

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the Fiscal Year Ended December 31, 2010**

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the Transition Period From \_\_\_\_\_ to \_\_\_\_\_**

**Commission File Number 001-32216**

**NEW YORK MORTGAGE TRUST, INC .**

*(Exact name of registrant as specified in its charter)*

**Maryland**

*(State or other jurisdiction of  
incorporation or organization)*

**47-0934168**

*(I.R.S. Employer  
Identification No.)*

**52 Vanderbilt Avenue, New York, NY 10017**

*(Address of principal executive office) (Zip Code)*

**(212) 792-0107**

*(Registrant's telephone number, including area code)*

**Securities registered pursuant to Section 12(b) of the Act:**

**Title of Each Class**

Common Stock, par value \$0.01 per share

**Name of Each Exchange on Which Registered**

NASDAQ Stock Market

**Securities registered pursuant to Section 12(g) of the Act: None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this



Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (check one):

Large Accelerated Filer ☐ Accelerated Filer ☐ Non-Accelerated Filer ☐ Smaller Reporting Company ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The aggregate market value of voting stock held by non-affiliates of the registrant as of June 30, 2010 was \$53,528,863.

The number of shares of the Registrant’s Common Stock outstanding on March 2, 2011 was 9,425,442.

## DOCUMENTS INCORPORATED BY REFERENCE

| <b>Document</b>                                                                                                                                                                                                                    | <b>Where<br/>Incorporated</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| 1. Portions of the Registrant's Definitive Proxy Statement relating to its 2011 Annual Meeting of Stockholders scheduled for May 10, 2011 to be filed with the Securities and Exchange Commission by no later than April 30, 2011. | <b>Part III, Items 10-14</b>  |

**NEW YORK MORTGAGE TRUST, INC.**

**FORM 10-K**

**For the Fiscal Year Ended December 31, 2010**

**TABLE OF CONTENTS**

**PART I**

|          |                           |    |
|----------|---------------------------|----|
| Item 1.  | Business                  | 5  |
| Item 1A. | Risk Factors              | 20 |
| Item 1B. | Unresolved Staff Comments | 37 |
| Item 2.  | Properties                | 37 |
| Item 3.  | Legal Proceedings         | 37 |
| Item 4.  | (Removed and Reserved)    | 37 |

**PART II**

|          |                                                                                                              |    |
|----------|--------------------------------------------------------------------------------------------------------------|----|
| Item 5.  | Market For Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities | 38 |
| Item 6.  | Selected Financial Data                                                                                      | 40 |
| Item 7.  | Management's Discussion and Analysis of Financial Condition and Results of Operations                        | 41 |
| Item 7A. | Quantitative and Qualitative Disclosures About Market Risk                                                   | 68 |
| Item 8.  | Financial Statements and Supplementary Data                                                                  | 73 |
| Item 9.  | Changes in and Disagreements with Accountants on Accounting and Financial Disclosure                         | 73 |
| Item 9A. | Controls and Procedures                                                                                      | 74 |
| Item 9B. | Other Information                                                                                            | 74 |

**PART III**

|          |                                                                                                |    |
|----------|------------------------------------------------------------------------------------------------|----|
| Item 10. | Directors and Executive Officers of the Registrant and Corporate Governance                    | 75 |
| Item 11. | Executive Compensation                                                                         | 75 |
| Item 12. | Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters | 75 |
| Item 13. | Certain Relationships and Related Party Transactions and Director Independence                 | 75 |
| Item 14. | Principal Accounting Fees and Services                                                         | 75 |

**PART IV**

|          |                                         |    |
|----------|-----------------------------------------|----|
| Item 15. | Exhibits, Financial Statement Schedules | 76 |
|----------|-----------------------------------------|----|

## PART I

### Item 1. BUSINESS

*In this Annual Report on Form 10-K we refer to New York Mortgage Trust, Inc., together with its consolidated subsidiaries, as “we,” “us,” “Company,” or “our,” unless we specifically state otherwise or the context indicates otherwise. We refer to Hypotheca Capital, LLC, our wholly-owned taxable REIT subsidiary (“TRS”) as “HC,” and New York Mortgage Funding, LLC, our wholly-owned qualified REIT subsidiary (“QRS”) as “NYMF.” In addition, the following defines certain of the commonly used terms in this report: “RMBS” refers to residential adjustable-rate, hybrid adjustable-rate and fixed-rate mortgage-backed securities; “Agency RMBS” refers to RMBS that are issued or guaranteed by a federally chartered corporation (“GSE”), such as the Federal National Mortgage Association (“Fannie Mae”) or the Federal Home Loan Mortgage Corporation (“Freddie Mac”), or an agency of the U.S. government, such as the Government National Mortgage Association (“Ginnie Mae”); “non-Agency RMBS” refers to RMBS backed by prime jumbo and Alternative A-paper (“Alt-A”) mortgage loans; “ARMs” refers to adjustable-rate residential mortgage loans; “prime ARM loans” refers to prime credit quality residential ARM loans (“prime ARM loans”) held in securitization trusts; and “CMBS” refers to commercial mortgage-backed securities.*

#### General

We are a real estate investment trust, or REIT, in the business of acquiring, investing in, financing and managing primarily mortgage-related assets. Our principal business objective is to generate net income for distribution to our stockholders resulting from the spread between the interest and other income we earn on our interest-earning assets and the interest expense we pay on the borrowings that we use to finance our leveraged assets and our operating costs, which we refer to as our net interest income. We intend to achieve this objective by investing in a broad class of mortgage-related and financial assets that in aggregate will generate what we believe are attractive risk-adjusted total returns for our stockholders. Our targeted assets currently include:

- Agency RMBS and non-Agency RMBS;
- prime ARM loans held in securitization trusts; and
- CMBS, commercial mortgage loans and other commercial real estate-related debt investments.

We also may opportunistically acquire and manage various other types of mortgage-related and financial assets that we believe will compensate us appropriately for the risks associated with them, including, among other things, certain non-rated residential mortgage assets and collateralized loan obligations (“CLO”) and certain mortgage-related derivatives. Subject to maintaining our qualification as a REIT, we also may invest in corporate debt or equity securities that may or may not be related to real estate.

Prior to 2009, our investment portfolio was primarily comprised of Agency RMBS, certain non-agency RMBS originally rated in the highest rating category by two rating agencies and prime ARM loans held in securitization trusts. The prime ARM loans held in our four securitization trusts were purchased from third parties or originated by us through HC. In early 2009, we commenced a repositioning of our investment portfolio to transition the portfolio from one primarily focused on leveraged Agency RMBS and prime ARM loans held in securitization trusts, which primarily involve interest rate risk, to a more diversified portfolio that includes elements of credit risk with reduced leverage. We believe this strategy will enable us to construct a diversified investment portfolio designed to provide attractive risk-adjusted returns across a variety of market conditions and economic cycles. We further believe that this approach, together with our new investment initiative described below under “The Midway Residential Mortgage Portfolio Strategy,” will better position us to capitalize on attractive investment opportunities created by market dislocations for these assets. In addition, certain of these targeted assets may permit us to potentially utilize part of a significant net operating loss carry-forward held by HC, subject to Internal Revenue Code (“IRC”) Section 382 limitations.

We elected to be taxed as a REIT for federal income tax purposes commencing with our taxable year ended on December 31, 2004. As a result, we generally will not be subject to federal income tax on our taxable income that is distributed to our stockholders.

The financial information requirements required under this Item 1 may be found in our consolidated financial statements beginning on page F-1 of this Annual Report.

## **Recent Developments**

### ***Initial Funding of Midway Residential Mortgage Portfolio Managed by The Midway Group***

On February 11, 2011, we entered into an investment management agreement (the “Midway Management Agreement”) with The Midway Group, L.P. (“Midway”), pursuant to which Midway will serve as investment manager of a separate account established and owned by us. As such, we will own all of the assets and liabilities in the separate account. We refer to this separate account as the Midway Residential Mortgage Portfolio.

Midway is a private investment management group with an approximately 11-year history of investing in a broad spectrum of RMBS and derivatives. On February 28, 2011, we provided \$24.0 million of initial funding to the Midway Residential Mortgage Portfolio and we expect to contribute additional capital to the Midway Residential Mortgage Portfolio in the future, subject to various conditions. See “The Midway Residential Mortgage Portfolio Strategy” and “The Midway Management Agreement” below for more information.

### ***Redemption of Series A Preferred Stock***

Pursuant to the terms of the Articles Supplementary for our Series A Cumulative Convertible Redeemable Preferred Stock (“Series A Preferred Stock”), on December 31, 2010, we redeemed all 1,000,000 outstanding shares of Series A Preferred Stock, which were held by JMP Group Inc. and certain of its affiliates, at the \$20.00 per share liquidation preference plus any accrued and unpaid dividends at that time.

## **Our Investment Strategy**

We intend to achieve our principal business objective of generating net income for distribution to our stockholders by building and managing a diversified investment portfolio comprised of a broad class of mortgage-related and financial assets that in the aggregate, will generate attractive risk-adjusted total returns for our stockholders. We have invested in the past and intend to invest in the future in assets that collectively allow us to maintain our REIT status and our exemption from registration under the Investment Company Act of 1940, as amended (the “Investment Company Act”).

Since 2009, we have repositioned our investment portfolio away from one primarily focused on leveraged Agency RMBS and prime ARM loans held in securitization trusts, to a more diversified portfolio that includes elements of credit risk with reduced leverage, as evidenced by our investments in residential mortgage loans in 2010 and our establishment and initial funding of the Midway Residential Mortgage Portfolio in February 2011. In-line with our diversification strategy and focus on asset performance, we have in the recent past pursued and anticipate continuing to pursue in the future investment opportunities in the commercial mortgage market. We intend that our investment strategy will enable us to capitalize on current investment opportunities in both the residential and commercial mortgage markets that we believe will provide attractive risk adjusted returns to our stockholders over the long term. We anticipate contributing capital to both our residential mortgage strategy, particularly the Midway Residential Mortgage Portfolio, and a commercial mortgage strategy, in the future, such that these investments will become significant contributors to our revenues and earnings and will represent a significant portion of our total assets in the future.

While we intend to assemble a diversified portfolio, our investment strategy does not, subject to our continued compliance with applicable REIT tax requirements and the maintenance of our exemption from the Investment Company Act, limit the amount of our capital that may be invested in any of these investments or in any particular class or type of our targeted assets. The investment and capital allocation decisions of our company and our external managers depend on prevailing market conditions and may change over time in response to opportunities available in different economic and capital market environments. As a result, we cannot predict the percentage of our capital that will be invested in any particular investment at any given time. We believe that our diversified investment approach, when combined with our external managers’ expertise within these targeted asset classes, will enable us to exploit changes in the capital markets and provide attractive risk-adjusted returns. In addition we may enter into joint ventures or other externally managed businesses with third parties that have special expertise or investment sourcing capabilities to the extent we believe such relationships will contribute to our achievement of our investment objectives.

Our overall investment strategy is designed, among other things, to:

- build a diversified investment portfolio of mortgage-related and financial assets that will provide attractive risk-adjusted returns to our stockholders across a variety of market conditions and economic cycles;
- take advantage of pricing dislocations created by distressed sellers or distressed capital structures and other market inefficiencies;
- identify investment opportunities that may permit us to utilize all or a portion of the net operating loss carry-forward held by HC;
- capitalize on opportunities in niche markets that other investors may overlook or undervalue;
- establish a more diversified risk profile that is not focused solely on interest rate or credit risk and properly manage financing, prepayment and other market risks;
- manage cash flow so as to provide for regular quarterly distributions to stockholders;
- allow us to maintain our qualification as a REIT; and
- allow us to remain exempt from the registration requirements of the Investment Company Act.

If necessary, we will modify our investment strategy from time to time in the future as market conditions change in an effort to maximize the returns from our portfolio of investment assets. As a result, our targeted assets and allocation strategy may vary over time from those described herein .

## **The Midway Residential Mortgage Portfolio Strategy**

### ***Investment Strategy***

The Midway Residential Mortgage Portfolio, which is externally managed by Midway, will focus on achieving long-term capital appreciation on our investments across various market cycles, including, various interest rate, yield curve, prepayment and credit market cycles, primarily through investments in a hedged portfolio of mortgage-related securities, contract rights and derivatives. In building this hedged portfolio, we expect the Midway Residential Mortgage Portfolio to invest in securities that are backed by prime or lesser credit quality first lien residential mortgage loans and to diversify loan characteristics across securities in the portfolio. Midway presently does not intend to invest in subprime securities. As part of its investment process for the Midway Residential Mortgage Portfolio, we expect that Midway will analyze significant amounts of data regarding the historical performance of mortgage-related securities transactions and collateral over various market cycles and granular level loan data to identify trends and attractive risk-adjusted investment and trading opportunities.

The Midway Residential Mortgage Portfolio's targeted assets include Agency RMBS, non-Agency RMBS, and other derivative instruments. The Agency RMBS invested in under this portfolio may include whole pool pass-through certificates, collateralized mortgage obligations ("CMOs"), real estate mortgage investment conduits ("REMICs") and interest only ("IOs") and principal only ("POs") securities issued or guaranteed by a GSE. The non-Agency RMBS invested in under this portfolio may also include IOs and POs. The Midway Residential Mortgage Portfolio may also invest a portion of its assets in other types of debt instruments, including investment-grade debt instruments and their related currencies as well as lower-grade securities. In the event Midway is unable to immediately invest any capital we contribute to the Midway Residential Mortgage Portfolio, Midway may invest the capital in an interest-bearing account or otherwise invest it in highly liquid cash equivalents.

Midway has agreed to not materially change the investment strategy and objectives described above without our written consent. As part of our internal risk management processes, our management team will monitor investment activity in and the performance of the Midway Residential Mortgage Portfolio. To the extent necessary, the investment strategy of the Midway Residential Mortgage Portfolio may be modified at our direction to ensure our continued qualification as a REIT and exemption from regulation as an investment company under the Investment Company Act.



## ***Financing Strategy***

We expect that the Midway Residential Mortgage Portfolio will borrow money from banks and other financing counterparties and may trade on margin to leverage its investments, and in so doing, may pledge its assets as security for such borrowings. We generally anticipate targeting a leverage ratio of 3 to 1 for the Midway Residential Mortgage Portfolio ; however, there may be occasional short-term increases or decreases in the amount of leverage used due to significant market events, and we may change our leverage strategy at any time.

