



**ASF MODEL RMBS  
REPRESENTATIONS AND WARRANTIES**

**Request for Comment**

JULY 15, 2009





**AMERICAN SECURITIZATION FORUM  
ASF PROJECT RESTART  
ASF MODEL RMBS REPRESENTATIONS AND WARRANTIES  
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**I. INTRODUCTION**

On July 16, 2008, the American Securitization Forum (“ASF”)<sup>1</sup> announced the public launch of ASF’s Project on Residential Securitization Transparency and Reporting (“ASF Project RESTART” or the “Project”), which is a broad-based industry-developed initiative to help rebuild investor confidence in mortgage and asset-backed securities, restore capital flows to the securitization markets, enhance market lending discipline and, ultimately, increase the availability of affordable credit to all Americans. The Project has been recognized by senior policymakers and market participants as a necessary industry initiative to improve the securitization process by developing commonly accepted and detailed standards for transparency, disclosure and diligence that each appropriate market participant will be expected to implement. ASF members participating actively in the Project include institutional investors, issuers, originators, financial intermediaries, servicers, rating agencies, due diligence professionals, trustees, outside counsel, outside consultants, data modelers and vendors, as well as ASF’s professional staff.

When mortgage loans are made by an originator, they are either held by the originator for its own account, sold as a “whole loan” to an investor or pooled with other loans to be deposited into a securitization. Mortgage loans can be bought and sold numerous times throughout their lives, so loans are often sold as whole loans before being placed into securitizations by ensuing purchasers. If the mortgage loan is sold, the originator will make “representations and warranties” concerning the terms of the loan and its origination. If a “defect” is later found in the loan resulting in a breach of the representations and warranties, the purchaser will “put back” or return the loan to the seller who is obligated to repurchase it (if the repurchasing party is not the originator, then the repurchasing party will likely return the loan to the originator). In

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<sup>1</sup> The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 350 firms, including issuers, investors, servicers, financial intermediaries, rating agencies, financial guarantors, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to [www.americansecuritization.com](http://www.americansecuritization.com). ASF is an independent affiliate of the Securities Industry and Financial Markets Association (SIFMA).

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securitizations, representations and warranties are used to appropriately allocate the risk of “defective” mortgage loans between the issuers of the securities and the investors who purchase them. Much like a defective product is returned to the store from which it was sold, a defective mortgage loan will be “returned” to the issuer (or an affiliated originator or loan seller) through its removal from a securitization trust for cash or a qualified substitute loan.

Some commentators have expressed concerns that originators did not sufficiently mitigate the risk in the loans they were making to borrowers that were later sold into residential mortgage-backed securities (“RMBS”) trusts. Some believe that the lack of “skin in the game” did not provide sufficiently aligned incentives between originators and investors to ensure that the loans underlying RMBS were of adequate credit quality. The risk or “skin in the game” traditionally retained by originators of RMBS is embodied in the representations and warranties that issuers provide with respect to the mortgage loans sold into the securitization trust, which are designed to ensure that the loans are free from undisclosed origination risks, leaving the investor primarily with normal risks of loan ownership, such as the deterioration of the borrower’s credit due to loss of employment, disability or other “life events.” For the reasons set forth below, many market participants, including investors and rating agencies, have indicated that the traditional representations and warranties and their related remedy provisions have not sufficiently provided a means to return defective loans to the originator of the loans. Because of this, the ASF has sought to address any alignment of interest issued in future securitization transactions by enhancing and standardizing the representations and warranties as well as developing stronger repurchase obligation provisions.

Another factor in the future success of the RMBS market will be an increase in the standardization of the transaction agreements. Capital commitment decisions by loan originators, financial intermediaries and fixed-income investors, as well as risk assessments by rating agencies, are more easily and efficiently made when contractual provisions are consistent across issuers. Increased standardization in a securitization transaction creates additional liquidity in the market because the due diligence process required to make an investment decision becomes more efficient. One of the areas where standardization is especially crucial is in the representations and warranties that issuers provide to investors, which help ensure that the mortgage loans in a given pool are of a certain quality.

Consistent with previous ASF efforts to help standardize aspects of securitization pooling and servicing agreements (the “PSAs”) such as the ASF’s Model Provisions for Reg AB compliance<sup>2</sup>, ASF members have worked over the past year to produce a standardized set of representations and warranties that would be acceptable to rating agencies, issuers and investors alike. A broad-based working group for this phase of the Project, consisting of issuers, originators, credit rating agencies and investors, has met extensively to develop a model set of representations and warranties, which are intended to provide enhancements to the representations and warranties provided in future securitization transactions and to more appropriately allocate the risk associated with origination and underwriting practices related to loans placed into securitization trusts. Today, the ASF is requesting comment on this set of ASF

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<sup>2</sup> See ASF Model Provisions for Residential Mortgage Loan Purchase and Servicing Agreements at: <http://www.americansecuritization.com/hub.aspx?catid=19&mainid=5>.

Model RMBS Representations and Warranties (the “Model Reps.” attached hereto as Attachment I), which represents the third major work stream of the Project.

