptcy Rules 6003 and 6004 Authorizing (I) Continued Use of Cash Management Services and Practices, (II) Continued Use of Existing Bank Accounts, Checks, and Business Forms, (III) Implementation of Modified Cash Management Procedures and Use of Certain Bank Accounts Established in Connection with Use of Pre-And Post-Petition Lenders Financing Facilities and Cash Collateral, (IV) Waiver of the Investment and Deposit Requirements of Bankruptcy Code Section 345, (V) Debtors to Honor Specified Outstanding Prepetition Payment Obligations, and (VI) Continuation of Intercompany Transactions and Granting Administrative Expense Status to Intercompany Claims* [Docket No. 393], including segregating cash generated from the Sale of

collateral securing any of the Debtors' financing facilities into the specific bank accounts established for the benefit of the lenders under such financing facilities.

15. Notwithstanding anything to the contrary in this Order, any action to be taken pursuant to the relief authorized in this Order is subject to the terms of any cash collateral order and debtor in possession financing order entered in these chapter 11 cases. To the extent there is any inconsistency between the terms of this Order and the terms of any order relating to postpetition financing, cash collateral, or cash management, the terms of the orders relating to postpetition financing, cash collateral, or cash management shall govern.

16. Subject to paragraph 15, absent further order of the Court, the proceeds of the Sale shall be used only for the payment of operating expenses in the ordinary course of business that are (i) afforded administrative expense status, or (ii) otherwise authorized by the Court; provided, however, that for the avoidance of doubt, absent further order of the Court, no proceeds of the Sale shall be used to pay down any of the Debtors' prepetition credit facilities.

17. Notwithstanding anything herein to the contrary, this Order shall not modify or affect the terms and provisions of, nor the rights and obligations under, (i) the Board of Governors of the Federal Reserve System Consent Order, dated April 13, 2011, by and among AFI, Ally Bank, ResCap, GMAC Mortgage, LLC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, (ii) the consent judgment entered April 5, 2012 by the District Court for the District of Columbia, dated February 9, 2012, (iii) the Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as amended, dated February 10, 2012, and (iv) all related

agreements with AFI and Ally Bank and their respective subsidiaries and affiliates (excluding ResCap and its subsidiaries).

18. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

19. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

20. Notwithstanding any possible applicability of Bankruptcy Rule 6004, or otherwise, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry.

21. The Sale does not alter the provisions of section 363(o) of the Bankruptcy Code.

22. The requirements set forth in Local Rule 9013-1(b) are satisfied.

23. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

24. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, York
_____, 2012

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

PROPOSED SALE PROCEDURES

SALE PROCEDURES

By the motion dated January 2, 2013 (the “Sale Motion”), Residential Capital LLC (“ResCap”) and its debtor subsidiaries, as debtors in possession (collectively, the “Debtors”), requested, among other things, approval of the process and procedures through which the Debtors will determine the highest or otherwise best price for the purchase of certain whole loans insured by the Federal Housing Administration (collectively, the “FHA Loans”) pursuant to a mortgage loan purchase and interim servicing agreement that was filed with the Court on [January __], 2013 [Docket No. __] (the “MLPISA”). On [January __], 2013, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) entered an order (the “Sale Procedures Order”),¹ which, among other things, authorized the Debtors to determine the highest or otherwise best price for the FHA Loans through the bidding process and procedures set forth below (the “Sale Procedures”).

On April 11, 2013, as further described below, in the Motion, and in the Sale Procedures Order, the Bankruptcy Court shall conduct a hearing (the “Sale Hearing”), at which the Debtors shall seek entry of an order (the “Sale Order”) authorizing and approving the sale of the FHA Loans (the “FHA Loan Sale”) pursuant to the MLPISA between the Seller (as defined in the MLPISA) and the Purchaser (as defined in the MLPISA).

Participation Requirements

The Debtors will distribute an offering memorandum not later than two business days after entry of the Sale Procedures Order. In order to participate in the bidding process, a person or entity interested in purchasing the FHA Loans must first deliver an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, to the following parties:

- (i) the Debtors, c/o Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Gary S. Lee and Todd M. Goren) and Centerview Partners, 31 West 52nd Street, New York, NY 10019 (Attn: Marc D. Puntus and Karn Chopra);
- (ii) the Official Committee of Unsecured Creditors (the “Committee”), c/o Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Kenneth H. Eckstein and Douglas H. Mannal), and Moelis & Company, 399 Park Ave, 5th Floor, New York, NY 10022 (Attn: Jared Dermont and Syed Hasan);
- (iii) the Ad Hoc Group of Junior Secured Noteholders (the “JSBs”), c/o White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036 (Attn: J. Christopher Shore, and Harrison L. Denman) and Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, NY 10005 (Attn: Gerard Uzzi); and

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion and the Sale Procedures Order, as applicable.

- (iv) Ally Financial Inc. (“AFI”), c/o Kirkland & Ellis LLP, 601 Lexington Ave New York, NY 10022 (Attn: Richard M. Cieri, Ray C. Schrock, and Stephen E. Hessler).

Preliminary Due Diligence Access

Bidders executing a confidentiality agreement shall be afforded the opportunity to conduct preliminary due diligence, including receiving the offering memorandum and the ability to review loan data tapes for the FHA Loans.

The Debtors shall coordinate all reasonable requests from bidders for additional information and due diligence access. If the Debtors determine that the due diligence materials requested by such bidder is reasonable and appropriate under the circumstances, but such material has not previously been provided to any other bidder, the Debtors shall provide such materials to all bidders.