We expect most of the Midway Residential Mortgage Portfolio's borrowings will be through reverse repurchase agreements with terms typically not exceeding six months at commercial rates of interest. A reverse repurchase agreement arises when the Midway Residential Mortgage Portfolio sells a security to a bank or brokerage firm and simultaneously agrees to repurchase it on an agreed-upon future date. The repurchase price is greater than the sale price, reflecting an agreed upon market rate which is effective for the period of time the buyer's money is invested in the security and which is not related to the coupon rate on the purchased security.

## ***Hedging Strategy***

We will use hedging instruments to reduce our risk associated with changes in interest rates, mortgage spreads, swap spreads, yield curve shapes, and market volatility. We expect that Midway will use multi-dimensional scenario analysis and stress testing that will simulate a wide spectrum of interest rate, volatility and refinancing environments, as well as macro and micro market dislocation events or shocks, to quantify and hedge the risks of the Midway Residential Mortgage Portfolio.

We expect to use mortgage derivatives and forward-settling purchases and sales of Agency RMBS where the underlying pools of mortgage loans are "To-Be-Announced," or TBAs, Euro-dollar futures, interest rate options, swaps and U.S. treasuries to protect long-term returns. For example, we may utilize interest rate swaps to effectively extend the maturity of our short term borrowings to better match the interest rate sensitivity to the underlying assets being financed. Similarly, we may utilize TBAs to hedge the interest rate or yield spread risk inherent in our long Agency RMBS by taking short positions in TBAs that are similar in character. In a TBA transaction, we would agree to purchase or sell, for future delivery, Agency RMBS with certain principal and interest terms and certain types of underlying collateral, but the particular Agency RMBS to be delivered is not identified until shortly before the TBA settlement date. TBAs are liquid and have quoted market prices and represent the most actively traded class of RMBS.

## ***About Midway***

The Midway Residential Mortgage Portfolio is externally managed and advised by Midway pursuant to the Midway Management Agreement. Midway was founded in 2000 by Mr. Robert Sherak, a mortgage industry veteran with more than 25 years experience, to serve as investment manager to the Midway Market Neutral Fund LLC, a private investment fund, and has an 11-year history of managing a hedged portfolio of mortgage-related securities.

Midway is responsible for administering the business activities and day-to-day operations of the Midway Residential Mortgage Portfolio. Midway has established portfolio management resources for each of the targeted assets described above and an established infrastructure supporting those resources. We expect that we will benefit from Midway's highly analytical investment processes, broad-based deal flow, extensive relationships in the financial community and operational expertise. Moreover, during its 11-year history of investing in this space, we believe Midway has developed strong relationships with a wide range of dealers and other market participants that provide Midway access to a broad range of trading opportunities and market information.

For additional information regarding the Midway Management Agreement, see "The Midway Management Agreement" below.

## **Strategy for Legacy Portfolio and Other Assets**

### ***Investment Strategy***

While we expect to focus and direct our future capital allocations to the Midway Residential Mortgage Portfolio and commercial mortgage opportunities, we will continue to manage our legacy portfolio of investment securities, mortgage loans and other financial assets, and will continue to pursue assets outside of the targeted assets that we believe are a productive use of our capital and compensate us appropriately for the risks associated with them. These investments may include, among other things, certain non-rated residential mortgage assets or interests in a pool of such assets, CLOs, high yield corporate bonds, other debt and equity securities and similar assets. Pursuant to our investment guidelines, investments in certain of these assets require the approval of our board of directors. In addition, we expect to continue to engage in portfolio management transactions designed to help us satisfy applicable legal or regulatory requirements, which we sometimes refer to as “regulatory trades,” including the REIT qualification requirements and the requirements for exemption under the Investment Company Act. We expect that our regulatory trades will most commonly involve the purchase and sale of Agency RMBS.

For more information regarding our portfolio as of December 31, 2010, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations” below.

### ***Financing Strategy***

We strive to maintain and achieve a balanced and diverse funding mix to finance our legacy investment portfolio. We rely primarily on repurchase agreements collateralized by Agency RMBS and CDOs in order to finance the Agency RMBS in our investment portfolio and prime ARM loans held in our securitization trusts. Repurchase agreements provide us with short-term borrowings that bear interest rates that are linked to the London Interbank Offered Rate (“LIBOR”), a short term market interest rate used to determine short term loan rates. Pursuant to these repurchase agreements, the financial institution that serves as a counterparty will generally agree to provide us with financing based on the market value of the securities that we pledge as collateral, less a “haircut.” Our repurchase agreements may require us to deposit additional collateral pursuant to a margin call if the market value of our pledged collateral declines or if unscheduled principal payments on the mortgages underlying our pledged securities increase at a higher than anticipated rate.

We have in the past leveraged, and expect in the future to leverage, borrowings collateralized by Agency RMBS. The extent that we finance our legacy Agency RMBS depends upon the particular characteristics of our portfolio at any given time. At December 31, 2010 our leverage ratio for our Agency RMBS investment portfolio, which we define as our outstanding indebtedness under repurchase agreements collateralized by Agency RMBS divided by total stockholders’ equity, was less than one to one.

With respect to the assets in our portfolio at December 31, 2010, excluding Agency RMBS and prime ARM loans held in our securitization trusts, due to market conditions, we have primarily financed, and expect for the foreseeable future to continue to finance, those investments with available cash from our balance sheet. However, should the prospects for stable, reliable and favorable financing for these assets develop in the future, we would expect to increase our borrowings against these assets.

For more information regarding our outstanding borrowings and debt instruments at December 31, 2010, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations” below.

## ***Hedging Strategy***

A significant risk relating to the management of our legacy and regulatory trade portfolio is the risk that interest rates on our assets will not adjust at the same times or amounts that rates on our liabilities adjust. Many of the underlying hybrid ARM loans held in, or that back the RMBS in, our legacy and regulatory trade portfolio have initial fixed rates of interest for a period of time ranging from two to five years. However, our funding costs are variable and the maturities typically have shorter terms than those of our assets. We use hedging instruments to reduce the risk associated with changes in interest rates that could affect these assets. Typically, we utilize interest rate swaps to effectively extend the maturity of our short term borrowings to better match the interest rate sensitivity to the underlying assets being financed. By extending the maturities on our short term borrowings, we attempt to lock in a spread between the interest income generated by the RMBS and loans in our legacy and regulatory trade portfolio and the interest expense related to the financing of such assets in order to maintain a net duration gap of less than one year. We also seek to hedge interest rate risk in order to stabilize net asset values and earnings during periods of rising interest rates. To do so, we use hedging instruments in conjunction with our borrowings to approximate the re-pricing characteristics of such assets. We utilize a model based risk analysis system to assist in projecting portfolio performances over a variety of different interest rates and market stresses. The model incorporates shifts in interest rates, changes in prepayments and other factors impacting the valuations of our assets. However, given the uncertainties related to prepayment rates, it is not possible to definitively lock-in a spread between the earnings yield on this portfolio or the related cost of borrowings. Nonetheless, through active management and the use of evaluative stress scenarios, we believe that we can mitigate a significant amount of both value and earnings volatility.

## ***About Harvest Capital Strategies***

Harvest Capital Strategies LLC (“HCS”) provides investment advisory services to us and manages on our behalf “new program assets.” New program assets generally refers to those assets of our company that were sourced or acquired by HCS on our behalf after the effective date of the Amended and Restated Advisory Agreement between HCS, HC, NYMF and us, dated July 26, 2010 (the “HCS Advisory Agreement”) and whose acquisition was approved by HCS and us. New program assets will generally exclude all cash, RMBS, our legacy assets at July 26, 2010, and any assets acquired for the Midway Residential Mortgage Portfolio.

HCS has served as an external advisor to us and certain of our subsidiaries since January 2008 when we concurrently entered into the original advisory agreement with HCS (the “Prior Advisory Agreement”) and sold \$20 million of our Series A Preferred Stock to JMP Group Inc. and certain of its affiliates in a private placement. On July 26, 2010, we entered into the HCS Advisory Agreement, which supersedes the Prior Advisory Agreement. During our transition to a diversified investment portfolio, HCS has been instrumental in identifying potential investment opportunities and providing financial and capital structuring expertise and thought leadership to our company. The chairman of our board of directors since January 2008, James J. Fowler, is a portfolio manager at HCS and a managing director of JMP Group Inc. Pursuant to the terms of the HCS Advisory Agreement, Mr. Fowler is also the chief investment officer of HC and NYMF. Mr. Fowler receives no direct compensation from us for his appointment to these positions.

HCS is a wholly-owned subsidiary of JMP Group Inc., that manages a family of single-strategy and multi-manager hedge fund products. HCS also sponsors and partners with other investment firms. As of December 31, 2010, JMP Group Inc. had \$1.8 billion in client assets under management. As discussed above, we redeemed all outstanding shares of our Series A Preferred Stock on December 31, 2010. As of February 14, 2011, JMP Group Inc. and certain of its affiliates owned approximately 15.3% of our outstanding shares of common stock. For more information regarding our relationship with HCS and the HCS Advisory Agreement, see “The HCS Advisory Agreement” and “Conflicts of Interest with Our External Managers; Equitable Allocation of Opportunities” below.

## ***Our Targeted Asset Classes***

Set forth below is a list of the principal assets that our management and our external managers currently target by investment strategy, followed by a brief description of these assets.

| <b>Investment Strategy</b>                          | <b>Principal Assets</b>                                                                                                                                                                                                                                   |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><i>Midway Residential Mortgage Portfolio</i></b> | Agency RMBS consisting of whole pool pass-through certificates, CMOs, REMICs, IOs and POs; non-Agency RMBS backed by prime jumbo and Alt-A paper and may include IOs and POs; and other derivative instruments.                                           |
| <b><i>Commercial Mortgage Portfolio</i></b>         | CMBS, commercial mortgage loans and other commercial real estate-related debt investments.                                                                                                                                                                |
| <b><i>Legacy Portfolio and Other Assets</i></b>     | Agency RMBS, primarily whole pool pass-through certificates or CMOs issued by Fannie Mae or Freddie Mac and backed by hybrid ARM loans; non-Agency RMBS backed by prime jumbo and Alt-A; prime ARM loans held in securitization trusts; residential whole |

mortgage loans (including non-rated loans) or equity interests therein; CLOs and other corporate debt or corporate equity securities and other similar investments.

**Agency RMBS .** Agency RMBS refers to residential mortgage-backed securities that are issued or guaranteed by a GSE, and includes pass-through certificates, CMOs, IOs, POs and REMICs. Most of the pass-through certificates and CMOs we have invested in historically are backed by ARM loans and hybrid ARM loans issued or guaranteed by an Agency. Pass-through certificates provide for a pass-through of the monthly interest and principal payments made by the borrowers on the underlying mortgage loans to the holders of the pass-through certificate. A CMO is a debt security that is backed by a pool of residential mortgages or RMBS with different principal and interest payment characteristics. ARMs have interest rates that reset monthly, quarterly and annually, based on the 12-month moving average of the one-year constant maturity U.S. Treasury rate or LIBOR. Hybrid ARMs have interest rates that are fixed for a longer initial period (typically three, five, seven or 10 years) and, thereafter, generally adjust annually to an increment over a pre-determined interest rate index. For additional information regarding IOs, POs and REMICs, see “— Real Estate Mortgage Investment Conduits” and “— Stripped RMBS” below.

Fannie Mae guarantees to the holder of Fannie Mae-issued RMBS that it will distribute amounts representing scheduled principal and interest on the mortgage loans in the pool underlying the Fannie Mae certificate, whether or not received, and the full principal amount of any such mortgage loan foreclosed or otherwise finally liquidated, whether or not the principal amount is actually received. Freddie Mac guarantees to each holder of certain Freddie Mac-issued certificates the timely payment of interest at the applicable pass-through rate and principal on the holder’s pro rata share of the unpaid principal balance of the related mortgage loans.

**Non-Agency RMBS.** Non-Agency RMBS refers to RMBS that are backed by residential mortgage loans that do not generally conform to underwriting guidelines issued by Fannie Mae, Freddie Mac or Ginnie Mae due to certain factors, including a mortgage balance in excess of Agency underwriting guidelines, borrower characteristics, loan characteristics and insufficient documentation. Consequently, the principal and interest on non-Agency RMBS are not guaranteed by GSEs, such as Fannie Mae and Freddie Mac, or in the case of Ginnie Mae, the U.S. Government. Non-Agency RMBS may include IOs and POs.

**Real Estate Mortgage Investment Conduits .** A REMIC is a trust, partnership, corporation, association or segregated pool of mortgages which has elected and qualified to be treated as a REMIC under applicable U.S. tax rules. A REMIC must consist of one or more classes of “regular interests,” some of which may be adjustable rate, and a single class of “residual interests.” The different classes may have different payment terms and rankings in terms of priority. To qualify as a REMIC, substantially all the assets of the entity must be assets principally secured, directly or indirectly, by interests in real property.

**Stripped RMBS .** Stripped RMBS are securities representing interests in a pool of mortgages the cash flow of which has been separated into its interest and principal components. IOs receive the interest portion of the cash flow while POs receive the principal portion. Stripped RMBS may be issued by U.S. government agencies or by non-Agency issuers similar to those described with respect to REMICs.

**CMO Residuals .** The cash flow generated by the mortgage loans underlying a series of CMOs is applied first to make required payments of principal of and interest on the CMOs and second, if applicable, to pay the related administrative expenses of the issuer. The residual in a CMO structure generally represents the interest in any excess cash flow remaining after making the foregoing payments, including mortgage servicing contracts. Some CMO residuals are subject to certain restrictions on transferability. Ownership of certain CMO residuals imposes liability on the purchaser for certain of the expenses of the related CMO issuer.

**Prime ARM Loans Held in Securitization Trusts.** Our portfolio also includes prime ARM loans held in securitization trusts. The loans held in securitization trusts are loans that primarily were originated by our discontinued mortgage lending business, and to a lesser extent purchased from third parties, that we securitized in 2005. These loans are substantially prime full documentation interest only hybrid ARMs on residential properties and are all first lien mortgages. The Company maintained the ownership trust certificates, or equity, of these securitizations which includes rights to excess interest, if any. Subject to market conditions, we may acquire mortgage loans in the future and subsequently securitize these loans.

**Commercial Mortgage-Backed Securities .** We may invest in commercial mortgage-backed securities, or CMBS, through the purchase of mortgage pass-through notes. CMBS are secured by, or evidence ownership interests in, a single commercial mortgage loan or a pool of mortgage loans secured by commercial properties. These securities may be senior, subordinated, investment grade or non-investment grade. We expect that most of our CMBS investments will be part of a capital structure or securitization where the rights of the class in which we invest are subordinated to senior classes but senior to the rights of lower rated classes of securities, although we may invest in the lower rated classes of securities if we believe the risk adjusted returns are attractive. We generally intend to invest in CMBS that will yield high current interest income and where we consider the return of principal to be likely. We may acquire CMBS from private originators of, or investors in, mortgage loans, including savings and loan associations, mortgage bankers, commercial banks, finance companies, investment banks and other entities.