The Model Reps have been developed in direct response to certain challenges currently confronting many RMBS transactions. Insufficient representations and warranties and inadequate repurchase provisions may have prevented many defective loans from being removed from securitization trusts, resulting in realized losses on the issued RMBS. The Model Reps were developed primarily to (i) appropriately allocate origination risks between issuers and investors, (ii) express customary market representations and warranties in the same, transparent language across transactions, (iii) provide a “market norm” against which investors and rating agencies can measure the representations and warranties contained in a particular transaction and (iv) provide enhanced investor protections over what had been previously provided in “pre-crisis” transactions.

## **II. BACKGROUND**

Typically in RMBS transactions, mortgage loans are sold by one or more mortgage loan sellers (usually the originators of the loans) to the depositor pursuant to one or more mortgage loan purchase agreements (each, an “MLPA”). The loans are then conveyed by the depositor to the securitization trust pursuant to the PSA for the benefit of the investors. These conveyances are typically accompanied by representations and warranties regarding the mortgage loans being sold, including representations and warranties relating to the mortgaged property securing the loan, the documentation for the loan, the manner in which such mortgage loan was originated and its compliance with applicable law. The conveyance transactions also require the delivery of the related mortgage loan files, which must contain, at a minimum, specific loan and mortgage documents. These requirements are important to ensure, among other things, that the securitization trust contains mortgage loans having expected characteristics and terms which can be serviced in accordance with accepted standards of servicing. Representations and warranties are used to appropriately allocate the risks assumed by the issuers of the securities and the investors who purchase them. Accordingly, it is also typical that the relevant terms of the MLPA and PSA will require repurchase or substitution by the mortgage loan seller or depositor of any affected mortgage loans upon discovery of a breach of the representations and warranties, or of a missing or defective mortgage loan document, that “materially and adversely affects” the value of, or the interest of the securitization certificateholders in, the affected mortgage loans.

A strong set of representations and warranties are only as good as the repurchase provisions in place that serve to enforce them. Most commonly, PSAs call for the trustee to demand repurchase when defects have been discovered. However, where demands have not been honored due to good faith disputes such enforcing parties have found the administration of these repurchase demands to be problematic, in some cases because the securitization documents may not provide a strong enforcement mechanism for the party making the repurchase demand. In other PSAs, provisions may not clearly provide sufficient means and guidance needed to enable the party with a repurchase claim or the party enforcing a repurchase obligation to pursue such matters. As such, representations and warranties and the related repurchase provisions have shown appreciable weaknesses in removing defective loans from outstanding transactions. In a benign economy, these inadequacies are far less significant because the loans in a pool generally perform well and repurchase demands are minimal. In the unlikely situation where a repurchase

demand is made, the depositor or seller will generally repurchase it out of good faith with little or no contention. However, the current economic situation has caused a significant increase in loan defaults, and the ensuing increase in repurchase demands has required depositors and loan sellers to begin contesting repurchase demands where appropriate. In light of these issues, members of the Project have begun developing a uniform set of procedures to enforce the Model Reps, to determine when a breach is material and to clearly delineate the roles and responsibilities of transaction parties in that process. The ASF hopes to release a request for comment on proposed repurchase procedures simultaneously with the finalized Model Reps.

### **III. A STARTING POINT FOR NEGOTIATION**

The Model Reps are not meant to be forced on issuers or investors for all transactions. Securitization transactions vary based on many factors, including the underlying collateral, the associated transaction parties, the types of bonds issued and the ultimate investors. The Model Reps provide a starting point in the negotiation process between issuers and investors. Depending on the transaction, investors and/or issuers may be willing or unwilling to assume certain risks and certain Model Reps may be inapplicable. Through industry adoption of the Model Reps, market participants will be able to easily determine which representations are not included in a transaction and make decisions accordingly. By making departures from an accepted market standard more transparent to rating agencies and investors, those parties will be able to more easily and better assess their willingness or unwillingness to assume risk.

### **IV. HIGHLIGHTS OF THE ENHANCED REPS**

Many of the Model Reps were included in various forms in securitization transactions for a number of years, and in those cases, the best attributes of each permutation were used to produce the Model Rep. However, certain of the Model Reps have been enhanced significantly due to comments from issuers, rating agencies and investors while other Model Reps did not exist at all in prior transactions. Enhanced and new Model Reps have been the most discussed items among market participants. As such, a number of the most important of these Model Reps are addressed below.

#### *Fraud*

Historically, representations and warranties related to fraud have not been universally included in securitization transactions. In strong economic times, increasing home values and the ability of a borrower to refinance can effectively mask fraud that may have occurred. Because of this, “fraud reps” were scarce and the ones that existed only covered fraud in limited situations or they were subject to an expansive knowledge qualifier. For example, a past fraud rep might only cover fraud on the part of the depositor or seller or the liability of the depositor or seller might be limited to situations where the depositor or seller knew of the fraud, which would severely decrease repurchases due to fraud by third party originators, appraisers or other parties involved in the origination process.

With the economic and housing crisis now in full force, instances of mortgage fraud are being discovered in great numbers in mortgage origination and although many anti-fraud initiatives have been established, it continues to plague the industry. In a securitization, increasing amounts

of fraud result in realized losses on the issued RMBS. To combat this trend, the Model Fraud Rep covers fraud by any party to the origination, including originators, borrowers and appraisers. The Model Fraud Rep is a strong proposed industry response to the issue, but the specifics of the Rep are still being discussed by issuers and investors.