Due Diligence From Bidders

The Debtors and their advisors shall be entitled to due diligence from a bidder upon execution of a confidentiality agreement that is reasonably satisfactory to the Debtors. Each bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors. The Debtors shall promptly provide copies of any information received from a bidder to the Committee, the JSBs, and AFI (collectively the “Interested Parties”).

Bid Deadline and Bid Package

The deadline for submitting Bid Packages (as defined below) by a bidder shall be February 6, 2013, at 5:00 p.m. (Eastern Time) (the “Bid Deadline”).

On or prior to the Bid Deadline, a bidder that desires to make a bid shall deliver to the Debtors and the Interested Parties the following (collectively, a “Bid Package”):

- (i) one written copy of its bid (a “Bid Proposal”);
- (ii) a copy of such bidder’s proposed MLPISA that has been marked to show amendments and modifications to the form MLPISA filed with the Court, including price and terms, with respect to which the bidder agrees to be bound (the “Marked Agreement”);
- (iii) a copy of such bidder’s proposed sale order that has been marked to show amendments and modifications to the Proposed Sale Order (the “Marked Proposed Sale Order”);
- (iv) evidence of corporate authority to commit to the FHA Loan Sale, including the most current audited and latest unaudited financial statements (collectively, the “Financials”) of such person or entity, or, if the bidder is an entity formed for the purpose of the Sale, Financials of the

equity holder(s) of the entity or such other form of financial disclosure as is acceptable to the Debtors, and (b) a written commitment acceptable to the Debtors of the equity holder(s) of the entity to be responsible for the entity's obligations in connection with the Sale;

- (v) evidence that such bidder is a HUD-approved mortgagee with all licenses and regulatory approvals necessary to own and service (either itself or through a sub-servicer) the FHA Loans; and
- (vi) evidence that such bidder (either itself or through a sub-servicer) has entered into a Servicer Participation Agreement (as defined in the MLPISA) with Fannie Mae (or, if applicable another government entity), that will enable such bidder to service the FHA Loans in accordance with the guidelines for HUD and HAMP, and such agreement is in full force and effect.

Bid Proposal Requirements

A Bid Proposal must be a written irrevocable offer, subject only to the Post-Bid Due Diligence, (i) stating that the bidder offers to consummate the Sale pursuant to the Marked Agreement, and (ii) confirming that the offer shall remain open until the selection of the Successful Bid (as defined below).

In addition to the foregoing requirements, a Bid Proposal must fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid, and the complete terms of any such participation.

Review of Bids

A timely Bid Package received from a bidder that meets the requirements set forth above shall be reviewed by the Debtors, in consultation with the Interested Parties, to determine which Bid Package, if any, offers the highest and best bid for the FHA Loans. If the Debtors, in consultation with the Interested Parties, determine that no Bid Package offers sufficient value for the FHA Loans, the Debtors reserve their right to terminate the Sale without prejudice to the Debtors' right, upon consultation with the Interested Parties, to monetize the FHA Loans in the ordinary course or to seek Court approval of a sale of the FHA Loans at a later date.

Acceptance of Highest and Best Bid(s)

If the Debtors, in consultation with the Interested Parties, determine that a Bid Package offers sufficient value for the FHA Loans and is the highest and best bid, such bid shall be deemed the "Successful Bid" and such bidder shall be deemed the "Successful Bidder," and the Debtors shall promptly notify all bidders of such determination. The Debtors and the Successful Bidder shall execute a trade confirmation and the Successful Bidder shall provide loan level prices within one business day of designation of the Successful Bid.

The Debtors reserve their right in their sole and absolute discretion, in consultation with the Interested Parties, to (i) reject any and all bids and to accept any bid prior

to the execution of a definitive MLPISA, and (ii) to withdraw any FHA Loan from the Sale at any time on or prior to the closing of the Sale. The Debtors may also, in their sole discretion, exclude any FHA Loans that do not satisfy certain servicing and/or documentation criteria.

Post-Bid Due Diligence Access

The Successful Bidder shall be afforded the opportunity to conduct further due diligence of the FHA Loans (the “Post-Bid Due Diligence”) for a period of 4 weeks (the “Post-Bid Diligence Period”).

The Post-Bid Diligence Period will allow the Successful Bidder the opportunity to perform due diligence, at its own expense, on 100% of the FHA Loans, provided that compliance review to HUD Guidelines will be limited to a sample size of 20% of the FHA Loans. The Successful Bidder will be provided access to a secure web site of the origination files and compact discs with pay histories and servicing comments with respect to all of the FHA Loans. The Debtors will use “best efforts” to clear any missing documents prior to the closing of the Sale. Any FHA Loan for which missing document exceptions cannot be cleared will be sold on an “as-is” basis.

The Successful Bidder will be permitted to reduce the bid on individual loans as a result of the Post-Bid Diligence, but will not be permitted to cancel the Sale entirely. No adjustments to the total bid will be permitted for any reason other than those that can be documented by the Purchaser as a result of the Post-Bid Diligence. After the Post-Bid Diligence is complete, the Successful Bidder will distribute a revised purchase price schedule on a loan-by-loan basis to the Debtors. The Debtors will determine, in consultation with the Interested Parties, whether any individual FHA Loan should be removed from the Sale.

For the avoidance of doubt, other than with respect to the final population and value of the FHA Loans to be sold, the MLPISA shall not materially differ from the Marked Agreement.