**Whole Commercial Mortgage Loans.** We may acquire mortgage loans, or portfolios of mortgage loans, secured by first or second liens on commercial properties or a preferred equity interest in an entity that owns the underlying mortgage loans, including office buildings, industrial or warehouse properties, hotels, retail properties, apartments and properties within other commercial real estate sectors, which may include performing, sub-performing and non-performing loans. In addition, we may originate whole mortgage loans that provide long-term mortgage financing to commercial property owners and developers. In some cases, we may originate and fund a first mortgage loan with the intention of structuring and selling a senior tranche, or A-Note, and retaining the subordinated tranche, or B-Note.

**Mezzanine Loans.** The origination or acquisition of loans made to property owners that are subordinate to mortgage debt and are secured by pledges of the borrower's ownership interests in the property and/or the entity that owns the property.

**High Yield Corporate Bonds.** We may invest in high yield corporate bonds, which are below investment grade debt obligations of corporations and other nongovernmental entities. We expect that a significant portion of such bonds we may invest in will not be secured by mortgages or liens on assets, and may have an interest-only payment schedule, with the principal amount staying outstanding and at risk until the bond's maturity. High yield bonds are typically issued by companies with significant financial leverage.

**Collateralized Loan Obligations.** We may invest in debentures, subordinated debentures or equity interests in a CLO. A CLO is secured by, or evidences ownership interests in, a pool of assets that may include RMBS, non-agency RMBS, CMBS, commercial real estate loans or corporate loans. Typically a CLO is collateralized by a diversified group of assets either within a particular asset class or across many asset categories. These securities may be senior, subordinated, investment grade or non-investment grade. We expect the majority of our CLO investments to be part of a capital structure or securitization where the rights of the class in which we will invest to receive principal and interest are subordinated to senior classes but senior to the rights of lower rated classes of securities, although we may invest in the lower rated classes of securities if we believe the risk adjusted return is attractive.

**Equity Securities .** To a lesser extent, subject to maintaining our qualification as a REIT, we also may invest in common and preferred equity, which may or may not be related to real estate. These investments may include direct purchases of common or preferred equity or other equity type investments. We will follow a value-oriented investment approach and focus on the anticipated cash flows generated by the underlying business, discounted by an appropriate rate to reflect both the risk of achieving those cash flows and the alternative uses for the capital to be invested. We will also consider other factors such as the strength of management, the liquidity of the investment, the underlying value of the assets owned by the issuer and prices of similar or comparable securities.

**Other Assets.** We also may from time to time opportunistically acquire other mortgage-related and financial assets that we believe will meet our investment objectives.

## **The Midway Management Agreement**

We entered into an investment management agreement with Midway on February 11 2011. The Midway Management Agreement has a current term that expires on February 11, 2013, and will be automatically renewed for successive one-year terms thereafter unless a termination notice is delivered by either party to the other party at least six months prior to the end of the then current term. Pursuant to the Midway Management Agreement, Midway implements the Midway Residential Mortgage Portfolio strategy and has complete discretion and authority to manage the assets of the Midway Residential Mortgage Portfolio and its day-to-day business, subject to compliance with the written investment guidelines governing the Midway Residential Mortgage Portfolio and the other terms and conditions of the Midway Management Agreement, including our authority to direct Midway to modify its investment strategy for purposes of maintaining our qualification as a REIT and exemption from the Investment Company Act. During the initial term of the Midway Management Agreement, Midway has agreed not to establish a separate account with any other publicly-listed residential or commercial mortgage REIT. Midway will provide performance reports to us on a monthly basis with respect to the performance of the Midway Residential Mortgage Portfolio.

The following table summarizes the fees that we pay to Midway pursuant to the Midway Management Agreement. We will reimburse Midway for all transaction costs and expenses incurred in connection with the management and administration of the Midway Residential Mortgage Portfolio.

| <b>Type</b>         | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Base management fee | We pay a base management fee monthly in arrears in a cash amount equal to the product of (i) 1.50% per annum of our invested capital in the Midway Residential Mortgage Portfolio as of the last business day of the previous month, multiplied by (ii) 1/12th.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Incentive fee       | <p>In addition to the base management fee, Midway will be entitled to a quarterly incentive fee (the “Midway Incentive Fee”) that is calculated monthly and paid in cash in arrears. The Midway Incentive Fee is based upon the total market value of the net invested capital in the Midway Residential Mortgage Portfolio on the last business day of the quarter, subject to a high water mark equal to a 10% return on invested capital (the “High Water Mark”), and shall be payable in an amount equal to 40% of the dollar amount by which adjusted net income (as defined below) attributable to the Midway Residential Mortgage Portfolio, on a calendar 12-month basis and before accounting for the Midway Incentive Fee, exceeds an annual 15% rate of return on invested capital (the “Hurdle Rate”). The return rate for each calendar 12-month period (the “Calculation Period”) is determined by dividing (i) the adjusted net income for the Calculation Period by (ii) the weighted average of the invested capital paid into the Midway Residential Mortgage Portfolio during the Calculation Period. For the initial 12 months, adjusted net income will be calculated on the basis of each of the previously completed months on an annualized basis.</p> <p>Adjusted net income, for purposes of the Midway Incentive Fee, is defined as net income (loss) calculated in accordance with generally accepted accounting principles in the United States (“GAAP”), excluding any unrealized gains and losses, after giving effect to certain expenses. All securities held in the Midway Residential Mortgage Portfolio will be valued in accordance with GAAP.</p> <p>Like the Hurdle Rate, which is calculated on a calendar 12 month basis, the High Water Mark is calculated on a calendar 12 month basis, and will reset every 24 months. The High Water Mark will be a static dollar figure that Midway will be required to recoup, to the extent there was a deficit in the prior High Water Mark calculation period before it can receive a Midway Incentive Fee.</p> |

Although the Midway Residential Mortgage Portfolio is wholly owned by our company, we may only redeem invested capital in an amount equal to the lesser of 10% of the invested capital in the Midway Residential Mortgage Portfolio or \$10 million as of the last calendar day of the month upon not less than 75 days written notice, subject to our authority to direct Midway to modify its investment strategy for purposes of maintaining our qualification as a REIT and exemption from the Investment Company Act. Pursuant to the terms of the Midway Management Agreement, we are only permitted to make one such redemption request in any 75-day period.

## ***The HCS Advisory Agreement***

The HCS Amended and Restated Advisory Agreement became effective on July 26, 2010 and has an initial term that expires on June 30, 2012, subject to automatic annual one-year renewals thereafter. Pursuant to the terms of the HCS Advisory Agreement, HCS will provide investment advisory services to us and will manage on our behalf “new program assets” acquired after the effective date of the agreement. The terms and conditions for new program assets, including the compensation payable thereunder to HCS by us, will be negotiated on a transaction-by-transaction basis. New program assets will be identified by HCS and us as either “Managed Assets” or “Scheduled Assets”. For those new program assets identified as Scheduled Assets, HCS will receive the compensation, which may include base advisory and incentive compensation, agreed upon by HCS and us and set forth in a term sheet or other documentation. The following table summarizes the fees to be paid to HCS for Managed Assets, “legacy assets”, which refers to certain assets owned by us at July 26, 2010 that were deemed to be managed assets under the Prior Advisory Agreement, such as our CLOs, and certain other services:

| <b>Type</b>                                    | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><i>Managed Assets:</i></b>                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Base management fee                            | HCS is entitled to receive a quarterly base advisory fee (payable in arrears) in an amount equal to the product of (i) 1/4 of the amortized cost of the Managed Assets as of the end of the quarter, and (ii) 2%.                                                                                                                                                                                                                                                                                                                                                                                |
| Incentive fee                                  | HCS is also eligible to earn incentive compensation on the Managed Assets for each fiscal year during the term of the HCS Advisory Agreement in an amount equal to 35% of the GAAP net income attributable to the Managed Assets for the full fiscal year (including paid interest and realized gains), after giving effect to all direct expenses related to the Managed Assets, including but not limited to, base advisory fees and the annual consulting fee, that exceeds a hurdle rate of 13% based on the average equity of our investment in Managed Assets during that particular year. |
| <b><i>Legacy Assets:</i></b>                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Incentive fee                                  | HCS is eligible to earn incentive compensation on “legacy assets” equal to 25% of the GAAP net income of HC and NYMF attributable to the investments that are deemed managed assets (as defined under the Prior Advisory Agreement) that exceed a hurdle rate equal to the greater of (a) 8.00% and (b) 2.00% plus the ten year treasury rate for such fiscal year. The incentive fee is payable in cash, quarterly in arrears.                                                                                                                                                                  |
| <b><i>Consulting and Support Services:</i></b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Consulting fee                                 | During the term of the HCS Advisory Agreement, we will pay HCS an annual consulting fee equal to \$1 million, subject to reduction in the event JMP Group’s equity investment in our company falls below certain thresholds, payable on a quarterly basis in arrears, for consulting and support services related to finance, capital markets, investment and other strategic activities.                                                                                                                                                                                                        |

We may terminate the HCS Advisory Agreement or elect not to renew the agreement, subject to certain conditions and subject to paying a termination fee equal to the product of (A) 1.5 and (B) the sum of (i) the average annual base advisory fee earned by HCS during the 24-month period preceding the effective termination date, and (ii) the annual consulting fee.



### ***Conflicts of Interest with Our External Managers; Equitable Allocation of Opportunities***

Each of Midway and HCS manages, and is expected to continue to manage, other client accounts with similar or overlapping investment strategies. In connection with the services provided to those accounts, these managers may be compensated more favorably than for the services provided under our external management agreements, and such discrepancies in compensation may affect the level of service provided to us by our external managers. Moreover, each of our external managers may have an economic interest in the accounts they manage or the investments they propose and, in the case of HCS, may raise, advise or sponsor other REITs or other investment funds that invest in assets similar to our targeted assets. In addition, we have in the recent past engaged in certain co-investment opportunities with an external manager or one of its affiliates and we may participate in future co-investment opportunities with our external managers or their affiliates. In these cases, it is possible that our interests and the interests of our external managers will not always be aligned and this could result in decisions that are not in the best interests of our company.

Each of Midway and HCS has agreed that, when making investment allocation decisions between us and its other client accounts, it will, in the case of HCS, adhere to the investment allocation policy for such assets and, in the case of Midway, seek to allocate investment opportunities on an equitable basis and in a manner it believes is in the best interests of its relevant accounts. Since certain of our targeted assets are typically available only in specified quantities and since certain of these targeted assets will also be targeted assets for other accounts managed by or associated with our external managers, our external managers may not be able to buy as much of certain assets as required to satisfy the needs of all of its clients' or associated accounts. In these cases, we understand that the allocation procedures and policies of our external managers would typically allocate such assets to multiple accounts in proportion to, among other things, the objectives and needs of each account. Moreover, the investment allocation policies of our external managers may permit departure from proportional allocation when the total allocation would result in an inefficiently small amount of the security being purchased for an account. Although we believe that each of our external managers will seek to allocate investment opportunities in a manner which it believes to be in the best interests of all accounts involved and will seek to allocate, on an equitable basis, investment opportunities believed to be appropriate for us and the other accounts it manages or is associated with, there can be no assurance that a particular investment opportunity will be allocated in any particular manner.

Midway is authorized to follow broad investment guidelines in determining which assets it will invest in. Although our board of directors will ultimately determine when and how much capital to allocate to the Midway Residential Mortgage Portfolio, we generally will not approve transactions in advance of their execution. Currently, our investment in any new program asset under the HCS Advisory Agreement requires the approval of our board of directors. However, our board of directors may elect to not review individual investments in new program assets in the future. In addition to conducting periodic reviews, we will rely primarily on information provided to us by our external managers. Complicating matters further, our external managers may use complex investment strategies and transactions, which may be difficult or impossible to unwind. As a result, because our external managers have great latitude to determine the types of assets it may decide are proper investments for the Midway Residential Mortgage Portfolio or us, there can be no assurance that we would otherwise approve of these investments individually or that they will be successful.

Pursuant to the terms of the Midway Management Agreement, we may only redeem invested capital in an amount equal to the lesser of 10% of the invested capital in the Midway Residential Mortgage Portfolio or \$10 million as of the last calendar day of the month upon not less than 75 days written notice, subject to our authority to direct Midway to modify its investment strategy for purposes of maintaining our qualification as a REIT and exemption from the Investment Company Act, and we are only permitted to make one such redemption request in any 75-day period. In the event a significant market event or shock, we may be unable to effect a redemption of invested capital in greater amounts or at a greater rate unless we obtain the consent of Midway. Because a reduction of invested capital would reduce the base management fee under the Midway Management Agreement, Midway may be less inclined to consent to such redemptions.

Other than HCS, none of our external managers is obligated to dedicate any specific personnel exclusively to us, nor are they or their personnel obligated to dedicate any specific portion of their time to the management of our business. As a result, we cannot provide any assurances regarding the amount of time our external managers will dedicate to the management of our business. Moreover, each of our external managers has significant responsibilities for other investment vehicles and may not always be able to devote sufficient time to the management of our business. Consequently, we may not receive the level of support and assistance that we otherwise might receive if such services were provided internally by us.

To our knowledge, HCS beneficially owned approximately 15.3% of our outstanding common stock as of December 31, 2010. In addition, our chairman, Mr. Fowler, is also a managing director of JMP Group Inc. and a portfolio manager at HCS and, as a result, may have a conflict of interest in situations where the best interests of our company and our stockholders do not align with the interests of HCS or its affiliates. This could result in decisions that are not in the best interests of our company or our stockholders.

## **Company History**

We were formed as a Maryland corporation in September 2003. In June 2004, we completed our initial public offering, or IPO, which resulted in approximately \$122 million in net proceeds to our company. Following the completion of our IPO, we operated as a self-advised residential mortgage finance company that focused on originating, acquiring and investing in adjustable and variable rate mortgage (“ARM”) assets. Under this business model, we retained and either financed in our portfolio or sold to third parties selected ARM loans and hybrid ARM loans originated by HC, while continuing to sell all fixed-rate loans originated by HC to third parties. In the first quarter of 2007, with the mortgage lending business facing increasingly difficult operating conditions, we completed the sale of substantially all of the assets related to our retail and wholesale residential mortgage lending platform to IndyMac Bank, F.S.B., thereby marking our exit from the mortgage lending business. In connection with the sale of the mortgage lending business, HC recorded a significant net operating loss carry-forward, of which approximately \$59 million remained at December 31, 2010, subject to limitation under Section 382 of the IRC.