Issuers (and their affiliated originators) acknowledge that fraud is a problem and are willing to represent that no fraud has occurred on behalf of the originator in the origination of the mortgage loan. However, many issuers are not comfortable representing that no fraud on the part of other parties in the origination process has occurred. Issuers believe that they are not in a position to effectively prevent other parties in the origination process from committing fraud and do not have the means to completely guard or insure against that fraud.

Fraud represents a major risk for investors because it is a risk that cannot be adequately modeled. Investors undertake many risks in purchasing RMBS and attempt, to the best of their ability, to model the risk when valuing a prospective security. For example, credit risk represents the risk that a borrower will not pay back his or her mortgage. Credit risk is caused by many scenarios including borrower illness, loss of job or other financial reason. Investors are able to model credit risk so they generally accept it when purchasing RMBS. In the case of fraud, investors are not in a position to exercise due diligence because information that would be valuable to determine if fraud has occurred is mostly unavailable to them due to privacy concerns and information constraints. For example, determining whether a fraudulent appraisal has occurred is nearly impossible if an investor does not have the property address. Many investors believe that issuers should provide a flat fraud rep covering any and all fraud occurring in the origination process, but some issuers believe that investors should accept fraud risks alongside other risks associated with the loans.

#### *Income/Employment/Asset Verification*

Another main concern in the origination of mortgage loans, and an area where a significant amount of fraud has occurred, has been the verification of a borrower's income, employment and assets for documented loans. This information is most indicative of a borrower's ability to pay on a loan. The new Model Rep is meant to be consistent with the related ASF RMBS Disclosure Package verification fields and to provide a backstop for such information (see Fields 107-112 in the ASF RMBS Disclosure Package and the ASF Market Standard and Practice for "Full Documentation"). The Model Income/Employment/Asset Verification Rep requires that verification be done in accordance with an originator's underwriting standards, that an originator employ procedures reasonably designed to authenticate the documentation and that the originator test the reasonableness of a borrower's income where W-2s or tax returns are not provided.

#### *Property Valuation*

One prominent issue regarding mortgage loan origination relates to the integrity of the appraisal process used in determining a home's value, including the qualification or certification of the appraisers, their independence with respect to the property and their incentive or compensation for the appraisal. The Model Property Valuation Rep requires that the appraiser be licensed by an appropriate government body, that the appraiser has no interest in the property and that the appraiser received no benefit from or compensation for the mortgage loan's approval or

disapproval. Similar qualification and independence requirements are also made applicable to real estate brokers providing “broker price opinions.”

### *Occupancy*

One of the best indicators of a borrower’s willingness to pay is whether he or she is occupying the subject property of a mortgage loan. If a borrower lives on the property, they are much less likely to default on a loan, particularly if home values are depreciating, than if the home were investor-owned. The Model Occupancy Rep requires that the originator test the reasonableness of the borrower’s statement of owner-occupancy, including consideration of other real estate owned, commuting distance to work and appraiser notes.

### *Data*

The Model Data Rep seeks to clarify the existing data rep that has existed in most securitization transactions. Originally, the data rep required the issuer to ensure that the information contained in the mortgage loan schedule was true and correct in all material respects. Issuers generally believed that information contained in a mortgage loan schedule was true and correct if it matched what was set forth in the originator’s records. Investors, however, believed that information contained in a mortgage loan schedule was only true and correct if the information proved to actually be true. The Model Data Rep addresses this difference in interpretation by dividing the existing representation into two parts. The first part ensures conformity of the information in the ASF RMBS Disclosure Package to the originator’s records and the second part represents that certain terms of the loan (specified on an exhibit) are true and correct in all material respects. With respect to the second part, issuers do not want to represent that certain other data elements are true and correct because the basis for the data is out of their control. However, if an issuer were to provide an unqualified fraud representation covering third parties, then some of the investor concerns would be alleviated. Certain of the data elements for which an issuer may take responsibility may be negotiated from transaction to transaction.

The Model Data Rep also requires that the most recent FICO score for each mortgage loan not be more than 4 months old and that all appraisals listed on the mortgage loan schedule be no more than 6 months old.

### *Early Payment Default*

Representations and warranties relating to early payment default (“EPD”) were originally developed to root out fraud in the origination process of subprime and Alt-A loans and thereby promote better underwriting standards. The theory behind this rep is that if a mortgage loan becomes delinquent within a short time after origination, then the loan should be removed from a securitization pool because there is presumptively a defect in the loan or its origination. The Model EPD Rep standardizes the concept for the industry and requires repurchase of loans that become delinquent during the first 3 months after origination.

Issuers generally believe that this Model Rep should continue to apply only to subprime and Alt-A transactions because prime transactions only contain high quality loans. Some investors believe that this Model Rep should apply to all transactions, because the protections it affords would be applicable irrespective of loan quality.

## **V. TRANSPARENT KNOWLEDGE QUALIFICATIONS**

The Model Reps issued today do not prevent the use of “knowledge qualifiers” by issuers. A knowledge qualifier is usually incorporated into a representation and warranty by including the words “to the best of the issuer’s knowledge.” Effectively, knowledge qualifiers require that the issuer be cognizant of the fact that causes a breach. For example, if a knowledge qualifier were used in a fraud rep, actual fraud would not be enough to cause a breach. Instead, the liability of the issuer would be limited to situations where the issuer knew of the fraud.