Preservation of Rights

For the avoidance of doubt, all of the Interested Parties’ rights are preserved to object to the Sale notwithstanding the consultation rights provided in these procedures.

Presentation of Successful Bid at Sale Hearing

The Debtors shall present the Successful Bid to the Bankruptcy Court at the Sale Hearing. At the Sale Hearing, certain findings shall be sought from the Bankruptcy Court, including that (i) the Successful Bidder was selected in accordance with the Sale Procedures, and (ii) consummation of the Sale as contemplated by the Successful Bid will provide the highest or otherwise best result and is in the best interests of the Seller and their estates in these chapter 11 cases.

Modification of Sale Procedures

The Debtors, with the consent of the Interested Parties, which consent shall not be unreasonably withheld, or by order of the Court, may modify any provision in the Sale

Procedures, for any reason the Debtors, in their reasonable business judgment, determine will be in the best interests of their estates.

EXHIBIT 2

PROPOSED NOTICE OF BID DEADLINE AND SALE HEARING

MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900
Gary S. Lee
Todd M. Goren
Jennifer L. Marines
Melissa M. Crespo

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
Debtors.)	Jointly Administered
_____)	

**NOTICE OF BID DEADLINE AND SALE HEARING
TO SELL FHA LOANS PURSUANT TO
MORTGAGE LOAN PURCHASE AND INTERIM SERVICING AGREEMENT**

PLEASE TAKE NOTICE THAT upon the motion (the “Motion”) of Residential Capital LLC (“ResCap”) and its debtor subsidiaries, as debtors in possession (collectively, the “Debtors”), dated January 2, 2013, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) has issued an order dated [], 2013 (the “Sale Procedures Order”), among other things, (i) authorizing and approving certain procedures for the submission and acceptance of competing bids (the “Sale Procedures”); (ii) scheduling a bid deadline and sale hearing (the “Sale Hearing”) to approve the sale by certain of the Debtors of the FHA Loans (as such term is defined in the Mortgage Loan Purchase and Interim Servicing Agreement (the “MLPISA”) free and clear of all liens, claims, encumbrances, and other interests (the “Sale”); and (v) granting related relief.

A. BID DEADLINE

PLEASE TAKE FURTHER NOTICE that the evaluation of bids and sale of the FHA Loans by the Debtors will occur in accordance with procedures established by the Sale Procedures Order, entered on [], attached hereto as Exhibit 1.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Sale Procedures Order, any party wishing to submit a bid for the FHA Loans must do so in accordance with the Sale Procedures Order, such that it is actually **received not later than February 6, 2013, at 5:00 p.m. (ET)** by the parties identified in the Sale Procedures Order.

B. SALE HEARING

PLEASE TAKE FURTHER NOTICE that the Sale Hearing will be held before the Honorable Martin Glenn, United States Bankruptcy Judge, in Courtroom 501 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, on **April 11, 2013, at 10:00 a.m. (ET)**. The Sale Hearing may be adjourned without notice by an announcement of the adjourned date at the Sale Hearing.

C. SALE FREE AND CLEAR

PLEASE TAKE FURTHER NOTICE that the order approving the Sale will provide that the FHA Loans shall be transferred to the Purchaser (as defined in the MLPISA), and such transfer shall be free and clear of all claims, liabilities, interests, liens, obligations, and encumbrances of any person or entity, and any and all rights and claims under any bulk transfer statutes and similar laws, whether arising by agreement, by statute or otherwise and whether occurring or arising before, on or after the date on which the chapter 11 cases were commenced, whether known, unknown, contingent or unliquidated, arising prior to the Closing Date (as defined in the MLPISA). Any person or entity holding any such claims, liabilities, interests, liens, obligations, or encumbrances shall be enjoined and forever barred from asserting such claims, liabilities, interests, liens, obligations, or encumbrances against the Purchaser of any of its affiliates, as more particularly described and provided for in the proposed order approving the Sale.

D. OBJECTIONS

PLEASE TAKE FURTHER NOTICE THAT RESPONSES OR OBJECTIONS, IF ANY, TO THE RELIEF SOUGHT IN THE MOTION SHALL BE FILED with the Clerk of the Bankruptcy Court and served upon: (i) the Debtors, c/o Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Gary S. Lee and Todd M. Goren) and Centerview Partners, 31 West 52nd Street, New York, NY 10019 (Attn: Marc Puntus and Karn Chopra); (ii) the Committee, c/o Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, N Y 10036 (Attn: Kenneth H. Eckstein and Douglas H. Mannal, and Moelis & Company, 399 Park Ave, 5th Floor, New York, NY 10022 (Attn: Jared Dermont and Syed Hasan); (iii) the JSBs, c/o White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036 (Attn: J. Christopher Shore, and Harrison L. Denman) and Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, NY 10005 (Attn: Gerard Uzzi); and (iv) AFI, c/o Kirkland & Ellis LLP, 601 Lexington Ave New York, NY 10022 (Attn: Richard M. Cieri, Ray C. Schrock, and Stephen E. Hessler); (v) the Office of the United States Trustee for the Southern District of New York (Attn: Brian Masumoto), 33 Whitehall Street, 21st Floor, New

York, New York 10004, **SO AS TO BE RECEIVED NO LATER THAN April 4, 2013 AT 5:00 p.m. (ET) (the “Objection Deadline”)**).

PLEASE TAKE FURTHER NOTICE that the failure of any person or entity to file a response or objection on or before the Objection Deadline shall be deemed a consent to the Sale and the other relief requested in the Motion, and shall bar the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Procedures, the Motion, the Sale, the approval of related agreements, and the Debtors’ consummation of the Sale.