Following our exit from the mortgage lending business, we focused our efforts on the business of investing, on a leveraged basis, in Agency RMBS, prime ARM loans and non-Agency RMBS, with a primary focus on growing our portfolio of Agency RMBS. In January 2008 we formed a strategic relationship with JMP Group Inc., by concurrently entering into The Prior Advisory Agreement with HCS and selling \$20 million of our Series A. Preferred Stock to JMP Group Inc. and certain of its affiliates. In February 2008, we received net proceeds of approximately \$56.5 million from the issuance and sale of 7.5 million shares of our common stock to certain accredited investors in a private placement for which an affiliate of JMP Group Inc. served as placement agent. At the time, we anticipated that we would continue to grow a portfolio of Agency RMBS, while, together with HCS, opportunistically pursuing and acquiring “alternative” real estate-related and financial assets that would diversify our market risks and might permit us to potentially utilize all or part of the significant net operating loss carry-forward held by HC. Accordingly, we used the proceeds from our private offerings of common and preferred stock to acquire a significant portfolio of Agency RMBS during January and February of 2008. Like other mortgage REITs and other industry participants, we were significantly affected by the market disruptions in 2008, particularly, the market disruption in March 2008, which caused us to liquidate a significant percentage of our Agency RMBS portfolio in an effort to reduce leverage and improve our liquidity position as credit markets tightened.

Since the market disruptions of 2008, we have endeavored to reposition our investment portfolio from one primarily focused on leveraged Agency RMBS and prime ARM loans held in securitization trusts, which primarily involve interest rate risk, to a more diversified portfolio that includes elements of credit risk with reduced leverage. Most recently, we announced the formation and initial funding of the Midway Residential Mortgage Portfolio. See “Our Investment Strategy” above.

## **Our Structure**

We conduct our business through New York Mortgage Trust, Inc., which serves as the parent company, and several of our subsidiaries, including special purpose subsidiaries established for loan securitization purposes. In addition, we conduct certain of our portfolio investment operations through our TRS, HC, in order to utilize, to the extent permitted by law, some or all of a net operating loss carry-forward held in HC that resulted from HC’s exit from the mortgage lending business, and through NYMF, our QRS, which currently holds certain mortgage-related assets for regulatory compliance purposes. The Company consolidates all of its subsidiaries under generally accepted accounting principles in the United States of America (“GAAP”).

## **Certain Federal Income Tax Considerations and Our Status as a REIT**

We have elected to be taxed as a REIT under Sections 856-860 of the Internal Revenue Code (IRC) of 1986, as amended, for federal income tax purposes, commencing with our taxable year ended December 31, 2004, and we believe that our current and proposed method of operation will enable us to continue to qualify as a REIT for our taxable year ended December 31, 2011 and thereafter. Accordingly, the net interest income we earn on these assets is generally not subject to federal income tax as long as we distribute at least 90% of our REIT taxable income in the form of a dividend to our stockholders each year and comply with various other requirements. Taxable income generated by HC, our taxable REIT subsidiary, or TRS, is subject to regular corporate income tax.

The benefit of REIT tax status is a tax treatment that avoids “double taxation,” or taxation at both the corporate and stockholder levels, that generally applies to distributions by a corporation to its stockholders. Failure to qualify as a REIT would subject our Company to federal income tax (including any applicable minimum tax) on its taxable income at regular corporate rates and distributions to its stockholders in any such year would not be deductible by our Company.

## **Summary Requirements for Qualification**

### *Organizational Requirements*

A REIT is a corporation, trust, or association that meets each of the following requirements:

- 1) It is managed by one or more trustees or directors.
- 2) Its beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest.
- 3) It would be taxable as a domestic corporation, but for the REIT provisions of the federal income tax laws.
- 4) It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws.
- 5) At least 100 persons are beneficial owners of its shares or ownership certificates.
- 6) Not more than 50% in value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, which the federal income tax laws define to include certain entities, during the last half of any taxable year.
- 7) It elects to be a REIT, or has made such election for a previous taxable year, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status.
- 8) It meets certain other qualification tests, described below, regarding the nature of its income and assets.

We must meet requirements 1 through 4 during our entire taxable year and must meet requirement 5 during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

*Qualified REIT Subsidiaries* . A corporation that is a “qualified REIT subsidiary” is not treated as a corporation separate from its parent REIT. All assets, liabilities, and items of income, deduction, and credit of a “qualified REIT subsidiary” are treated as assets, liabilities, and items of income, deduction, and credit of the REIT. A “qualified REIT subsidiary” is a corporation, all of the capital stock of which is owned by the REIT. Thus, in applying the requirements described herein, any “qualified REIT subsidiary” that we own will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit.

*Taxable REIT Subsidiaries* . A REIT is permitted to own up to 100% of the stock of one or more “taxable REIT subsidiaries,” or TRSs. A TRS is a fully taxable corporation that may earn income that would not be qualifying income if earned directly by the parent REIT. Overall, no more than 25% of the value of a REIT’s assets may consist of stock or securities of one or more TRSs.

A TRS will pay income tax at regular corporate rates on any income that it earns. In addition, the TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. We have elected for HC to be treated as a TRS. HC is subject to corporate income tax on its taxable income.

*Qualified REIT Assets* . On the last day of each calendar quarter, at least 75% of the value of our assets (which includes any assets held through a qualified REIT subsidiary) must consist of qualified REIT assets — primarily real estate, mortgage loans secured by real estate, and certain mortgage-backed securities (“Qualified REIT Assets”), government securities, cash, and cash items. We believe that substantially all of our assets are and will continue to be Qualified REIT Assets. On the last day of each calendar quarter, of the assets not included in the foregoing 75% asset test, the value of securities that we hold issued by any one issuer may not exceed 5% in value of our total assets and we may not own more than 10% of the voting power or value of any one issuer’s outstanding securities (with an exception for securities of a qualified REIT subsidiary or of a taxable REIT subsidiary). In addition, the aggregate value of our securities in taxable REIT subsidiaries cannot exceed 25% of our total assets. We monitor the purchase and holding of our assets for purposes of the above asset tests and seek to manage our portfolio to comply at all times with such tests.

We may from time to time hold, through one or more taxable REIT subsidiaries, assets that, if we held them directly, could generate income that would have an adverse effect on our qualification as a REIT or on certain classes of our stockholders.

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## ***Gross Income Tests***

We must meet the following separate income-based tests each year:

1. The 75% Test. At least 75% of our gross income for the taxable year must be derived from Qualified REIT Assets. Such income includes interest (other than interest based in whole or in part on the income or profits of any person) on obligations secured by mortgages on real property, rents from real property, gain from the sale of Qualified REIT Assets, and qualified temporary investment income or interests in real property. The investments that we have made and intend to continue to make will give rise primarily to mortgage interest qualifying under the 75% income test.

2. The 95% Test. At least 95% of our gross income for the taxable year must be derived from the sources that are qualifying for purposes of the 75% test, and from dividends, interest or gains from the sale or disposition of stock or other assets that are not dealer property.

## ***Distributions***

We must distribute to our stockholders on a pro rata basis each year an amount equal to at least (i) 90% of our taxable income before deduction of dividends paid and excluding net capital gain, plus (ii) 90% of the excess of the net income from foreclosure property over the tax imposed on such income by the Internal Revenue Code, less (iii) any “excess non-cash income.” We have made and intend to continue to make distributions to our stockholders in sufficient amounts to meet the distribution requirement for REIT qualification.

## ***Competition***

Our success depends, in large part, on our ability to acquire assets at favorable spreads over our borrowing costs. When we invest in mortgage-backed securities, mortgage loans and other investment assets, we compete with a variety of institutional investors, including other REITs, insurance companies, mutual funds, hedge funds, pension funds, investment banking firms, banks and other financial institutions that invest in the same types of assets. Many of these investors have greater financial resources and access to lower costs of capital than we do .

## ***Corporate Offices and Personnel***

Our corporate headquarters are located at 52 Vanderbilt Avenue, Suite 403, New York, New York, 10017 and our telephone number is (212) 792-0107. As of December 31, 2010 we employed three full-time employees.

## ***Access to our Periodic SEC Reports and Other Corporate Information***

Our internet website address is [www.nymtrust.com](http://www.nymtrust.com). We make available free of charge, through our internet website, our annual report on Form 10-K, our quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments thereto that we file or furnish pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Our Corporate Governance Guidelines and Code of Business Conduct and Ethics and the charters of our Audit, Compensation and Nominating and Corporate Governance Committees are also available on our website and are available in print to any stockholder upon request in writing to New York Mortgage Trust, Inc., c/o Secretary, 52 Vanderbilt Avenue, Suite 403, New York, New York, 10017. Information on our website is neither part of nor incorporated into this Annual Report on Form 10-K.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements included in this Annual Report on Form 10-K constitute forward-looking statements. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. In some cases, you can identify forward-looking statements by terms such as “anticipate,” “believe,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “goal,” “objective,” “potential,” “project,” “should,” “will” and “would” or the negative of these terms or other comparable terminology.

The forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account information currently in our possession. These beliefs, assumptions and expectations may change as a result of many possible events or factors, not all of which are known to us or are within our control. If a change occurs, the performance of our portfolio and our business, financial condition, liquidity and results of operations may vary materially from those expressed, anticipated or contemplated in our forward-looking statements. You should carefully consider these risks, along with the following factors that could cause actual results to vary from our forward-looking statements:

- changes in our business and strategies;
- our ability to successfully diversify our investment portfolio and identify suitable assets to invest in;
- the effect of the Federal Reserve’s and the U.S. Treasury’s actions and programs, including future purchases or sales of Agency RMBS by the Federal Reserve or Treasury, on the liquidity of the capital markets and the impact and timing of any further programs or regulations implemented by the U.S. Government or its agencies;
- any changes in laws and regulations affecting the relationship between Fannie Mae, Freddie Mac and Ginnie Mae and the U.S. Government;
- increased prepayments of the mortgages and other loans underlying our investment securities;
- the volatility of the markets for our targeted assets;
- increased rates of default and/or decreased recovery rates on our assets;
- mortgage loan modification programs and future legislative action;
- the degree to which our hedging strategies may or may not protect us from, or expose us to, credit or interest rate risk;
- changes in the availability, terms and deployment of capital;
- changes in interest rates and interest rate mismatches between our assets and related borrowings;
- our ability to maintain existing financing agreements, obtain future financing arrangements and the terms of such arrangements;
- changes in economic conditions generally and the mortgage, real estate and debt securities markets specifically;
- legislative or regulatory changes;
- changes to GAAP; and
- the other important factors identified in, or incorporated by reference into, this Annual Report, including, but not limited to those under the captions “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Quantitative and Qualitative Disclosures about Market Risk,” and the various other factors identified in any other documents filed by us with the SEC.

## **Item 1A. RISK FACTORS**

***Set forth below are the risks that we believe are material to stockholders. You should carefully consider the following risk factors and the various other factors identified in or incorporated by reference into any other documents filed by us with the SEC in evaluating our company and our business. The risks discussed herein can adversely affect our business, liquidity, operating results, prospects, and financial condition. This could cause the market price of our securities to decline. The risk factors described below are not the only risks that may affect us. Additional risks and uncertainties not presently known to us also may adversely affect our business, liquidity, operating results, prospects, and financial condition.***

### **Risks Related to Our Business and Our Company**

***Difficult conditions in the mortgage and residential real estate markets have caused and may cause us to experience losses and these conditions may persist for the foreseeable future.***

Our business is materially affected by conditions in the residential mortgage market, the residential real estate market, the financial markets and the economy generally. In addition, we expect that as we acquire commercial mortgage-related assets in the future, our business will be increasingly affected by conditions in the commercial mortgage market and the commercial real estate market. Furthermore, we believe the risks associated with our investments will be more acute during periods of economic slowdown or recession, especially if these periods are accompanied by declining real estate values. Concerns about the residential and commercial mortgage markets and a declining real estate market generally, as well as inflation, energy costs, geopolitical issues and the availability and cost of credit have contributed to increased volatility and diminished expectations for the economy and markets going forward. The residential and commercial mortgage markets have been adversely affected by changes in the lending landscape, the severity of which was largely unanticipated by the markets. There is no assurance that these markets have stabilized or that they will not worsen.

In addition, a continued economic slowdown or delayed recovery may result in continued decreased demand for residential and commercial property, which would likely further compress homeownership rates and place additional pressure on home price performance, while forcing commercial property owners to lower rents on properties with excess supply. We believe there is a strong correlation between home price growth rates and mortgage loan delinquencies. Moreover, to the extent that a property owner has fewer tenants or receives lower rents, such property owners will generate less cash flow on their properties, which increases significantly the likelihood that such property owners will default on their debt service obligations. If the borrowers of our mortgage loans, or the loans underlying certain of our investment securities, default, we may incur losses on those loans or investment securities. Any sustained period of increased payment delinquencies, foreclosures or losses could adversely affect both our net interest income and our ability to acquire our targeted assets in the future on favorable terms or at all. The further deterioration of the residential or commercial mortgage markets, the residential or commercial real estate markets, the financial markets and the economy generally may result in a decline in the market value of our investments or cause us to experience losses related to our assets, which may adversely affect our results of operations, the availability and cost of credit and our ability to make distributions to our stockholders.

***We may change our investment strategy, hedging strategy and asset allocation and operational and management policies without stockholder consent, which may result in the purchase of riskier assets and materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our stockholders.***

We may change our investment strategy, hedging strategy and asset allocation and operational and management policies at any time without the consent of our stockholders, which could result in our purchasing assets or entering into hedging transactions that are different from, and possibly riskier than, the assets and hedging transactions described in this report. A change in our investment strategy or hedging strategy may increase our exposure to real estate values, interest rates and other factors. A change in our asset allocation could result in us purchasing assets in classes different from those described in this report. Our board of directors determines our operational policies and may amend or revise our policies, including those with respect to our acquisitions, growth, operations, indebtedness, capitalization and distributions or approve transactions that deviate from these policies without a vote of, or notice to, our shareholders. In addition, certain of our external managers have great latitude in making investment and hedging decisions on our behalf. Changes in our investment strategy, hedging strategy and asset allocation and operational and management policies could materially adversely affect our business, financial condition and results of operations and ability to make distributions to our stockholders.