As noted above, the Model Reps provide a starting point for negotiation between the parties to a transaction. Issuers believe that some processes and pieces of information are truly out of their control. Investors believe that issuers, as originators of the loans, are in the best possible position to know this information and should be responsible for it. Whether knowledge qualifiers are ultimately included in any of the Model Reps will depend on the risk tolerance of each investor and issuer. If knowledge qualifiers are included in any Model Reps, the ASF is recommending that each instance be clearly specified in a uniform document location, facilitating transparency by allowing rating agencies and investors to identify qualifications at a glance and to compare them across issuers. Knowledge qualifiers will most likely be used in some instances, but their existence should not be obfuscated.

## **VI. REQUEST FOR COMMENT**

The Model Reps are being proposed to provide a “market norm” against which investors and rating agencies can measure the representations and warranties contained in a particular transaction. Given the importance of enhancement and standardization of representations and warranties to restoring investor confidence in the RMBS markets, the development of the Model Reps is an important phase of the Project and vital to drawing investor capital back to the residential securitization industry. Due to the importance of this phase, the ASF is issuing a request for comment on the proposed Model Reps in order to solicit input from other market participants, regulators and other trade associations whose members are active in the securitization market. Comments are due by September 4, 2009. Based on comments received on the proposed Model Reps, the ASF will make any appropriate revisions. The ASF is seeking to release final recommendations on the proposed Model Reps in the Fall of 2009.

## **VII. SUBMISSION OF COMMENTS**

Comments or questions regarding the ASF Model RMBS Representations and Warranties should be directed to Tom Deutsch, Deputy Executive Director of the ASF, at 212.313.1135 or at [tdeutsch@americansecuritization.com](mailto:tdeutsch@americansecuritization.com).

We wish to thank the hundreds of individual members participating in ASF Project RESTART for the thousands of collective hours that have been devoted to this Project thus far to help reinvigorate this critical component of American mortgage finance. We would like to extend special thanks to the Project’s outside counsel, Jordan Schwartz and Evan Siegert of Cadwalader, Wickersham and Taft LLP.

## ATTACHMENT I

### I. Representations and Warranties

As of the date hereof (or such other date set forth below), with respect to the Mortgage Loans, or each Mortgage Loan, as the case may be; the Seller hereby represents and warrants to the Trustee, for the benefit of the certificateholders, the following; provided that, with respect to clauses [ ], the representation and warranty of the Seller is made to the best of the Seller's knowledge:

#### (a) Property Valuation:

(1) Each Mortgage Loan with a written appraisal as indicated on the Mortgage Loan Schedule contains a written appraisal prepared by an appraiser licensed or certified by the applicable governmental body in which the Mortgaged Property is located and in accordance with the requirements of Title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA). The appraisal was written, in form and substance, to (A) customary Fannie Mae or Freddie Mac standards for mortgage loans of the same type as the Mortgage Loans and (B) USPAP standards, and satisfies applicable legal and regulatory requirements. The appraisal was made and signed prior to the final approval of the mortgage loan application.

(2) For each Mortgage Loan where the property valuation consisted of a broker price opinion, as indicated on the mortgage loan schedule, the opinion was provided by a real estate broker or realtor licensed in the jurisdiction in which the subject property is located.

(3) The person performing any property valuation (including an appraiser) had no ownership interest, direct or indirect, in the Mortgaged Property or in any loan made on the security thereof and received no benefit from, and such person's compensation or flow of business from the loan originator was not affected by, the approval or disapproval of the Mortgage Loan.

#### (b) Income/Employment/Assets:

With respect to each Mortgage Loan whose document type on the Mortgage Loan Schedule indicates documented income, employment and/or assets, the originator verified the borrower's income, employment and/or assets in accordance with its written underwriting guidelines and employed procedures reasonably designed to authenticate the documentation supporting such income, employment and/or assets. With respect to each Mortgage Loan other than a Mortgage Loan for which the borrower documented his or her income by providing Form W-2 or tax returns, the originator employed a process designed to test the reasonableness of the income used to approve the loan, which process may, but need not, include (1) obtaining IRS Form 4506 or 4506-T or (2) reviewing public and/or commercially available information (such as salary.com).

#### (c) Occupancy:

With respect to each Mortgage Loan, the originator gave due consideration at the time of origination to factors, including but not limited to, other real estate owned by the borrower,

commuting distance to work and appraiser comments and notes, to evaluate whether the occupancy status of the property as represented by the borrower was reasonable.

(d) Source of Loan Payments:

With respect to each Mortgage Loan (1) no portion of the loan proceeds has been escrowed for the purpose of making monthly payments on behalf of the borrower and (2) no payments due and payable under the terms of the note and mortgage or deed of trust, except for seller or builder concessions or amounts paid or escrowed for payment by the borrower's employer, have been paid by any person (other than the borrower and any guarantor) who was involved in, or benefited from, the sale or purchase of the Mortgaged Property or the origination, refinancing, sale, purchase or servicing of the Mortgage Loan.