E. COPIES OF THE MOTION AND RELATED SALE DOCUMENTS

PLEASE TAKE FURTHER NOTICE that this Notice provides only a partial summary of the relief sought in the Motion, the terms of the Sale Procedures Order, and the Sale Approval Order. Copies of such documents are available for inspection (i) by accessing (a) the website of the Bankruptcy Court at <http://www.nysb.uscourts.gov>, or (b) the website of the Debtors’ claims and noticing agent, Kurtzman Carson Consultants, at www.kccllc.net/rescap or (ii) by visiting the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, NY 10004-1408. Copies also may be obtained by faxing a written request to the attorneys for the Debtors, Morrison & Foerster LLP (Attn: Gary S. Lee, Esq. and Todd M. Goren at (212) 468-7900). The terms of such documents shall control in the event of any conflict with this Notice.

Dated: [], 2013
New York, New York

DRAFT

Gary S. Lee
Todd M. Goren
Jennifer L. Marines
Melissa M. Crespo

MORRISON & FOERSTER LLP
1290 Avenue of the Americas
New York, New York 10104
Telephone: (212) 468-8000
Facsimile: (212) 468-7900

*Counsel for the Debtors and
Debtors in Possession*

EXHIBIT 2 TO MOTION

SALE APPROVAL ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
_____)	

**PROPOSED ORDER UNDER 11 U.S.C. §§ 105 AND 363, AND
FED. R. BANKR. P. 2002 AND 6004, (I) APPROVING (A) SALE OF DEBTORS’
FHA LOANS PURSUANT TO MORTGAGE LOAN PURCHASE AND INTERIM
SERVICING AGREEMENT; (B) SALE OF FHA LOANS FREE AND CLEAR OF
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS;
AND (II) GRANTING RELATED RELIEF**

Upon the motion, dated January 2, 2013 (the “Motion”), of Residential Capital, LLC (“ResCap”) and certain of its affiliates, as debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”),¹ for entry of an order, under Bankruptcy Code sections 105 and 363, and Bankruptcy Rules 2002 and 6004 authorizing and approving (i) that certain mortgage loan purchase and sale agreement dated as of [] (the “MLPISA”), entered into by and among the Seller (as defined in the MLPISA) and the Purchaser (as defined in the MLPISA); (ii) the sale and all related transactions, in accordance with the MLPISA of all of the Debtors’ right, title, and interest in, to and under the FHA Loans and (iii) granting related relief; and upon the Whitlinger Affidavit [Docket No. 6] and the Puntus Declaration [Docket No. ____]; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court

¹ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Motion, the Sale Procedures Order, or the MLPISA (as defined herein). Creditors and parties-in-interest with questions or concerns regarding the Debtors’ Chapter 11 cases or the relief granted herein may refer to <http://www.kcellc.net/rescap> for additional information.

having entered an order, dated January [], 2013 (the “Sale Procedures Order”),

(i) providing for the sale and all related transactions, in accordance with the MLPISA and this Order (the “Sale”), of all of the Debtors’ right, title, and interest in, to and under the FHA Loans to the Purchaser free and clear of all claims, liens, encumbrances, or other interests (including, any and all “claims” as defined in section 101(5) of the Bankruptcy Code and any rights or claims based on any successor or transferee liability); and

(ii) authorizing and approving the Sale Procedures, notice of the Sale and the hearing to consider approval of the Sale (the “Sale Hearing”)³; and Bid Packages having been evaluated in accordance with the Sale Procedures Order; and at the conclusion of the evaluation, [] was chosen as the Successful Bidder (as defined in the Sale Procedures) in accordance with the Sales Procedures Order; and the Sale Hearing having been held on [March 26], 2013 to consider the relief requested in the Motion; and upon the record of the Sale Hearing, and all of the proceedings before the Court; and the Court having reviewed the Motion [and any objections thereto (the “Objections”)]; and all parties in interest having been afforded an opportunity to be heard with respect to the Motion and all of the relief related thereto; and it appearing that the relief requested by the Motion with respect to the Sale as provided in this Order is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefore, it is

³ For the purposes of this Order, the term “Sale Hearing” shall be any hearing at which the approval of the Sale is considered.

FOUND AND DETERMINED THAT:⁴

A. Jurisdiction and Venue. This Court has jurisdiction over the Motion and the Sale pursuant to 28 U. S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U. S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory predicates for the relief sought in the Motion are sections 105(a) and 363 of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002, 6004, and 9007. The consummation of the Sale contemplated by the MLPISA and this Order is legal, valid, and properly authorized under all such provisions of the Bankruptcy Code and Bankruptcy Rules, and all of the applicable requirements of such sections and rules have been complied with in respect of the Sale.

C. Notice. As evidenced by the affidavits and certificates of service and Sale Notice previously filed with the Court and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the Sale, and the Sale Hearing have been provided in accordance with sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002(a), 6004(a) and 9007, and in compliance with the Sale Procedures Order to all interested persons and entities, including: (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys for the Debtors' prepetition secured credit facilities, (iv) the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement, (v) the

⁴ The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

attorneys for the Committee, (vi) the attorneys for the JSBs, (vii) the attorneys for AFI, (viii) the attorneys for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, (ix) any party who, in the past year, expressed in writing to the Debtors an interest in the FHA Loans and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated by the proposed sale, (x) all parties who are known to have asserted or believed by Debtors to hold any lien, claim, encumbrance, or interest in or on the FHA Loans, (xi) the Securities and Exchange Commission, (xii) the Internal Revenue Service, (xiii) all applicable state attorneys' general, and local authorities, (xiv) all applicable state and local taxing authorities, (xv) the Federal Trade Commission, (xvi) the United States Department of Justice, (xvii) the United States Attorney's Office, (xviii) the office of the New York Attorney General; and (xix) all entities that requested notice in these chapter 11 cases under Bankruptcy Rule 2002 (collectively, the "Notice Parties"). The notice described in this Paragraph C is good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Sale Procedures, the Sale Hearing, the MLPISA, the Sale, and this Order is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors, the Sale Notice described above was sufficient and reasonably calculated under the circumstances to reach such parties.