***Interest rate mismatches between the interest-earning assets held in our investment portfolio and the borrowings used to fund the purchases of those assets may reduce our net income or result in a loss during periods of changing interest rates.***

Certain of the assets held in our investment portfolio, particularly RMBS, have a fixed coupon rate, generally for a significant period, and in some cases, for the average maturity of the asset. At the same time, our repurchase agreements and other borrowings typically provide for a payment reset period of 30 days or less. In addition, the average maturity of our borrowings generally will be shorter than the average maturity of the RMBS currently in our portfolio and shorter than the RMBS and other mortgage-related securities and loans in which we seek to invest. Historically, we have used swap agreements as a means for attempting to fix the cost of certain of our liabilities over a period of time; however, these agreements will generally not be sufficient to match the cost of all our liabilities against all of our investment securities. In the event we experience unexpectedly high or low prepayment rates on RMBS or other mortgage-related securities or loans, our strategy for matching our assets with our liabilities is more likely to be unsuccessful.

Interest rate fluctuations will also cause variances in the yield curve, which may reduce our net income. The relationship between short-term and longer-term interest rates is often referred to as the “yield curve.” If short-term interest rates rise disproportionately relative to longer-term interest rates (a flattening of the yield curve), our borrowing costs may increase more rapidly than the interest income earned on the RMBS and other interest-earning assets in our investment portfolio. For example, because the RMBS in our investment portfolio typically bear interest based on longer-term rates while our borrowings typically bear interest based on short-term rates, a flattening of the yield curve would tend to decrease our net income and the market value of these securities. Additionally, to the extent cash flows from investments that return scheduled and unscheduled principal are reinvested, the spread between the yields of the new investments and available borrowing rates may decline, which would likely decrease our net income. It is also possible that short-term interest rates may exceed longer-term interest rates (a yield curve inversion), in which event our borrowing costs may exceed our interest income and we could incur significant operating losses.

***Declines in the market values of assets in our investment portfolio may adversely affect periodic reported results and credit availability, which may reduce earnings and, in turn, cash available for distribution to our stockholders.***

The market value of the interest-bearing assets in which we invest, most notably RMBS and purchased prime ARM loans and any related hedging instruments, may move inversely with changes in interest rates. We anticipate that increases in interest rates will tend to decrease our net income and the market value of our interest-bearing assets. A significant percentage of the securities within our investment portfolio are classified for accounting purposes as “available for sale.” Changes in the market values of trading securities will be reflected in earnings and changes in the market values of available for sale securities will be reflected in stockholders’ equity. As a result, a decline in market values may reduce the book value of our assets. Moreover, if the decline in market value of an available for sale security is other than temporary, such decline will reduce earnings.

A decline in the market value of our interest-bearing assets may adversely affect us, particularly in instances where we have borrowed money based on the market value of those assets. If the market value of those assets declines, the lender may require us to post additional collateral to support the loan, which would reduce our liquidity and limit our ability to leverage our assets. In addition, if we are, or anticipate being, unable to post the additional collateral, we would have to sell the assets at a time when we might not otherwise choose to do so. In the event that we do not have sufficient liquidity to meet such requirements, lending institutions may accelerate indebtedness, increase interest rates and terminate our ability to borrow, any of which could result in a rapid deterioration of our financial condition and cash available for distribution to our stockholders. Moreover, if we liquidate the assets at prices lower than the amortized cost of such assets, we will incur losses.

***Changes in laws and regulations affecting the relationship between Fannie Mae and Freddie Mac and the U.S. government, may adversely affect our business.***

Payments on the Agency RMBS in which we invest are guaranteed by Fannie Mae and Freddie Mac. As broadly publicized, Fannie Mae and Freddie Mac have experienced significant losses in recent years, causing the U.S. Government to place Fannie Mae and Freddie Mac under federal conservatorship and to inject significant capital in these businesses. Questions regarding the continued viability of Fannie Mae and Freddie Mac, as currently structured, including the guarantees that back the RMBS issued by them, and the U.S. Government’s participation in the U.S. residential mortgage market through the GSEs, continue to persist. In February 2011, the U.S. Department of the Treasury along with the U.S. Department Housing and Urban Development released a much-awaited report titled “ Reforming America’s Housing Finance Market ”, which outlines recommendations for reforming the U.S. housing system, specifically the roles of Fannie Mae and Freddie Mac and transforming the government’s involvement in the housing market and its relationship to Fannie Mae and Freddie Mac. It is unclear how future legislation may impact the housing finance market and the investing environment for mortgage-related securities and more specifically, Agency RMBS and non-Agency RMBS, as the method of reform is undecided and has not yet been defined by the regulators. New regulations and programs related to Fannie Mae and Freddie Mac, including those affecting the relationship between the GSEs and the U.S. Government, may adversely affect the pricing, supply, liquidity and value of RMBS and otherwise materially harm our business and operations.





Our income could be negatively affected in a number of ways depending on the manner in which events related to Fannie Mae and Freddie Mac unfold. For example, the current credit support provided by the U.S. to Fannie Mae and Freddie Mac, and any additional credit support it may provide in the future, could have the effect of lowering the interest rates we expect to receive from Agency RMBS, thereby tightening the spread between the interest we earn on those assets and our cost of financing those assets. A reduction in the supply of Agency RMBS could also negatively affect the pricing of RMBS by reducing the spread between the interest we earn on our RMBS and our cost of financing those assets. In addition, any law affecting these government-sponsored enterprises may create market uncertainty and have the effect of reducing the actual or perceived credit quality of securities issued or guaranteed by Fannie Mae or Freddie Mac. As a result, such laws could increase the risk of loss on investments in Fannie Mae and/or Freddie Mac Agency RMBS.

***Mortgage loan modification programs and future legislative action may adversely affect the value of, and the returns, on the interest-earning assets in which we invest.***

In late 2008, the U.S. government, through the Federal Housing Authority and the Federal Deposit Insurance Corporation, or FDIC, commenced implementation of programs designed to provide homeowners with assistance in avoiding residential mortgage loan foreclosures. The programs involve, among other things, modifications of mortgage loans to reduce the principal amount of the loans or the rate of interest payable on the loans, or to extend the payment terms of the loans. In addition, members of the U.S. Congress have indicated support for additional legislative relief for homeowners, including an amendment of the bankruptcy laws to permit the modification of mortgage loans in bankruptcy proceedings. These loan modification programs, as well as future legislative or regulatory actions, including amendments to the bankruptcy laws, that result in the modification of outstanding mortgage loans may as well as changes in the requirements necessary to qualify for refinancing a mortgage with Fannie Mae, Freddie Mac or Ginnie Mae adversely affect the value of, and the returns on, the interest-earning assets in which we invest, including through prepayments on the mortgage loans underlying our RMBS and other mortgage-related securities and loans, including mortgage loans held in our securitization trusts.

***We have acquired and may acquire in the future non-Agency RMBS collateralized by subprime and Alt A mortgage loans, which are not guaranteed by any government-sponsored entity or agency and are subject to increased risks.***

We have acquired and may acquire in the future non-Agency RMBS, which are backed by residential real estate property but, in contrast to Agency RMBS, their principal and interest are not guaranteed by a GSE such as Fannie Mae or Freddie Mac. We may acquire non-Agency RMBS backed by collateral pools of mortgage loans that have been originated using underwriting standards that are less restrictive than those used in underwriting “prime mortgage loans” and “Alt A mortgage loans.” These lower standards include mortgage loans made to borrowers having imperfect or impaired credit histories, mortgage loans where the amount of the loan at origination is 80% or more of the value of the mortgage property, mortgage loans made to borrowers with low credit scores, mortgage loans made to borrowers who have other debt that represents a large portion of their income and mortgage loans made to borrowers whose income is not required to be disclosed or verified. Due to current economic conditions, including fluctuations in interest rates and lower home prices, as well as aggressive lending practices, many of the mortgage loans backing the non-Agency RMBS have in recent periods experienced increased rates of delinquency, foreclosure, bankruptcy and loss, and they are likely to continue to experience delinquency, foreclosure, bankruptcy and loss rates that are higher, and that may be substantially higher, than those experienced by mortgage loans underwritten in a more traditional manner. Thus, because of the higher delinquency rates and losses associated with these mortgage loans, the performance of non-Agency RMBS could be adversely affected, which could materially and adversely impact our results of operations, financial condition and business.

***Prepayment rates can change, adversely affecting the performance of our assets.***

The frequency at which prepayments (including both voluntary prepayments by the borrowers and liquidations due to defaults and foreclosures) occur on mortgage loans underlying RMBS is affected by a variety of factors, including the prevailing level of interest rates as well as economic, demographic, tax, social, legal, and other factors. Generally, borrowers tend to prepay their mortgages when prevailing mortgage rates fall below the interest rates on their mortgage loans. A significant percentage of the mortgage loans underlying our existing RMBS were originated in a relatively higher interest rate environment than currently in effect and, thus, could be prepaid if borrowers are eligible for refinancings.

In general, “premium” securities (securities whose market values exceed their principal or par amounts) are adversely affected by faster-than-anticipated prepayments because the above-market coupon that such premium securities carry will be earned for a shorter period of time. Generally, “discount” securities (securities whose principal or par amounts exceed their market values) are adversely affected by slower-than-anticipated prepayments. Since many RMBS will be discount securities when interest rates are high, and will be premium securities when interest rates are low, these RMBS may be adversely affected by changes in prepayments in any interest rate environment.

During the first quarter of 2010, each of Fannie Mae and Freddie Mac announced that it was significantly increasing its repurchase of mortgage loans that are 120 or more days delinquent from mortgage pools backing Freddie Mac guaranteed RMBS or Fannie Mae guaranteed RMBS, as applicable. The initial effect of these repurchases was similar to a one-time or short-term increase in mortgage prepayment rates. The ongoing magnitude of the effect of these repurchases on a particular Agency RMBS depends upon the composition of the mortgage pool underlying each Agency RMBS, although for many Agency RMBS the effect has been, and we expect will continue to be, significant.

The adverse effects of prepayments may impact us in various ways. First, particular investments may experience outright losses, as in the case of IOs and in an environment of faster actual or anticipated prepayments. Second, particular investments may under-perform relative to any hedges that we may have constructed for these assets, resulting in a loss to us. In particular, prepayments (at par) may limit the potential upside of many RMBS to their principal or par amounts, whereas their corresponding hedges often have the potential for unlimited loss. Furthermore, to the extent that faster prepayment rates are due to lower interest rates, the principal payments received from prepayments will tend to be reinvested in lower-yielding assets, which may reduce our income in the long run. Therefore, if actual prepayment rates differ from anticipated prepayment rates our business, financial condition and results of operations and ability to make distributions to our shareholders could be materially adversely affected.

***A flat or inverted yield curve may adversely affect prepayment rates on and supply of our RMBS.***

Our net interest income varies primarily as a result of changes in interest rates as well as changes in interest rates across the yield curve. We believe that when the yield curve is relatively flat, borrowers have an incentive to refinance into hybrid mortgages with longer initial fixed rate periods and fixed rate mortgages, causing our RMBS, or investment securities, to experience faster prepayments. In addition, a flatter yield curve generally leads to fixed-rate mortgage rates that are closer to the interest rates available on hybrid ARMs and ARMs, possibly decreasing the supply of the RMBS we seek to acquire. At times, short-term interest rates may increase and exceed long-term interest rates, causing an inverted yield curve. When the yield curve is inverted, fixed-rate mortgage rates may approach or be lower than hybrid ARMs or ARM rates, further increasing prepayments on, and negatively impacting the supply of, our RMBS. Increases in prepayments on our portfolio will cause our premium amortization to accelerate, lowering the yield on such assets. If this happens, we could experience a decrease in net income or incur a net loss during these periods, which may negatively impact our distributions to stockholders.

***Changes in interest rates could negatively affect the value of our assets, and increase the risk of default on our assets.***

Currently, our assets primarily consist of RMBS. Most RMBS, especially most fixed-rate RMBS and most RMBS backed by fixed-rate mortgage loans, decline in value when long-term interest rates increase. Even in the case of Agency RMBS, the guarantees provided by GSEs do not protect us from declines in market value caused by changes in interest rates. In the case of RMBS backed by ARMs, increases in interest rates can lead to increases in delinquencies and defaults as borrowers become less able to make their mortgage payments following interest payment resets. At the same time, an increase in short-term interest rates would increase the amount of interest owed on our reverse repos.

RMBS backed by ARMs are typically subject to periodic and lifetime interest rate caps. Periodic interest rate caps limit the amount an interest rate can increase during any given period. Lifetime interest rate caps limit the amount an interest rate can increase over the life of the security. Our borrowings typically are not subject to similar restrictions. Accordingly, in a period of rapidly increasing interest rates, the interest rates paid on our borrowings could increase without limitation while interest rate caps could limit the interest rates on our RMBS backed by ARMs. This problem is magnified for RMBS backed by ARMs and hybrid ARMs that are not fully indexed. Further, some RMBS backed by ARMs and hybrid ARMs may be subject to periodic payment caps that result in a portion of the interest being deferred and added to the principal outstanding. As a result, the payments we receive on RMBS backed by ARMs and hybrid ARMs may be lower than the related debt service costs. These factors could have a material adverse effect on our business, financial condition and results of operations and our ability to make distributions to our shareholders.

***Competition may prevent us from acquiring assets on favorable terms or at all, which could have a material adverse effect on our business, financial condition and results of operations.***

We operate in a highly competitive market for investment opportunities. Our net income largely depends on our ability to acquire our targeted assets at favorable spreads over our borrowing costs. In acquiring our targeted assets, we compete with other REITs, investment banking firms, savings and loan associations, banks, insurance companies, mutual funds, other lenders and other entities that purchase mortgage-related assets, many of which have greater financial resources than us. Additionally, many of our potential competitors are not subject to REIT tax compliance or required to maintain an exemption from the Investment Company Act. As a result, we may not in the future be able to acquire sufficient quantities of our targeted assets at favorable spreads over our borrowing costs, which could have a material adverse effect on our business, financial condition and results of operations.

***We may experience periods of illiquidity for our assets which could adversely affect our ability to finance our business or operate profitably.***

We bear the risk of being unable to dispose of our interest-earning assets at advantageous times or in a timely manner because these assets generally experience periods of illiquidity. The lack of liquidity may result from the absence of a willing buyer or an established market for these assets, legal or contractual restrictions on resale or disruptions in the secondary markets. This illiquidity may adversely affect our profitability and our ability to finance our business and could cause us to incur substantial losses.