(e) Data:

The information on the Mortgage Loan Schedule<sup>3</sup> correctly and accurately reflects the information contained in the originator's records (including, without limitation, the mortgage loan file) in all material respects. In addition, the information contained under each of the headings in the Mortgage Loan Schedule identified on Exhibit [I] to this Agreement is true and correct in all material respects. With respect to each Mortgage Loan, any seller or builder concession in excess of the allowable limits established by Fannie Mae or Freddie Mac has been subtracted from the appraised value of the Mortgaged Property for purposes of determining the LTV and CLTV. With respect to each Mortgage Loan and as of the Closing Date, the most recent FICO score listed on the Mortgage Loan Schedule was no more than 4 months old. As of the date of funding of the Mortgage Loan to the borrower, no appraisal or other property valuation listed on the Mortgage Loan Schedule was more than 6 months old.

(f) Fraud:

No fraud, material misrepresentation, error or omission or gross negligence has taken place in connection with the origination of the Mortgage Loan on the part of (1) the originator or (2) any party (other than the originator) involved in the origination of the Mortgage Loan.

[Investors believe that the Fraud Rep should not contain a knowledge qualifier.]

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<sup>3</sup> The Mortgage Loan Schedule should consist of the data elements set forth in the ASF RMBS Disclosure Package.

(g) Underwriting:

Each Mortgage Loan was either (1) underwritten in conformance to the originator's underwriting guidelines in effect at the time of origination without regard to any underwriter discretion or (2) if not underwritten in conformance to the originator's guidelines, has documented compensating factors which are disclosed in the [disclosure document to be determined].

[Investors have requested that a "Yes/No" field be added to the Disclosure Package which will indicate whether an exception has occurred.]

(h) Mortgage Insurance:

With respect to each Mortgage Loan listed as having mortgage insurance on the Mortgage Loan Schedule, such Mortgage Loan has the benefit of a valid, binding and enforceable primary mortgage insurance policy issued by a primary mortgage insurer acceptable to Fannie Mae and Freddie Mac. The form and substance of such mortgage insurance policy is in substantial conformance with primary mortgage insurance policies acceptable to Fannie Mae and Freddie Mac.

(i) Regulatory Compliance:

At the time of origination or, if subsequently modified, the effective date of the modification, each Mortgage Loan complied in all material respects with all then-applicable federal, state and local laws including, without limitation, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, predatory and abusive lending laws and disclosure laws, or such noncompliance was cured subsequent to origination, as permitted by applicable law.

The servicing of each Mortgage Loan prior to the Closing Date complied in all material respects with all then-applicable federal, state and local laws.

(j) Borrower:

With respect to each Mortgage Loan, (1) unless otherwise indicated on the Mortgage Loan Schedule, each borrower is a natural person or [other acceptable forms, e.g., land trust], (2) at the time of origination, the borrower was legally entitled to reside in the United States, (3) unless otherwise indicated on the Mortgage Loan Schedule, no borrower was the subject of a bankruptcy proceeding in the 7 years prior to the origination of the Mortgage Loan, (4) unless otherwise indicated on the Mortgage Loan Schedule, no borrower previously owned a property in the 7 years prior to the origination of the Mortgage Loan that was the subject of a foreclosure during the time the borrower was the owner of record.

(k) Downpayment:

Unless otherwise indicated on the Mortgage Loan Schedule, with respect to each Mortgage Loan whose purpose is listed on the Mortgage Loan Schedule as "purchase", the borrower (or

borrower's spouse or domestic partner) paid at least 3% of the purchase price with his/her own funds.<sup>4</sup>

(l) No Prior Liens:

Immediately prior to the transfer and assignment contemplated herein, the Seller was the sole owner and holder of the Mortgage Loan free and clear of any and all liens (other than any senior lien indicated on the Mortgage Loan Schedule), pledges, charges or security interests of any nature and the Seller has good and marketable title and has full right and authority to sell and assign the same.

(m) Enforceability and Priority of Lien:

The Mortgage is a valid, subsisting and enforceable first lien on the property therein described and, except as noted in the Mortgage Loan Schedule, the Mortgaged Property is free and clear of all encumbrances and liens having priority over the lien of the Mortgage except for (1) the lien of current real property taxes and assessments not yet due and payable, (2) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of such Mortgage acceptable to mortgage lending institutions in the area in which the Mortgaged Property is located or specifically referred to in the appraisal performed in connection with the origination of the related Mortgage Loan, (3) liens created pursuant to any federal, state or local law, regulation or ordinance affording liens for the costs of clean-up of hazardous substances or hazardous wastes or for other environmental protection purposes and (4) such other matters to which like properties are commonly subject which do not individually, or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Mortgage; and any security agreement, chattel mortgage or equivalent document related to, and delivered to the Trustee or to the Custodian with, any Mortgage establishes in the Seller a valid and subsisting first lien on the property described therein and the Seller has full right to sell and assign the same to the Trustee.

(n) Complete Mortgage Files:

The instruments and documents with respect to each Mortgage Loan required to be delivered to the Custodian on or prior to the closing date in accordance with Section [ ] have been delivered to the Custodian.

(o) No Prior Modifications:

Unless otherwise indicated on the Mortgage Loan Schedule, neither the Seller nor any prior holder of the Mortgage or the related Mortgage Note has modified the Mortgage or the related Mortgage Note in any material respect, satisfied, canceled or subordinated the Mortgage in whole or in part, released the Mortgaged Property in whole or in part from the lien of the

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<sup>4</sup> This rep should only be included if Disclosure Package Field Number 118 (Percentage of Down Payment from Borrower Own Funds) is not populated.