D. Extensive Efforts by Debtors. The Sale is the result of the Debtors' extensive efforts in seeking to maximize recoveries to the Debtors' estates for the benefit of creditors.

E. Business Justification. For the reasons set forth in the Motion and the Puntus Declaration, the Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the FHA Loans.

F. Sale Procedures Order. On January [], 2013, this Court entered the Sale Procedures Order approving Sale Procedures for the FHA Loans. The Sale Procedures provided a full, fair, and reasonable opportunity for an entity to make an offer to purchase the FHA Loans.

G. Adequate Marketing; Highest or Best Offer. The Debtors have adequately marketed the FHA Loans and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make an offer for the FHA Loans; (c) the consideration provided for in the MLPISA constitutes the highest or otherwise best offer for the FHA Loans; (d) the consideration provides fair and reasonable consideration for the FHA Loans and constitutes reasonably equivalent value under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia; (e) taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the FHA Loans for greater economic value to the Debtors or their estates; and (f) the Debtors' determination that the MLPISA constitutes the highest and best offer for the FHA Loans constitutes a valid and sound exercise of the Debtors' business judgment.

H. Opportunity to Object. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons, including the Notice Parties.

I. Sale in Best Interests. The actions represented to be taken by the Seller and the Purchaser are appropriate under the circumstances of these chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest. Approval of the MLPISA and circumstances of the Sale at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. Arm's-Length Sale. The MLPISA was negotiated, proposed, and entered into by the Seller and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Seller nor the Purchaser, nor any of their respective insiders and affiliates, have engaged in any conduct that would cause or permit the MLPISA or any part of the Sale to be avoided under section 363(n) of the Bankruptcy Code.

L. Good Faith Purchaser. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

M. Corporate Authority. Each Debtor (i) has full corporate power and authority to execute the MLPISA and all other documents contemplated thereby, and the sale of the FHA Loans has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the MLPISA, (iii) has taken all corporate action necessary to authorize and approve the MLPISA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) needs no consents or approvals, other than those expressly provided for in the MLPISA, which may be waived by the Purchaser, to consummate such transactions.

N. Binding and Valid Transfer. The transfer of the FHA Loans to the Purchaser will be a legal, valid, and effective transfer of the FHA Loans and will vest the Purchaser with all right, title, and interest of the Seller to the FHA Loans free and clear of all interests, including (i) rights or claims based on any successor or transferee liability, (ii) those that purport to give to any party a right or option to effect any setoff, forfeiture, modification, right of first refusal, or termination of the Seller's or the Purchaser's interest in the FHA Loans, or any similar rights, (iii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the FHA Loans prior to the closing, and (iv) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal, or charges of any kind or nature, if any, including, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all debts arising in any way in connection with any agreements, acts, or failures to act, of any of the Seller or any of the Seller's predecessors or affiliates, claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, claims otherwise arising under doctrines of successor or transferee liability. The MLPISA and the related documents and agreements contemplated thereby, and the consummation of the transactions contained therein shall not be subject to avoidance by the Debtors, any affiliate of the Debtors, any of their respective successor trustees appointed

with respect thereto, or any other person or entity, including, without limitation, any claims with respect to any transfers made in accordance with the MLPISA.

O. Satisfaction of 363(f) Standards. The Seller may sell, and, upon closing of the Sale, shall be deemed to have sold the FHA Loans free and clear of all interests of any kind or nature whatsoever, including all rights or claims based upon any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of interests, including all rights or claims based on any successor or transferee liability are (a) deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code and (b) adequately protected by having their interests, if any, including all rights or claims based on any successor or transferee liability, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they claim an interest, including all rights or claims based on any successor or transferee liability. In all cases, each such person with interests in the FHA Loans are enjoined from taking any action against the Purchaser, the Purchaser's affiliates or any agent of the foregoing to recover any such interest.

P. Necessity of Order. The Purchaser would not have entered into the MLPISA and would not have consummated the Sale without the relief provided for in this Order (including that the transfer of the FHA Loans to Purchaser be free and clear of all interests and including rights or claims based upon successor or transferee liability).

Q. Personally Identifiable Information. The Debtors have provided certain privacy policies to consumers that govern the disclosure of "personally identifiable information" (as defined in Bankruptcy Code section 101(41A)) to unaffiliated third parties. The Debtors have proposed to sell certain assets, which may require the disclosure of personally identifiable

information to third parties. The Debtors' disclosure of personally identifiable information pursuant to the Sale is in compliance with the Gramm-Leach-Bliley Act and is consistent with the privacy notices delivered by the Debtors to mortgage borrowers. For these reasons, no consumer privacy ombudsman has been appointed under section 363(b)(1) of the Bankruptcy Code.

R. Final Order. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rule 6004(h), the Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. **Motion is Granted.** The Motion is granted and the relief requested therein with respect to the Sale of the FHA Loans to the Purchaser pursuant to the MLPISA is granted and approved, as further described below.