***Market conditions may upset the historical relationship between interest rate changes and prepayment trends, which would make it more difficult for us to analyze our investment portfolio.***

Our success depends on our ability to analyze the relationship of changing interest rates on prepayments of the mortgage loans that underlie our RMBS. Changes in interest rates and prepayments affect the market price of the RMBS that we hold in our portfolio and in which we intend to invest. In managing our investment portfolio, to assess the effects of interest rate changes and prepayment trends on our investment portfolio, we typically rely on certain assumptions that are based upon historical trends with respect to the relationship between interest rates and prepayments under normal market conditions. If the dislocations in the residential mortgage market over the last few years or other developments change the way that prepayment trends have historically responded to interest rate changes, our ability to (i) assess the market value of our investment portfolio, (ii) effectively hedge our interest rate risk and (iii) implement techniques to reduce our prepayment rate volatility would be significantly affected, which could materially adversely affect our financial position and results of operations.

***A substantial majority of the RMBS within our investment portfolio is recorded at fair value as determined in good faith by our management based on market quotations from brokers and dealers. Although we currently are able to obtain market quotations for assets in our portfolio, we may be unable to obtain quotations from brokers and dealers for certain assets within our investment portfolio in the future, in which case our management may need to determine in good faith the fair value of these assets .***

Substantially all of the assets held within our investment portfolio are in the form of securities that are not publicly traded on a national securities exchange or quotation system. The fair value of securities and other assets that are not publicly traded in this manner may not be readily determinable. A substantial majority of the assets in our investment portfolio are valued by us at fair value as determined in good faith by our management based on market quotations from brokers and dealers. Although we currently are able to obtain quotations from brokers and dealers for substantially all of the assets within our investment portfolio, we may be unable to obtain such quotations on other assets in our investment portfolio in the future, in which case, our manager may need to determine in good faith the fair value of these assets. Because such quotations and valuations are inherently uncertain, may fluctuate over short periods of time and may be based on estimates, our determinations of fair value may differ materially from the values that would have been used if a public market for these securities existed. The value of our common stock could be adversely affected if our determinations regarding the fair value of these assets are materially higher than the values that we ultimately realize upon their disposal. Misjudgments regarding the fair value of our assets that we subsequently recognize may also result in impairments that we must recognize.

***Loan delinquencies on our prime ARM loans held in securitization trusts may increase as a result of significantly increased monthly payments required from ARM borrowers after the initial fixed period.***

The scheduled increase in monthly payments on certain adjustable rate mortgage loans held in our securitization trusts may result in higher delinquency rates on those mortgage loans and could have a material adverse affect on our net income and results of operations. This increase in borrowers' monthly payments, together with any increase in prevailing market interest rates, may result in significantly increased monthly payments for borrowers with adjustable rate mortgage loans. Borrowers seeking to avoid these increased monthly payments by refinancing their mortgage loans may no longer be able to fund available replacement loans at comparably low interest rates or at all. A decline in housing prices may also leave borrowers with insufficient equity in their homes to permit them to refinance their loans or sell their homes. In addition, these mortgage loans may have prepayment premiums that inhibit refinancing.

***We may be required to repurchase loans if we breached representations and warranties from loan sale transactions, which could harm our profitability and financial condition.***

Loans from our discontinued mortgage lending operations that were sold to third parties under sale agreements include numerous representations and warranties regarding the manner in which the loan was originated, the property securing the loan and the borrower. If these representations or warranties are found to have been breached, we may be required to repurchase the loan. We may be forced to resell these repurchased loans at a loss, which could harm our profitability and financial condition.

***Residential whole mortgage loans, including subprime residential mortgage loans and non-performing and sub-performing residential mortgage loans, are subject to increased risks.***

We may acquire and manage pools of residential whole mortgage loans. Residential whole mortgage loans, including subprime mortgage loans and non-performing and sub-performing mortgage loans, are subject to increased risks of loss. Unlike Agency RMBS, whole mortgage loans generally are not guaranteed by the U.S. Government or any GSE, though in some cases they may benefit from private mortgage insurance. Additionally, by directly acquiring whole mortgage loans, we do not receive the structural credit enhancements that benefit senior tranches of RMBS. A whole mortgage loan is directly exposed to losses resulting from default. Therefore, the value of the underlying property, the creditworthiness and financial position of the borrower and the priority and enforceability of the lien will significantly impact the value of such mortgage. In the event of a foreclosure, we may assume direct ownership of the underlying real estate. The liquidation proceeds upon sale of such real estate may not be sufficient to recover our cost basis in the loan, and any costs or delays involved in the foreclosure or liquidation process may increase losses.

Whole mortgage loans are also subject to “special hazard” risk (property damage caused by hazards, such as earthquakes or environmental hazards, not covered by standard property insurance policies), and to bankruptcy risk (reduction in a borrower’s mortgage debt by a bankruptcy court). In addition, claims may be assessed against us on account of our position as mortgage holder or property owner, including assignee liability, responsibility for tax payments, environmental hazards and other liabilities. In some cases, these liabilities may be “recourse liabilities” or may otherwise lead to losses in excess of the purchase price of the related mortgage or property.

***Commercial mortgage loans are subject to risks of delinquency and foreclosure and risks of loss that may be greater than similar risks associated with residential mortgage loans.***

We may acquire CMBS backed by commercial mortgage loans or directly acquire commercial mortgage loans. Commercial mortgage loans are secured by multifamily or commercial property and are subject to risks of delinquency and foreclosure and risks of loss that are greater than similar risks associated with residential mortgage loans. The ability of a borrower to repay a loan secured by an income-producing property typically is dependent primarily upon the successful operation of such property rather than upon the existence of independent income or assets of the borrower. If the net operating income of the property is reduced, the borrower’s ability to repay the loan may be impaired. If we incur losses on CMBS, or commercial mortgage loans, our business, financial condition and results of operations and our ability to make distributions to our stockholders may be materially adversely affected.

***The mezzanine loan assets that we may acquire or originate will involve greater risks of loss than senior loans secured by income-producing properties.***

We may acquire or originate mezzanine loans, which take the form of subordinated loans secured by second mortgages on the underlying property or loans secured by a pledge of the ownership interests of either the entity owning the property or a pledge of the ownership interests of the entity that owns the interest in the entity owning the property. These types of assets involve a higher degree of risk than long-term senior mortgage lending secured by income-producing real property, because the loan may become unsecured as a result of foreclosure by the senior lender. In addition, mezzanine loans may have higher loan-to-value ratios than conventional mortgage loans, resulting in less equity in the property and increasing the risk of loss of principal. If a borrower defaults on our mezzanine loan or debt senior to our loan, or in the event of a borrower bankruptcy, our mezzanine loan will be satisfied only after the senior debt is paid in full. Where debt senior to our loan exists, the presence of intercreditor arrangements between the holder of the mortgage loan and us, as the mezzanine lender, may limit our ability to amend our loan documents, assign our loans, accept prepayments, exercise our remedies and control decisions made in bankruptcy proceedings relating to borrowers. As a result, we may not recover some or all of our investment, which could result in losses. In addition, even if we are able to foreclose on the underlying collateral following a default on a mezzanine loan, we would be substituted for the defaulting borrower and, to the extent income generated on the underlying property is insufficient to meet outstanding debt obligations on the property, may need to commit substantial additional capital to stabilize the property and prevent additional defaults to lenders with existing liens on the property. Significant losses related to mezzanine loans originated or acquired by us could have a material adverse effect on our results of operations and our ability to make distributions to our stockholders.

***We may invest in high yield or subordinated and lower rated securities that have greater risks of loss than other investments, which could adversely affect our business, financial condition and cash available for dividends.***

We may invest in high yield or subordinated or lower rated securities, including subordinated tranches of CMBS and non-Agency RMBS, which involve a higher degree of risk than other investments. Numerous factors may affect a company's ability to repay its high yield or subordinated securities, including the failure to meet its business plan, a downturn in its industry or negative economic conditions. These securities may not be secured by mortgages or liens on assets. Our right to payment and security interest with respect to such securities may be subordinated to the payment rights and security interests of the senior lender. Therefore, we may be limited in our ability to enforce our rights to collect these loans and to recover any of the loan balance through a foreclosure of collateral.

***Our real estate assets are subject to risks particular to real property.***

We own assets secured by real estate and may own real estate directly in the future, either through direct acquisitions or upon a default of mortgage loans. Real estate assets are subject to various risks, including:

- acts of God, including earthquakes, floods and other natural disasters, which may result in uninsured losses;
- acts of war or terrorism, including the consequences of terrorist attacks, such as those that occurred on September 11, 2001;
- adverse changes in national and local economic and market conditions; and
- changes in governmental laws and regulations, fiscal policies and zoning ordinances and the related costs of compliance with laws and regulations, fiscal policies and ordinances;

The occurrence of any of the foregoing or similar events may reduce our return from an affected property or asset and, consequently, materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our shareholders.

***We are highly dependent on information systems and system failures could significantly disrupt our business, which may, in turn, materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our shareholders.***

Our business is highly dependent on communications and information systems. Any failure or interruption of our systems could cause delays or other problems in our securities trading activities, including RMBS trading activities, which could materially adversely affect on our business, financial condition and results of operations and our ability to make distributions to our stockholders.

***To the extent that due diligence is conducted on potential assets, such due diligence may not reveal all of the risks associated with such assets and may not reveal other weaknesses in such assets, which could lead to losses.***

Before acquiring certain assets, such as non-Agency RMBS, whole mortgage loans, CMBS or other mortgage-related or financial assets, we or the external manager responsible for the acquisition and management of such asset may decide to conduct (either directly or using third parties) certain due diligence. Such due diligence may include (i) an assessment of the strengths and weaknesses of the asset's credit profile, (ii) a review of all or merely a subset of the documentation related to the asset, or (iii) other reviews that we or the external manager may deem appropriate to conduct. There can be no assurance that we or the external manager will conduct any specific level of due diligence, or that, among other things, the due diligence process will uncover all relevant facts or that any purchase will be successful, which could result in losses on these assets, which, in turn, could adversely affect our business, financial condition and results of operations and our ability to make distributions to our stockholders.

***Lack of diversification in the number of assets we acquire would increase our dependence on relatively few individual assets.***

Our management objectives and policies do not place a limit on the size of the amount of capital used to support, or the exposure to (by any other measure), any individual asset or any group of assets with similar characteristics or risks. In addition, because we are a small company, we may be unable to sufficiently deploy capital into a number of assets or asset groups. As a result, our portfolio may be concentrated in a small number of assets or may be otherwise undiversified, increasing the risk of loss and the magnitude of potential losses to us and our stockholders if one or more of these assets perform poorly. For example, our portfolio of mortgage-related assets may at times be concentrated in certain property types that are subject to higher risk of foreclosure, or secured by properties concentrated in a limited number of geographic locations. To the extent that our portfolio is concentrated in any one region or type of security, downturns relating generally to such region or type of security may result in defaults on a number of our assets within a short time period, which may materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our stockholders

## **Risk Related to Our Debt Financing**

***Our access to financing sources, which may not be available on favorable terms, or at all, especially in light of current market conditions, may be limited, and this may materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our stockholders.***

We depend upon the availability of adequate capital and financing sources to fund our operations. However, as previously discussed, the capital and credit markets recently experienced unprecedented levels of volatility and disruption which exerted downward pressure on stock prices and credit capacity for lenders. If these levels of market volatility and disruption recur, it could materially adversely affect one or more of our lenders and could cause one or more of our lenders to be unwilling or unable to provide us with financing, or to increase the costs of that financing, or to become insolvent. Moreover, we are currently party to repurchase agreements of a short duration and there can be no assurance that we will be able to roll over or re-set these borrowings on favorable terms, if at all. In the event we are unable to roll over or re-set our reverse repos, it may be more difficult for us to obtain debt financing on favorable terms or at all. In addition, if regulatory capital requirements imposed on our lenders change, they may be required to limit, or increase the cost of, financing they provide to us. In general, this could potentially increase our financing costs and reduce our liquidity or require us to sell assets at an inopportune time or price. Under current market conditions, securitizations are generally unavailable or limited, which has also limited borrowings under warehouse facilities and other credit facilities that are intended to be refinanced by such securitizations. Consequently, depending on market conditions at the relevant time, we may have to rely on additional equity issuances to meet our capital and financing needs, which may be dilutive to our stockholders, or we may have to rely on less efficient forms of debt financing that consume a larger portion of our cash flow from operations, thereby reducing funds available for our operations, future business opportunities, cash distributions to our stockholders and other purposes. We cannot assure you that we will have access to such equity or debt capital on favorable terms (including, without limitation, cost and term) at the desired times, or at all, which may cause us to curtail our asset acquisition activities and/or dispose of assets, which could materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our stockholders.

***We may incur increased borrowing costs related to repurchase agreements and that would adversely affect our profitability.***

Currently, a significant portion of our borrowings are collateralized borrowings in the form of repurchase agreements. If the interest rates on these agreements increase at a rate higher than the increase in rates payable on our investments, our profitability would be adversely affected.

Our borrowing costs under repurchase agreements generally correspond to short-term interest rates such as LIBOR or a short-term Treasury index, plus or minus a margin. The margins on these borrowings over or under short-term interest rates may vary depending upon a number of factors, including, without limitation:

- the movement of interest rates;
- availability of financing in the market; and
- value and liquidity of our mortgage-related assets.

During 2008 and 2009, many repurchase agreement lenders required higher levels of collateral than they had required in the past to support repurchase agreements collateralized by Agency RMBS. Although these collateral requirements have been reduced to more appropriate levels, we cannot assure you that they will not again experience a dramatic increase. If the interest rates, lending margins or collateral requirements under these repurchase agreements increase, or if lenders impose other onerous terms to obtain this type of financing, our results of operations will be adversely affected.

***The repurchase agreements that we use to finance our investments may require us to provide additional collateral, which could reduce our liquidity and harm our financial condition.***

We intend to use repurchase agreements to finance our investments. If the market value of the loans or securities pledged or sold by us to a funding source decline in value, we may be required by the lending institution to provide additional collateral or pay down a portion of the funds advanced, but we may not have the funds available to do so. Posting additional collateral to support our repurchase agreements will reduce our liquidity and limit our ability to leverage our assets. In the event we do not have sufficient liquidity to meet such requirements, lending institutions can accelerate our indebtedness, increase our borrowing rates, liquidate our collateral at inopportune times and terminate our ability to borrow. This could result in a rapid deterioration of our financial condition and possibly require us to file for protection under the U.S. Bankruptcy Code.