Mortgage, or executed any instrument of release, cancellation, modification or satisfaction, except in each case as is reflected in an agreement included in the loan file. If a Mortgage Loan has been modified, the modified terms are reflected on the Mortgage Loan Schedule.

(p) Taxes Paid:

All taxes; governmental assessments; insurance premiums; water, sewer and municipal charges; leasehold payments; and ground rents which previously became due and owing have been paid, or an escrow of funds has been established, to the extent permitted by law, in an amount sufficient to pay for every such item which remains unpaid and that has been assessed but is not yet due and payable.

(q) No Damage/Condemnation:

(1) The Mortgaged Property is undamaged by water, fire, earthquake, earth movement other than earthquake, windstorm, flood, tornado or similar casualty (excluding casualty from the presence of hazardous wastes or hazardous substances, as to which no representation is made), so as to affect adversely the value of the Mortgaged Property as security for the Mortgage Loan or the use for which the premises were intended or would render the property uninhabitable and, (2) there is no proceeding pending or threatened for the total or partial condemnation of the Mortgaged Property.

(r) No Mechanics Liens:

The Mortgaged Property is free and clear of all mechanics' and materialmen's liens; provided, however, that this warranty shall be deemed not to have been made at the time of the initial issuance of the Certificates if a title policy affording, in substance, the same protection afforded by this warranty is furnished to the Trustee by the Seller.

(s) No Encroachments / Compliance with Zoning:

Except for Mortgage Loans secured by Co-op Shares and Mortgage Loans secured by residential long-term leases (1) the Mortgaged Property consists of a fee simple estate in real property; (2) all of the improvements which are included for the purpose of determining the appraised value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of such property and no improvements on adjoining properties encroach upon the Mortgaged Property (unless insured against under the related title insurance policy); and (3) the Mortgaged Property and all improvements thereon comply with all requirements of any applicable zoning and subdivision laws and ordinances.

(t) No Usury:

The Mortgage Loan meets, or is exempt from, applicable state, federal or local laws, regulations and other requirements, pertaining to usury.

(u) Certificate of Occupancy:

All inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including, but not limited to, certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities.

(v) Loans Current / Prior Delinquencies:

Unless otherwise indicated on the Mortgage Loan Schedule, all payments required to be made up to the Due Date immediately preceding the Cut-Off Date for such Mortgage Loan under the terms of the related Mortgage Note have been made and no Mortgage Loan had more than one delinquency in the 12 months preceding the Cut-Off Date.

(w) Mortgage Loan Legal and Binding:

(1) The Mortgage Note, the related Mortgage and other agreements executed in connection therewith are genuine, and each is the legal, valid and binding obligation of the maker thereof, enforceable in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law); and (2) all parties to the Mortgage Note, the related Mortgage and other agreements executed in connection therewith had legal capacity to execute such documents and such documents have been duly and properly executed and delivered by such parties.

(x) Proceeds Fully Disbursed / Recording Fees Paid:

The proceeds of the Mortgage Loan have been fully disbursed, there is no requirement for future advances thereunder and any and all requirements as to completion of any on-site or off-site improvements and as to disbursements of any escrow funds therefor have been complied with (except for escrow funds for exterior items which could not be completed due to weather and escrow funds for the completion of swimming pools); and all costs, fees and expenses incurred in making, closing or recording the Mortgage Loan have been paid, except recording fees with respect to Mortgages not recorded as of the closing date.

(y) Existence of Title Insurance:

The Mortgage Loan (except (1) any Mortgage Loan secured by a Mortgaged Property located in any jurisdiction as to which an opinion of counsel of the type customarily rendered in such jurisdiction in lieu of title insurance is instead received and (2) any Mortgage Loan secured by Co-op Shares) is covered by an American Land Title Association mortgage title insurance policy or other generally acceptable form of policy or insurance acceptable to Fannie Mae or Freddie Mac, issued by a title insurer acceptable to Fannie Mae or Freddie Mac insuring the originator, its successors and assigns, as to the first priority lien of the Mortgage in the original principal amount of the Mortgage Loan and subject only to (A) the lien of current real property

taxes and assessments not yet due and payable, (B) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of such Mortgage acceptable to mortgage lending institutions in the area in which the Mortgaged Property is located or specifically referred to in the appraisal performed in connection with the origination of the related Mortgage Loan, (C) liens created pursuant to any federal, state or local law, regulation or ordinance affording liens for the costs of clean-up of hazardous substances or hazardous wastes or for other environmental protection purposes and (D) such other matters to which like properties are commonly subject which do not individually, or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Mortgage; the Seller is the sole insured of such mortgagee title insurance policy, the assignment to the Trustee of the Seller's interest in such mortgagee title insurance policy does not require any consent of or notification to the insurer which has not been obtained or made, such mortgagee title insurance policy is in full force and effect and will be in full force and effect and inure to the benefit of the Trustee, and no claims have been made under such mortgagee title insurance policy.