2. **[Objections Overruled.** Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.]

3. **Approval.** The MLPISA, and all the terms and conditions thereof, is approved. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under, and comply with the terms of, the MLPISA and consummate the Sale pursuant to, and in accordance with, the terms and conditions of the MLPISA and this Order. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the

MLPISA, together with all additional instruments and documents that the Seller or the Purchaser deem necessary or appropriate to implement the MLPISA and effectuate the Sale, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to Purchaser's possession the FHA Loans or as may be necessary or appropriate to the performance of the obligations as contemplated by the MLPISA.

4. **Binding Effect of Order.** This Order and the MLPISA shall be binding in all respects upon all known and unknown creditors of, and equity security interests in, any Debtor, including any holders of interests (including holders of rights or claims based on any successor or transferee liability), all successors and assigns of the Purchaser, each Seller and their affiliates and subsidiaries, the FHA Loans, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and this Order shall not be subject to amendment or modification and the MLPISA shall not be subject to rejection. The terms of this Order shall apply in any sale pursuant to a chapter 11 plan and may be incorporated into any confirmation order. Nothing contained in any chapter 11 plan confirmed in the Debtors' chapter 11 cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the MLPISA or this Order.

5. **Injunction.** All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the FHA Loans to the Purchaser in accordance with the MLPISA and this Order. Following the Closing Date, all persons or entities (including, but not limited to, the Debtors and/or their respective successors (including any trustee), creditors, investors, certificate holders,

securitization trustees, borrowers, current and former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state, and local officials, including those maintaining any authority relating to any environmental, health and safety laws, and the successors and assigns of each of the foregoing) holding interests in the FHA Loans or against the Debtors in respect of the FHA Loans of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing any interests of any kind or nature whatsoever against the Purchaser or any affiliate of the Purchaser or any of their respective property, successors, and assigns, or the FHA Loans, as an alleged successor or on any other grounds, it being understood that nothing herein shall affect assets of the Debtors that are not FHA Loans.

6. No person or entity shall assert, and the Purchaser and the FHA Loans shall not be subject to, any defaults, breaches, counterclaims, offsets, defenses (whether contractual or otherwise, including any right of recoupment), liabilities, claims and interests, or basis of any kind or nature whatsoever to delay, defer, or impair any right of the Purchaser or the Debtors.

7. **General Assignment.** Upon the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Seller's interests in the FHA Loans and a bill of sale transferring good and marketable title in the FHA Loans to the Purchaser. Each and every federal, state, and local governmental agency, quasi-agency, or department is hereby directed to accept this Order, or any and all other documents and instruments necessary and appropriate to consummate the Sale.

9. **Transfer Free and Clear.** Except as otherwise provided by section 363(o) of the Bankruptcy Code, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the FHA Loans shall be transferred to the Purchaser as required under the MLPISA, and such transfer shall be free and clear of all interests of any person and any and all rights and claims under any bulk transfer statutes and similar laws, whether arising by agreement, by statute or otherwise and whether occurring or arising before, on or after the date on which these chapter 11 cases were commenced, whether known or unknown, occurring or arising prior to such transfer, with all such interests to attach to the proceeds of the Sale ultimately attributable to the property against or in which the holder of a claim or interest claims or may claim a claim or interest, in the order of their priority, with the same validity, force, and effect which they now have, subject to any claims and defenses the Seller may possess with respect thereto.

10. **Valid Transfer.** The transfer of the FHA Loans to the Purchaser pursuant to the MLPISA constitutes a legal, valid, and effective transfer of the FHA Loans and shall vest the Purchaser with all right, title, and interest of the Seller in and to the FHA Loans free and clear of all interests of any kind or nature whatsoever, including all rights or claims based on any successor or transferee liability. The transfers of FHA Loans shall not be subject to avoidance for any reason by the Debtors, any affiliate of the Debtors, their respective successors, or any creditor thereof including, without limitation, with respect to any transfers pursuant to the MLPISA.

11. **Direction to Release Interests.** Upon the Closing Date, each of the Seller's creditors and any other holder of an interest, including rights or claims based on any successor or transferee liability, is authorized and directed to execute such documents and

take all other actions as may be necessary to release its interest in the FHA Loans, if any, as such interest may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing an interest in the Seller or the FHA Loans shall not have delivered to the Seller prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests, which the person or entity has with respect to the Seller or the FHA Loans or otherwise, then (i) the Seller is authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Seller or the FHA Loans, and (ii) the Purchaser is authorized to file, register, or otherwise record a certified copy of this Order, which shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Seller or the FHA Loans. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the MLPISA, including, without limitation, recordation of this Order. This Order shall be binding upon and shall govern the acts of all persons or entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of such assets or other property interests.

11. **No Interference.** Following the Closing Date of the Sale, no holder of any interest shall interfere with the Purchaser's title to, or use and enjoyment of, the FHA Loans based on, or related to, any such interest, or based on any actions the Debtors may take in their chapter 11 cases.

13. **No Discriminatory Treatment.** To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the FHA Loans sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale contemplated by the MLPISA.

14. **No Successor Liability.** Neither the Purchaser, nor any of its successors or assigns, or any of their respective affiliates shall have any liability for any interest that arose prior to the Closing Date, or otherwise is assertable against the Debtors or is related to the FHA Loans prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the MLPISA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the FHA Loans, to: (i) be legal successors, or otherwise be deemed successors to the Debtors; (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any interests, including under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing Date, now

existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated.