***We intend to leverage our equity, which will exacerbate any losses we incur on our current and future investments and may reduce cash available for distribution to our stockholders.***

We intend to leverage our equity through borrowings, generally through the use of repurchase agreements and CDOs, which are obligations issued in multiple classes secured by an underlying portfolio of securities, and we may, in the future, utilize other forms of borrowing. The amount of leverage we incur varies depending on our ability to obtain credit facilities and our lenders' estimates of the value of our portfolio's cash flow. The return on our investments and cash available for distribution to our stockholders may be reduced to the extent that changes in market conditions cause the cost of our financing to increase relative to the income that can be derived from the assets we hold in our investment portfolio. Further, the leverage on our equity may exacerbate any losses we incur.

Our debt service payments will reduce the net income available for distribution to our stockholders. We may not be able to meet our debt service obligations and, to the extent that we cannot, we risk the loss of some or all of our assets to sale to satisfy our debt obligations. A decrease in the value of the assets may lead to margin calls under our repurchase agreements which we will have to satisfy. Significant decreases in asset valuation, such as occurred during March 2008, could lead to increased margin calls, and we may not have the funds available to satisfy any such margin calls. Although we have established a target overall leverage amount for our Midway Residential Mortgage Portfolio strategy and our legacy assets, there is no established limitation, other than may be required by our financing arrangements, on our leverage ratio or on the aggregate amount of our borrowings.



***If we are unable to leverage our equity to the extent we currently anticipate, the returns on certain of our assets could be diminished, which may limit or eliminate our ability to make distributions to our stockholders.***

If we are limited in our ability to leverage certain of our assets, such as Agency RMBS, assets under the Midway Residential Mortgage Portfolio or certain commercial mortgage-related securities, the returns on these assets may be harmed. A key element of our strategy is our use of leverage to increase the size of our RMBS portfolio in an attempt to enhance our returns. Our repurchase agreements are not currently committed facilities, meaning that the counterparties to these agreements may at any time choose to restrict or eliminate our future access to the facilities and we have no other committed credit facilities through which we may leverage our equity. If we are unable to leverage our equity to the extent we currently anticipate, the returns on our portfolio could be diminished, which may limit or eliminate our ability to make distributions to our stockholders.

***If a counterparty to our repurchase transactions defaults on its obligation to resell the underlying security back to us at the end of the transaction term or if we default on our obligations under the repurchase agreement, we would incur losses.***

When we engage in repurchase transactions, we generally sell RMBS to lenders (i.e., repurchase agreement counterparties) and receive cash from the lenders. The lenders are obligated to resell the same RMBS back to us at the end of the term of the transaction. Because the cash we receive from the lender when we initially sell the RMBS to the lender is less than the value of those RMBS (this difference is referred to as the “haircut”), if the lender defaults on its obligation to resell the same RMBS back to us we would incur a loss on the transaction equal to the amount of the haircut (assuming there was no change in the value of the RMBS). Further, if we default on one of our obligations under a repurchase transaction, the lender can terminate the transaction and cease entering into any other repurchase transactions with us. Our repurchase agreements contain cross-default provisions, so that if a default occurs under any one agreement, the lenders under our other agreements could also declare a default. Any losses we incur on our repurchase transactions could adversely affect our earnings and thus our cash available for distribution to our stockholders.

***Our use of repurchase agreements to borrow funds may give our lenders greater rights in the event that either we or a lender files for bankruptcy.***

Our borrowings under repurchase agreements may qualify for special treatment under the bankruptcy code, giving our lenders the ability to avoid the automatic stay provisions of the bankruptcy code and to take possession of and liquidate our collateral under the repurchase agreements without delay in the event that we file for bankruptcy. Furthermore, the special treatment of repurchase agreements under the bankruptcy code may make it difficult for us to recover our pledged assets in the event that a lender files for bankruptcy. Thus, the use of repurchase agreements exposes our pledged assets to risk in the event of a bankruptcy filing by either a lender or us.

***Our liquidity may be adversely affected by margin calls under our repurchase agreements because we are dependent in part on the lenders' valuation of the collateral securing the financing.***

Each of these repurchase agreements allows the lender, to varying degrees, to revalue the collateral to values that the lender considers to reflect market value. If a lender determines that the value of the collateral has decreased, it may initiate a margin call requiring us to post additional collateral to cover the decrease. When we are subject to such a margin call, we must provide the lender with additional collateral or repay a portion of the outstanding borrowings with minimal notice. Any such margin call could harm our liquidity, results of operation and financial condition. Additionally, in order to obtain cash to satisfy a margin call, we may be required to liquidate assets at a disadvantageous time, which could cause it to incur further losses and adversely affect our results of operations and financial condition.

***Hedging against credit events and interest rate changes and other risks may materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our shareholders.***

We have in the past engaged in and intend to opportunistically pursue in the future, together with our external managers, various hedging strategies in an effort to reduce our exposure to losses from adverse changes in interest rates, credit events and other factors. Hedging against a decline in the values of our portfolio positions does not prevent losses if the values of such positions decline, or eliminate the possibility of fluctuations in the value of our portfolio. Hedging transactions generally will limit the opportunity for gain if the values of our portfolio positions should increase. Further, certain hedging transactions could result in our experiencing significant losses. Moreover, at any point in time we may choose not to hedge all or a portion of these risks, and we generally will not hedge those risks that we believe are appropriate for us to take at such time, or that we believe would be impractical or prohibitively expensive to hedge. Even if we do choose to hedge certain risks, for a variety of reasons we generally will not seek to establish a perfect correlation between our hedging instruments and the risks being hedged. Any such imperfect correlation may prevent us from achieving the intended hedge and expose us to risk of loss. Our hedging activity will vary in scope based on the composition of our portfolio, our market views, and changing market conditions, including the level and volatility of interest rates. When we do choose to hedge, hedging may fail to protect or could materially adversely affect us because, among other things:

- either we or our external managers may fail to correctly assess the degree of correlation between the performance of the instruments used in the hedging strategy and the performance of the assets in the portfolio being hedged;
- either we or our external managers may fail to recalculate, re-adjust and execute hedges in an efficient and timely manner;
- the hedging transactions may actually result in poorer over-all performance for us than if we had not engaged in the hedging transactions;
- credit hedging can be expensive, particularly when the market is forecasting future credit deterioration and when markets are more illiquid;
- interest rate hedging can be expensive, particularly during periods of volatile interest rates;
- available hedges may not correspond directly with the risks for which protection is sought;
- the durations of the hedges may not match the durations of the related assets or liabilities being hedged;
- many hedges are structured as over-the-counter contracts with counterparties whose creditworthiness is not guaranteed, raising the possibility that the hedging counterparty may default on their payment obligations; and
- to the extent that the creditworthiness of a hedging counterparty deteriorates, it may be difficult or impossible to terminate or assign any hedging transactions with such counterparty.

For these and other reasons, our hedging activity may materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our stockholders.

***Hedging instruments and other derivatives historically have not, in many cases, been traded on regulated exchanges, or been guaranteed or regulated by any U.S. or foreign governmental authorities and involve risks and costs that could result in material losses.***

Hedging instruments and other derivatives involve risk because they historically have not, in many cases, been traded on regulated exchanges and have not been guaranteed or regulated by any U.S. or foreign governmental authorities. Consequently, for these instruments there are no requirements with respect to record keeping, financial responsibility or segregation of customer funds and compliance with applicable statutory and commodity and other regulatory requirements and, depending on the identity of the counterparty, applicable international requirements. Neither we nor our external managers are restricted from dealing with any particular counterparty or from concentrating any or all of its transactions with one counterparty. The business failure of a hedging counterparty with whom we enter into a hedging transaction will most likely result in a default under the hedging agreement. Default by a party with whom we enter into a hedging transaction may result in losses and may force us to re-initiate similar hedges with other counterparties at the then-prevailing market levels. Generally we will seek to reserve the right to terminate our hedging transactions upon a counterparty's insolvency, but absent an actual insolvency, we may not be able to terminate a hedging transaction without the consent of the hedging counterparty, and we may not be able to assign or otherwise dispose of a hedging transaction to another counterparty without the consent of both the original hedging counterparty and the potential assignee. If we terminate a hedging transaction, we may not be able to enter into a replacement contract in order to cover our risk. There can be no assurance that a liquid secondary market will exist for hedging instruments purchased or sold, and therefore we may be required to maintain any hedging

position until exercise or expiration, which could materially adversely affect our business, financial condition and results of operations.

The U.S. Commodity Futures Trading Commission and certain commodity exchanges have established limits referred to as speculative position limits or position limits on the maximum net long or net short position which any person or group of persons may hold or control in particular futures and options. Limits on trading in options contracts also have been established by the various options exchanges. It is possible that trading decisions may have to be modified and that positions held may have to be liquidated in order to avoid exceeding such limits. Such modification or liquidation, if required, could materially adversely affect our business, financial condition and results of operation and our ability to make distributions to our stockholders.

### **Risks Related to Our Agreements with Our External Managers**

***We are dependent on our external managers and certain of their key personnel and may not find a suitable replacement if they terminate their respective management or advisory agreements with us or such key personnel are no longer available to us.***

We historically were organized as a self-advised company that acquired, originated, sold and managed its assets; however, as we modified our business strategy and the targeted assets we seek to acquire in response to changing market conditions, we began to outsource the management of certain targeted asset classes for which we had limited internal resources or experience. We presently are a party to two separate management or advisory agreements that provide for the external management of certain of our assets and investment strategies. Each of our external managers, in some manner, identifies, evaluates, negotiates, structures, closes and monitors certain investments on our behalf. In each case, we have engaged these third parties because of the expertise of certain key personnel of our external managers. The departure of any of the senior officers of our external managers, or of a significant number of investment professionals or principals of our external managers, could have a material adverse effect on our ability to achieve our investment objectives. We are subject to the risk that our external managers will terminate their respective management or advisory agreement with us or that we may deem it necessary to terminate such agreement or prevent certain individuals from performing services for us, and that no suitable replacement will be found to manage certain of our assets and investment strategies.

***Pursuant to our management or advisory agreements, our external managers, in most cases, are entitled to receive a management fee that is payable regardless of the performance of the assets under their management.***

We will pay Midway substantial base management fees, based on our invested capital (as such term is defined in the Midway Management Agreement), regardless of the performance of the assets under their management. Similarly, pursuant to the HCS Advisory agreement, we will pay HCS a base advisory fee if such assets are deemed “managed assets” under the HCS Advisory Agreement, and we may pay them, if agreed to by each party, base management fees for assets deemed “scheduled assets, regardless of the performance of the assets under their management. In addition, we will pay HCS an annual consulting fee, subject to certain conditions, that is in no way contingent upon the performance or management of any of our assets. The external managers’ entitlement in many cases to non-performance based compensation may reduce its incentive to devote the time and effort of its professionals to seeking profitable investment opportunities for our company, which could result in the under-performance of assets under their management and negatively affect our ability to pay distributions to our stockholders or to achieve capital appreciation.

***Pursuant to the terms of our management and advisory agreements, our external managers are generally entitled to receive an incentive fee, which may induce them to make certain investments, including speculative or high risk investments.***

In addition to the base management and, in some cases, consulting fees, payable to our external managers, our external managers are generally entitled to receive incentive compensation based, in part, upon the achievement of targeted levels of net income. In evaluating investments and other management strategies, the opportunity to earn incentive compensation based on net income may lead our external managers to place undue emphasis on the maximization of net income at the expense of other criteria, such as preservation of capital, maintaining liquidity and/or management of credit risk or market risk, in order to achieve higher incentive compensation. Investments with higher yield potential are generally riskier or more speculative. In addition, Midway has broad discretion regarding the types of investments it will make pursuant to its management agreement with us. This could result in increased risk to the value of our assets under the management of our external managers.

***We compete with our external managers’ other clients for access to them.***

Each of Midway and HCS manages, and is expected to continue to manage, other client accounts with similar or overlapping investment strategies. In connection with the services provided to those accounts, these managers may be compensated more favorably than for the services provided under our external management or advisory agreements, and such discrepancies in compensation may affect the level of service provided to us by our external managers. Moreover, each of our external managers may have an economic interest in the accounts they manage or the investments they propose and, in the case of HCS, may raise, advise or sponsor other REITs or other investment funds that invest in assets similar to our targeted assets. As a result, we will compete with these other accounts and interests for access to Midway and HCS and the benefits derived from those relationships. For the same reasons, the personnel of each of Midway and HCS may be unable to dedicate a

substantial portion of their time managing our investments to the extent they manage or are associated with any future investment vehicles not related to us.

***There are conflicts of interest in our relationships with our external managers, which could result in decisions that are not in the best interests of our stockholders.***

We may acquire or sell assets in which an external manager or its affiliates have or may have an interest. In recent years, we have engaged in certain co-investment opportunities with HCS or one of its affiliates and we may participate in future co-investment opportunities with our external managers or their affiliates. In these cases, it is possible that our interests and the interests of our external managers will not always be aligned and this could result in decisions that are not in the best interests of our company. Similarly, one of our external managers or its affiliates may acquire or sell assets in which we have or may have an interest. Although such acquisitions or dispositions may present conflicts of interest, we nonetheless may pursue and consummate such transactions. Additionally, we may engage in transactions directly with our external managers or their affiliates, including the purchase and sale of all or a portion of a targeted asset.

Acquisitions made for entities with similar objectives may be different from those made on our behalf. Our external managers may have economic interests in or other relationships with others in whose obligations or securities we may acquire. In particular, such persons may make and/or hold an investment in securities that we acquire that may be pari passu, senior or junior in ranking to our interest in the securities or in which partners, security holders, officers, directors, agents or employees of such persons serve on boards of directors or otherwise have ongoing relationships. Each of such ownership and other relationships may result in securities laws restrictions on transactions in such securities and otherwise create conflicts of interest. In such instances, the external managers may, in their sole discretion, make recommendations and decisions regarding such securities for other entities that may be the same as or different from those made with respect to securities acquired by us and may take actions (or omit to take actions) in the context of these other economic interests or relationships, the consequences of which may be adverse to our interests.

The key personnel of our external managers and its affiliates devote as much time to us as our external managers deem appropriate, however, these individuals may have conflicts in allocating their time and services among us and their other accounts and investment vehicles. During turbulent conditions in the mortgage industry, distress in the credit markets or other times when we will need focused support and assistance from our external managers, other entities for which our external manager serves as a manager, or its accounts will likewise require greater focus and attention, placing the resources of our external managers in high demand. In such situations, we may not receive the necessary support and assistance we require or would otherwise receive if we were internally managed.