(z) Hazard Insurance:

The Mortgaged Property securing each Mortgage Loan is insured by an insurer acceptable to Fannie Mae or Freddie Mac against loss by fire and such hazards as are covered under a standard extended coverage endorsement, in an amount which is not less than the lesser of 100% of the insurable value of the Mortgaged Property and the outstanding principal balance of the Mortgage Loan; if the Mortgaged Property is a condominium unit, it is included under the coverage afforded by a blanket policy for the project; if upon origination of the Mortgage Loan, the improvements on the Mortgaged Property were in an area identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards, a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration is in effect with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (1) the outstanding principal balance of the Mortgage Loan, (2) the full insurable value of the Mortgaged Property and (3) the maximum amount of insurance which was available under the National Flood Insurance Act of 1968, as amended; and each Mortgage obligates the Mortgagor thereunder to maintain all such insurance at the Mortgagor's cost and expense.

(aa) No Default:

There is no monetary default, monetary breach, monetary violation or event of acceleration existing under the Mortgage or the related Mortgage Note and no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a monetary default, monetary breach, monetary violation or event of acceleration; the Seller has not waived any such default, breach, violation or event of acceleration; and no foreclosure action is currently threatened or has been commenced with respect to the Mortgage Loan.

(bb) No Rescission:

(1) No Mortgage Note or Mortgage is subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor will the operation of any of the terms of the Mortgage Note or Mortgage, or the exercise of any right thereunder, render the Mortgage Note or Mortgage unenforceable, in whole or in part, or subject it to any right of rescission, set-off, counterclaim or defense, including the defense of usury, and (2) no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto.

(cc) Enforceable Right of Foreclosure:

(1) Each Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security, including realization by judicial foreclosure (subject to any limitation arising from any bankruptcy, insolvency or other law for the relief of debtors), and (2) there is no homestead or other exemption available to the Mortgagor which would interfere the right to sell the Mortgaged Property at a trustee's sale or the right of foreclosure.

(dd) No Bankruptcy:

The originator has not received notice that the Mortgagor is a debtor in any state or federal bankruptcy or insolvency proceeding.

(ee) Mortgaged Property is 1-4 Family:

Each Mortgaged Property is located in the United States or a territory of the United States and consists of a one- to four-unit residential property, which may include, but is not limited to, a single family dwelling, townhouse, condominium unit or a unit in a planned unit development or, in the case of Mortgage Loans secured by Co-op Shares, leases or occupancy agreements.

(ff) Mortgage Loan Qualifies for REMIC:

The Mortgage Loan is a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Code.

(gg) Lost Note Affidavit:

With respect to each Mortgage where a lost note affidavit has been delivered to the Trustee in place of the related Mortgage Note, the related Mortgage Note is no longer in existence.

(hh) Doing Business:

With respect to each Mortgage Loan, all parties that have had any interest in such Mortgage Loan, whether as mortgagee, assignee, pledgee or otherwise, are (or, during the period in which they held and disposed of such interest, were) in compliance with any and all applicable licensing requirements of the laws of the state wherein the related Mortgaged Property is located,

except to the extent that failure to be so licensed would not give rise to any claim against the Trust.

(ii) Environmental Laws:

At the time of origination, each Mortgaged Property was in material compliance with all then-applicable environmental laws pertaining to environmental hazards including, without limitation, asbestos.

(jj) Insurance Coverage Not Impaired:

With respect to any insurance policy including, but not limited to, hazard, title, or mortgage insurance, covering a Mortgage Loan and the related Mortgaged Property, neither the originator nor any prior holder has engaged in any act or omission which would impair the coverage of any such policy, the benefits of the endorsement, or the validity and binding effect of either, including without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the originator.

(kk) Deeds of Trust:

In the event the Mortgage constitutes a deed of trust, a trustee, duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by the Seller or the Trust to the trustee under the deed of trust, except in connection with a trustee's sale after default under the Mortgage.

(ll) Mortgage Recorded:

Each original Mortgage was recorded and all subsequent assignments of the original Mortgage have been recorded in the appropriate jurisdictions in which such recordation is necessary to perfect the ownership of the Mortgage by the Trust, or are in the process of being recorded.

(mm) Due-On-Sale:

The Mortgage contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Mortgage Loan in the event that the Mortgaged Property is sold or transferred without the prior written consent of the mortgagee.

(nn) Leases:

The Mortgaged Property is either a fee simple estate or a long-term residential lease. If the Mortgage Loan is secured by a long-term residential lease and (1) the terms of such lease expressly permit the mortgaging of the leasehold estate, the assignment of the lease without the lessor's consent (or the lessor's consent has been obtained and such consent is in the Mortgage

File) and the acquisition by the holder of the Mortgage of the rights of the lessee upon foreclosure or assignment in lieu of foreclosure or provide the holder of the Mortgage with substantially similar protection; (2) the terms of such lease do not (x) allow the termination thereof upon the lessee's default without the holder of the Mortgage being entitled to receive written notice of, and opportunity to cure, such default or (y) prohibit the holder of the Mortgage from being insured under the hazard insurance policy related to the Mortgaged Property; (3) the original term of such lease is not less than 15 years; (4) the term of such lease does not terminate earlier than five years after the maturity date of the Mortgage Note; and (5) the Mortgaged Property is located in a jurisdiction in which the use of leasehold estates for residential properties is an accepted practice.