15. **Fair Consideration.** The consideration provided by the Purchaser for the FHA Loans under the MLPISA shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Sales may not be avoided under section 363(n) of the Bankruptcy Code. The Purchaser was not party to any agreements to control the sale price, and is not subject to any claims for damages under section 363(n) of the Bankruptcy Code.

16. **Retention of Jurisdiction.** This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Order, all amendments thereto, and any waivers and consents thereunder, including, but not limited to, retaining jurisdiction to (i) compel delivery of the FHA Loans to the Purchaser; (ii) interpret, implement, and enforce the provisions of this Order; (iii) protect the Purchaser against any interests, claims or liabilities against or related to the Seller or the FHA Loans of any kind or nature whatsoever, and (iv) enter any order under section 363 of the Bankruptcy Code.

17. **Good Faith.** The transactions contemplated by the MLPISA are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the Sale shall not affect the validity of the Sale, unless such authorization is duly stayed pending such appeal. The Purchaser is a

purchaser in good faith of the FHA Loans and is entitled to all the protections afforded by section 363(m) of the Bankruptcy Code. There has been no collusion by the Purchaser.

18. **No Bulk Law Application.** No law of any state or other jurisdiction, including any bulk sales law or similar law, shall apply in any way to the transactions contemplated by the Sale, the MLPISA, the Motion, and this Order.

19. **Subsequent Plan Provisions.** Nothing contained in any chapter 11 plan confirmed in any Debtor's bankruptcy case or any order confirming any such plan or in any other order in these chapter 11 cases shall alter, conflict with, or derogate from, the provisions of the MLPISA or this Order.

20. **Failure to Specify Provisions.** The failure to specifically include any particular provisions of the MLPISA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the MLPISA be authorized and approved in its entirety.

21. **Non-Material Modifications.** The MLPISA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have any material adverse effect on the Debtors' estates.

22. **Appointment of Trustee.** The provisions of the MLPISA and this Order may be specifically enforced in accordance with the MLPISA notwithstanding the appointment of any chapter 7 or chapter 11 trustee after the Closing Date.

23. **Amounts Payable By Seller Is Administrative Expenses.** Any amounts due to Purchaser from the Seller under the MLPISA shall constitute allowed administrative expenses and shall be paid without the need for further application or motion by Purchaser.

24. **Segregation of Cash.** The Debtors will segregate cash generated from the Sale in accordance with the *Final Order Under Bankruptcy Code Sections 105(a), 345, 363, 364, and 503(b)(1) and Bankruptcy Rules 6003 and 6004 Authorizing (I) Continued Use of Cash Management Services and Practices, (II) Continued Use of Existing Bank Accounts, Checks, and Business Forms, (III) Implementation of Modified Cash Management Procedures and Use of Certain Bank Accounts Established in Connection with Use of Pre-And Post-Petition Lenders Financing Facilities and Cash Collateral, (IV) Waiver of the Investment and Deposit Requirements of Bankruptcy Code Section 345, (V) Debtors to Honor Specified Outstanding Prepetition Payment Obligations, and (VI) Continuation of Intercompany Transactions and Granting Administrative Expense Status to Intercompany Claims* [Docket No. 393], including segregating cash generated from the Sale of collateral securing any of the Debtors' financing facilities into the specific bank accounts established for the benefit of the lenders under such financing facilities.

25. Subject to paragraph 24 , absent further order of the Court, the proceeds of the Sale shall be used only for the payment of operating expenses in the ordinary course of business that are (i) afforded administrative expense status, or (ii) otherwise authorized by the Court; provided, however, that for the avoidance of doubt, absent further order of the Court, no proceeds of the Sale shall be used to pay down any of the Debtors' prepetition credit facilities.

13. Notwithstanding anything herein to the contrary, including, without limitation, any findings and any assertion, agreement, pleading, or other document made or filed in

connection with the Sale, the Sale Motion, the Sale Procedures Order, the Sale Hearing, or this Sale Order, this Order shall not modify or affect the terms and provisions of, nor the rights and obligations under, (a) the Board of Governors of the Federal Reserve System Consent Order, dated April 13, 2011, by and among AFI, Ally Bank, ResCap, GMAC Mortgage, LLC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, (b) the consent judgment entered April 5, 2012 by the District Court for the District of Columbia, dated February 9, 2012, (c) the Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as amended, dated February 10, 2012; and (d) all related agreements with AFI and Ally Bank and their respective subsidiaries and affiliates.

14. **Document Preservation.** The Debtors shall take all appropriate steps to preserve, protect, maintain, and ensure the availability of all of the Debtors' books, records, documents and electronically stored information, in whatever format, including native format that are potentially relevant to the claims asserted by the Plaintiffs (collectively the "Relevant Books and Records") in the following actions (the "Actions"):

- *New Jersey Carpenters Health Fund, et als., on Behalf of Themselves and All Others Similarly Situated v. Residential Capital, LLC, et als.*, No. 08-CV-8781 (HB) (S.D.N.Y. 2008)
- *Union Cent. Life Ins. Co. et al. v. Credit Suisse First Boston Mortg. Sec. Corp. et al.*, No. 11-CV-2890 (GBD) (S.D.N.Y. 2011)
- *Donna Moore, Frenchola Holden and Keith McMillon, individually and on behalf of all others similarly situated v. GMAC Mortgage, LLC, GMAC Bank and CapRe of Vermont, Inc.*, No. 07-CV-04296-PD (E.D. Pa. 2007)
- *Cambridge Place Inv. Mgmt. Inc. v. Morgan Stanley & Co., Inc., et al.*, Nos. 10-2741-BLS1, 11-0555-BLS1 (Mass. Sup. Ct. 2010, 2011).