(oo) Manufactured Homes:

To the extent that any manufactured home is included as part of the Mortgaged Property: Such manufactured home is (1) together with the related land, subject to the Mortgage, (2) deemed to be a part of the real property on which it is located pursuant to the applicable law of the jurisdiction in which it is located, and (3) treated as a single-family residence under Section 25(e)(10) of the Internal Revenue Code.

**The following additional representations will be required in transactions rated by S&P:**

(pp) S&P Glossary; Georgia Fair Lending:

No Mortgage Loan is a High Cost Loan or Covered Loan, as applicable (as such terms are defined in the then-current Standard & Poor's LEVELS® Glossary of Terms on Appendix E), and no loan originated on or after Oct. 1, 2002, through March 6, 2003, is governed by the Georgia Fair Lending Act.

(qq) Higher Cost Product; Underwriting:

No borrower was encouraged or required to select a loan product offered by the originator that was a higher cost product designed for less-creditworthy borrowers, unless at the time of the Mortgage Loan's origination, such borrower did not qualify, taking into account credit history and debt-to-income ratios, for a lower cost credit product then offered by the originator or any affiliate of the originator.

**The following additional representation will be required in transactions rated by Fitch:**

(rr) No High Cost Loan:

No Mortgage Loan in the Trust is a "high-cost" loan, "covered" loan, or any other similarly designated loan as defined under any state, local, or federal law, as defined by applicable predatory and abusing lending laws.

## II. Covenants

### (a) Early Payment Default Repurchase:

With respect to any Mortgage Loan originated not more than 90 days prior to the Closing Date, the originator shall promptly repurchase any such Mortgage Loan that becomes 30 days or more delinquent within the first three months following the origination date unless the originator reasonably concludes, based on information provided by the servicer, that the default was the result of a servicing issue which has subsequently been corrected or is likely to be corrected and such default has been cured within 30 days following the missed payment date.<sup>5</sup>

### (b) Mortgage Insurance Repurchase:

With respect to any Mortgage Loan listed as having mortgage insurance on the Mortgage Loan Schedule, to the extent such mortgage insurance is borrower-paid or, if lender-paid, was obtained by the originator or the servicer, in the event the mortgage insurer rejects, denies, or rescinds a claim on the basis of any defect in connection with the origination of the Mortgage Loan [(other than due to borrower fraud)]<sup>6</sup> or the servicing of the Mortgage Loan prior to the Closing Date (a “mortgage insurer rejection”), other than as a result of the mortgage insurer’s breach of its obligations or insolvency, the originator shall either repurchase such Mortgage Loan at the [Repurchase Price] or pay the Trust the amount of such claim within [30] days from such mortgage insurer rejection.

[Servicer’s indemnification to be enhanced to expressly cover any rejection of a mortgage insurance claim due to servicer action or inaction.]

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<sup>5</sup> Generally, an Early Payment Default covenant will only be required for alt-A and subprime mortgage loan securitizations, although some investors believe it should be required for prime mortgage loan securitizations as well. This is the ASF recommended language for any transaction in which an Early Payment Default covenant is required to be given. Banks should consider whether the applicability of this covenant would create recourse for purposes of Appendix A to Part 325 of Chapter III of Title 12 of the Code of Federal Regulations. If this covenant would create such recourse, then the bank should exclude the relevant loans from this representation and identify them on a schedule.

<sup>6</sup> This parenthetical should be included only if clause (2) of the fraud rep (rep (f)) contains a knowledge qualifier.

## Exhibit I

### List of ASF RMBS Disclosure Package Field Numbers and Field Names for Data Rep

<b><u>Field Number</u></b>	<b><u>Field Name</u></b>
5	Originator
7	Loan Number
8	Amortization Type
9	Lien Position
10	HELOC Indicator
25	Origination Date
26	Original Loan Amount
27	Original Interest Rate
28	Original Amortization Term
29	Original Term to Maturity
30	First Payment Date of Loan
31	Interest Type Indicator
32	Original Interest Only Term
33	Buy Down Period
34	HELOC Draw Period
35	Current Loan Amount
36	Current Interest Rate
37	Current Payment Amount Due
40	Index Type
42	Gross Margin
45	Initial Fixed Rate Period
46	Initial Interest Rate Cap (Change Up)
47	Initial Interest Rate Cap (Change Down)
48	Subsequent Interest Rate Reset Period
49	Subsequent Interest Rate (Change Down)
50	Subsequent Interest Rate Cap (Change Up)
51	Lifetime Maximum Rate (Ceiling)
52	Lifetime Minimum Rate (Floor)
53	Negative Amortization Limit
54	Initial Negative Amortization Recast Period
55	Subsequent Negative Amortization Recast Period
56	Initial Fixed Payment Period
57	Subsequent Payment Reset Period
58	Initial Periodic Payment Cap
60	Initial Minimum Payment Reset Period
61	Subsequent Minimum Payment Reset Period
63	Options at Recast
64	Initial Minimum Payment
65	Current Minimum Payment
67	Prepayment Penalty Type
68	Prepayment Penalty Total Term
69	Prepayment Penalty Hard Term
72	Total Number of Borrowers

119	<b>City</b>
120	<b>State</b>
121	<b>Postal Code</b>
138	<b>Mortgage Insurance Company Name</b>
139	<b>Mortgage Insurance Percent</b>