15. The Debtors (i) shall retain the originals or true copies of the Relevant Books and Records included in the Sale (the “Retained Relevant Books and Records”) and, as to any of the Actions that have not been fully and finally resolved by a final, non-appealable judgment (ii) shall provide at least thirty (30) days’ written notice to lead and bankruptcy counsel for the Plaintiffs in each of the Actions with an opportunity to be heard of any abandonment, destruction, or transfer of the Retained Relevant Books and Records that may render the Relevant Books and Records unavailable to the Plaintiffs. In the event Plaintiffs file an objection to the abandonment, destruction, or transfer described above within such thirty (30) day period after receiving written notice, the Debtors shall not abandon, destroy, or transfer the Retained Relevant Books and Records absent a final and non-appealable order of this Court or any court of competent jurisdiction if the Debtors’ bankruptcy cases are closed. Purchaser shall not have any obligation to preserve, protect, maintain, or ensure the availability of any Relevant Books and Records.

16. **No Stay or Order.** Notwithstanding the provisions of Bankruptcy Rules 6004(h), this Order shall not be stayed for fourteen (14) days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the Sale immediately upon entry of this Order. Time is of the essence in closing the transactions referenced herein, and the Debtors and the Purchaser intend to close the Sale as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

17. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: [], 2012

New York, York

THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

MLPISA

Hearing Date and Time: January 16, 2013 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: January 9, 2013 at 4:00 p.m. (Prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

_____)	
In re:)	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
Debtors.)	Jointly Administered
_____)	

NOTICE OF DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), AND (m) AND FED R. BANKR. P. 2002, 6004, AND 9007 FOR ORDERS: (A)(I) AUTHORIZING AND APPROVING SALE PROCEDURES; (II) SCHEDULING BID DEADLINE AND SALE HEARING; (III) APPROVING FORM AND MANNER OF NOTICE THEREOF; AND (IV) GRANTING RELATED RELIEF AND (B)(I) AUTHORIZING THE SALE OF CERTAIN FHA LOANS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (II) AUTHORIZING AND APPROVING MORTGAGE LOAN PURCHASE AND INTERIM SERVICING AGREEMENT; AND (III) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that the undersigned have filed the attached *Motion Pursuant to 11 U.S.C. §§ 105, 363(b), (f) and (m) and Fed. R. Bankr. P. 2002, 6004 and 9007 for Orders: (A)(I) Authorizing and Approving Sale Procedures; (II) Scheduling Bid Deadline and Sale Hearing; (III) Approving Form and Manner of Notice Thereof; and (IV) Granting Related Relief and (B)(I) Authorizing the Sale of Certain FHA Loans Free and Clear of Liens, Claims,*



Encumbrances and Other Interests; (II) Authorizing and Approving Mortgage Loan Purchase and Interim Servicing Agreement; and (III) Granting Related Relief (the “Motion”).

PLEASE TAKE FURTHER NOTICE that a hearing will take place on **January 16, 2013 at 10:00 a.m. (prevailing Eastern time)** before the Honorable Martin Glenn, at the United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004-1408, Room 501.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must be made in writing, conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of New York, and the Notice, Case Management, and Administrative Procedures approved by the Bankruptcy Court [Docket No. 141], be filed electronically by registered users of the Bankruptcy Court’s electronic case filing system, and be served, so as to be received no later than **January 9, 2013 at 4:00 p.m. (Prevailing Eastern Time)**, upon (a) counsel for the Debtors, Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Gary S. Lee, Todd M. Goren, Jennifer L. Marines and Melissa M. Crespo); (b) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, NY 10004 (Attn: Tracy Hope Davis, Linda A. Riffkin, and Brian S. Masumoto); (c) the Office of the United States Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001 (Attn: US Attorney General, Eric H. Holder, Jr.); (d) Office of the New York State Attorney General, The Capitol, Albany, NY 12224-0341 (Attn: Nancy Lord, Esq. and Enid N. Stuart, Esq.); (e) Office of the U.S. Attorney for the Southern District of New York, One St. Andrews Plaza, New York, NY 10007 (Attn: Joseph N. Cordaro, Esq.); (f) counsel for Ally Financial Inc., Kirkland & Ellis LLP, 153 East 53rd Street, New York, NY 10022 (Attn: Richard M. Cieri); (g) counsel to

Barclays Bank PLC, as administrative agent for the DIP lenders, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036 (Attn: Ken Ziman & Jonathan H. Hofer); (h) counsel for the committee of unsecured creditors, Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, NY 10036 (Attn: Kenneth Eckstein & Greg Horowitz); (i) Internal Revenue Service, P.O. Box 7346, Philadelphia, PA 19101-7346 (if by overnight mail, to 2970 Market Street, Mail Stop 5-Q30.133, Philadelphia, PA 19104-5016); and (j) Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, Suite 400, New York, NY 10281-1022 (Attn: George S. Canellos, Regional Director).

PLEASE TAKE FURTHER NOTICE that if you do not timely file and serve a written objection to the relief requested in the Motion, the Bankruptcy Court may deem any opposition waived, treat the Motion as conceded, and enter an order granting the relief requested in the Motion without further notice or hearing.

Dated: January 2, 2013
New York, New York

Respectfully submitted,

/s/ Gary S. Lee
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