We, directly or through our external managers, may obtain confidential information about the companies or securities in which we have invested or may invest. If we do possess confidential information about such companies or securities, there may be restrictions on our ability to dispose of, increase the amount of, or otherwise take action with respect to the securities of such companies. Our external managers' management of other accounts could create a conflict of interest to the extent such external manager is aware of material non-public information concerning potential investment decisions and this in turn could impact our ability to make necessary investment decisions. Any limitations that develop as a result of our access to confidential information could therefore materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our stockholders.

HCS, which is a wholly-owned subsidiary of JMP Group Inc., is deemed to beneficially own approximately 15.3% of our outstanding common stock as of December 31, 2010. In evaluating opportunities for us and other management strategies, this may lead HCS to emphasize certain asset acquisition, disposition or management objectives over others, such as balancing risk or capital preservation objectives against return objectives. This could increase the risks, or decrease the returns, of your investment. In addition, the chairman of our board of directors, James J. Fowler, is a portfolio manager at HCS and a managing director of JMP Group Inc. As a result, Mr. Fowler may have a conflict of interest in situations where the best interests of our company and stockholders do not align with the interests of HCS, JMP Group, Inc. or its affiliates, which may result in decisions that are not in the best interests of all our stockholders.

***There are limitations on our ability to withdraw invested capital from the account managed by Midway and our inability to withdraw our invested capital when necessary may materially adversely affect our business, financial condition and results of operations and our ability to make distributions to our stockholders.***

Pursuant to the terms of the Midway Management Agreement, we may only redeem invested capital in an amount equal to the lesser of 10% of the invested capital in the account managed by Midway or \$10 million as of the last calendar day of the month upon not less than 75 days written notice, subject to our authority to direct Midway to modify its investment strategy for purposes of maintaining our qualification as a REIT and exemption from the Investment Company Act. In addition, we are only permitted to make one such redemption request in any 75-day period. In the event a significant market event or shock, we may be unable to effect a redemption of invested capital in greater amounts or at a greater rate unless we obtain the consent of Midway. Moreover, because a reduction of invested capital would reduce the base management fee under the Midway Management Agreement, Midway may be less inclined to consent to such redemptions. If we are unable to withdraw invested capital as needed to meet our obligations in the future, our business and financial condition could be materially adversely affected.



***Termination of the HCS Advisory Agreement may be difficult and costly.***

Termination of the HCS Advisory Agreement without cause is subject to several conditions which may make such a termination difficult and costly. The HCS Advisory Agreement provides that it may only be terminated without cause upon our election to not renew the agreement at the end of the initial term or upon the affirmative vote of at least two-thirds of our independent directors, based either upon unsatisfactory performance by HCS that is materially detrimental to us or upon a determination that the management fee payable to HCS is not fair, subject to HCS's right to prevent such a termination by accepting a mutually acceptable reduction of management fees. HCS will be paid a termination fee equal to the product of (A) 1.5 and (B) the sum of (i) the average annual base advisory fee earned by HCS during the 24-month preceding the effective termination date, and (ii) the annual consulting fee. Thus, in the event we elect not to renew the HCS Advisory Agreement for any reason other than cause (as defined in the HCS Advisory Agreement), we will be required to pay this termination fee. These provisions may increase the effective cost to us of terminating the HCS Advisory Agreement, thereby adversely affecting our ability to terminate HCS without cause.

**Risks Related to an Investment in Our Capital Stock**

***The market price and trading volume of our common stock may be volatile.***

The market price of our common stock is highly volatile and subject to wide fluctuations. In addition, the trading volume in our common stock may fluctuate and cause significant price variations to occur. Some of the factors that could result in fluctuations in the price or trading volume of our common stock include, among other things: actual or anticipated changes in our current or future financial performance; changes in market interest rates and general market and economic conditions. We cannot assure you that the market price of our common stock will not fluctuate or decline significantly.

***We have not established a minimum dividend payment level for our common stockholders and there are no assurances of our ability to pay dividends to common or preferred stockholders in the future.***

We intend to pay quarterly dividends and to make distributions to our common stockholders in amounts such that all or substantially all of our taxable income in each year, subject to certain adjustments, is distributed. This, along with other factors, should enable us to qualify for the tax benefits accorded to a REIT under the Internal Revenue Code of 1986, as amended, or Internal Revenue Code. We have not established a minimum dividend payment level for our common stockholders and our ability to pay dividends may be harmed by the risk factors described herein. From July 2007 until April 2008, our Board of Directors elected to suspend the payment of quarterly dividends on our common stock. Our Board's decision reflected our focus on the elimination of operating losses through the sale of our mortgage lending business and the conservation of capital to build future earnings from our portfolio management operations. All distributions to our common stockholders will be made at the discretion of our Board of Directors and will depend on our earnings, our financial condition, maintenance of our REIT status and such other factors as our Board of Directors may deem relevant from time to time. There are no assurances of our ability to pay dividends in the future at the current rate or at all.

***Future offerings of debt securities, which would rank senior to our common stock and preferred stock upon our liquidation, and future offerings of equity securities, which would dilute our existing stockholders and may be senior to our common stock for the purposes of dividend and liquidating distributions, may adversely affect the market price of our common stock.***

In the future, we may attempt to increase our capital resources by making offerings of debt or additional offerings of equity securities, including commercial paper, medium-term notes, senior or subordinated notes and classes of preferred stock or common stock. Upon liquidation, holders of our debt securities and lenders with respect to other borrowings will receive a distribution of our available assets prior to the holders of our preferred stock and common stock, with holders of our preferred stock having priority over holders of our common stock. Additional equity offerings may dilute the holdings of our existing stockholders or reduce the market price of our common stock, or both. Because our decision to issue securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, holders of our common stock bear the risk of our future offerings reducing the market price of our common stock and diluting their stock holdings in us.

***Future sales of our common stock could have an adverse effect on our common stock price.***

We cannot predict the effect, if any, of future sales of common stock, or the availability of shares for future sales, on the market price of our common stock. Sales of substantial amounts of common stock, or the perception that such sales could occur, may adversely affect prevailing market prices for our common stock.



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## **Risks Related to Our Company, Structure and Change in Control Provisions**

### ***Our directors have approved broad investment guidelines for us and do not approve each investment we make.***

Certain of our external managers, including Midway, are authorized to follow broad investment guidelines, which were approved by our board of directors at the time we entered into our respective management agreements with these parties, in determining which assets they will invest in on our behalf. Although our board of directors will ultimately determine when and how much capital to allocate to these strategies, we generally will not approve transactions in advance of their execution by these managers. Currently, our investment in any new program asset under the HCS Advisory Agreement requires the approval of our board of directors. However, our board of directors may elect to not review individual investments in new program assets in the future. In addition, in conducting periodic reviews, we will rely primarily on information provided to us by our external managers. Complicating matters further, our external managers may use complex investment strategies and transactions, which may be difficult or impossible to unwind. As a result, because our external managers have great latitude to determine the types of assets it may decide are proper investments for us, there can be no assurance that we would otherwise approve of these investments individually or that they will be successful.

### ***We are dependent on certain key personnel.***

We are a small company and are dependent upon the efforts of certain key individuals, including James J. Fowler, the Chairman of our Board of Directors, and Steven R. Mumma, our Chief Executive Officer and President. The loss of any key personnel or their services could have an adverse effect on our operations.

### ***The stock ownership limit imposed by our charter may inhibit market activity in our common stock and may restrict our business combination opportunities.***

In order for us to maintain our qualification as a REIT under the Internal Revenue Code, not more than 50% in value of the issued and outstanding shares of our capital stock may be owned, actually or constructively, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) at any time during the last half of each taxable year (other than our first year as a REIT). This test is known as the “5/50 test.” Attribution rules in the Internal Revenue Code apply to determine if any individual or entity actually or constructively owns our capital stock for purposes of this requirement. Additionally, at least 100 persons must beneficially own our capital stock during at least 335 days of each taxable year (other than our first year as a REIT). To help ensure that we meet these tests, our charter restricts the acquisition and ownership of shares of our capital stock. Our charter, with certain exceptions, authorizes our directors to take such actions as are necessary and desirable to preserve our qualification as a REIT and provides that, unless exempted by our Board of Directors, no person may own more than 5.0% in value of the outstanding shares of our capital stock. The ownership limit contained in our charter could delay or prevent a transaction or a change in control of our company under circumstances that otherwise could provide our stockholders with the opportunity to realize a premium over the then current market price for our common stock or would otherwise be in the best interests of our stockholders.

***Certain provisions of Maryland law and our charter and bylaws could hinder, delay or prevent a change in control which could have an adverse effect on the value of our securities.***

Certain provisions of Maryland law, our charter and our bylaws may have the effect of delaying, deferring or preventing transactions that involve an actual or threatened change in control. These provisions include the following, among others:

- our charter provides that, subject to the rights of one or more classes or series of preferred stock to elect one or more directors, a director may be removed with or without cause only by the affirmative vote of holders of at least two-thirds of all votes entitled to be cast by our stockholders generally in the election of directors;
- our bylaws provide that only our Board of Directors shall have the authority to amend our bylaws;
- under our charter, our Board of Directors has authority to issue preferred stock from time to time, in one or more series and to establish the terms, preferences and rights of any such series, all without the approval of our stockholders;
- the Maryland Business Combination Act; and
- the Maryland Control Share Acquisition Act.

Although our Board of Directors has adopted a resolution exempting us from application of the Maryland Business Combination Act and our bylaws provide that we are not subject to the Maryland Control Share Acquisition Act, our Board of Directors may elect to make the “business combination” statute and “control share” statute applicable to us at any time and may do so without stockholder approval.

***Maintenance of our Investment Company Act exemption imposes limits on our operations.***

We have conducted and intend to continue to conduct our operations so as not to become regulated as an investment company under the Investment Company Act. We believe that there are a number of exemptions under the Investment Company Act that are applicable to us. To maintain the exemption, the assets that we acquire are limited by the provisions of the Investment Company Act and the rules and regulations promulgated under the Investment Company Act. In addition, we could, among other things, be required either (a) to change the manner in which we conduct our operations to avoid being required to register as an investment company or (b) to register as an investment company, either of which could have an adverse effect on our operations and the market price for our securities.

**Tax Risks Related to Our Structure**

***Failure to qualify as a REIT would adversely affect our operations and ability to make distributions.***

We have operated and intend to continue to operate so to qualify as a REIT for federal income tax purposes. Our continued qualification as a REIT will depend on our ability to meet various requirements concerning, among other things, the ownership of our outstanding stock, the nature of our assets, the sources of our income, and the amount of our distributions to our stockholders. In order to satisfy these requirements, we might have to forego investments we might otherwise make. Thus, compliance with the REIT requirements may hinder our investment performance. Moreover, while we intend to continue to operate so to qualify as a REIT for federal income tax purposes, given the highly complex nature of the rules governing REITs, there can be no assurance that we will so qualify in any taxable year.

If we fail to qualify as a REIT in any taxable year and we do not qualify for certain statutory relief provisions, we would be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. We might be required to borrow funds or liquidate some investments in order to pay the applicable tax. Our payment of income tax would reduce our net earnings available for investment or distribution to stockholders. Furthermore, if we fail to qualify as a REIT and do not qualify for certain statutory relief provisions, we would no longer be required to make distributions to stockholders. Unless our failure to qualify as a REIT were excused under the federal income tax laws, we generally would be disqualified from treatment as a REIT for the four taxable years following the year in which we lost our REIT status.

***REIT distribution requirements could adversely affect our liquidity.***

In order to qualify as a REIT, we generally are required each year to distribute to our stockholders at least 90% of our REIT taxable income, excluding any net capital gain. To the extent that we distribute at least 90%, but less than 100% of our REIT taxable income, we will be subject to corporate income tax on our undistributed REIT taxable income. In addition, we will be subject to a 4% nondeductible excise tax on the amount, if any, by which certain distributions paid by us with respect to any calendar year are less than the sum of (i) 85% of our ordinary REIT income for that year, (ii) 95% of our REIT capital gain net income for that year, and (iii) 100% of our undistributed REIT taxable income from prior years.

We have made and intend to continue to make distributions to our stockholders to comply with the 90% distribution requirement and to avoid corporate income tax and the nondeductible excise tax. However, differences in timing between the recognition of REIT taxable income and the actual receipt of cash could require us to sell assets or to borrow funds on a short-term basis to meet the 90% distribution requirement and to avoid corporate income tax and the nondeductible excise tax.

Certain of our assets may generate substantial mismatches between REIT taxable income and available cash. Such assets could include mortgage-backed securities we hold that have been issued at a discount and require the accrual of taxable income in advance of the receipt of cash. As a result, our taxable income may exceed our cash available for distribution and the requirement to distribute a substantial portion of our net taxable income could cause us to:

- sell assets in adverse market conditions,
- borrow on unfavorable terms or
- distribute amounts that would otherwise be invested in future acquisitions, capital expenditures or repayment of debt in order to comply with the REIT distribution requirements.

Further, our lenders could require us to enter into negative covenants, including restrictions on our ability to distribute funds or to employ leverage, which could inhibit our ability to satisfy the 90% distribution requirement.

***Dividends payable by REITs do not qualify for the reduced tax rates on dividend income from regular corporations.***

The maximum U.S. federal income tax rate for dividends payable to domestic shareholders that are individuals, trust and estates is 15% (through 2012). Dividends payable by REITs, however, are generally not eligible for the reduced rates. Although the reduced U.S. federal income tax rate applicable to dividend income from regular corporate dividends does not adversely affect the taxation of REITs or dividends paid by REITs, the more favorable rate applicable to regular corporate dividends could cause investors who are individuals, trusts and estates to perceive investments in REITs to be relatively less attractive than investments in the stocks of non-REIT corporations that pay dividends, which could adversely affect the value of the shares of REITs, including our common shares.

***Complying with REIT requirements may limit our ability to hedge effectively.***

The REIT provisions of the Code substantially limit our ability to hedge the RMBS in our investment portfolio. Our aggregate gross income from non-qualifying hedges, fees, and certain other non-qualifying sources cannot exceed 5% of our annual gross income. As a result, we might have to limit our use of advantageous hedging techniques or implement those hedges through a TRS. Any hedging income earned by a TRS would be subject to federal, state and local income tax at regular corporate rates. This could increase the cost of our hedging activities or expose us to greater risks associated with changes in interest rates than we would otherwise want to bear.

***A decline in the value of the real estate securing the mortgage loans that back RMBS could cause a portion of our income from such securities to be nonqualifying income for purposes of the REIT 75% gross income test, which could cause us to fail to qualify as a REIT.***

Pools of mortgage loans back the RMBS that we hold in our investment portfolio and in which we invest. In general, the interest income from a mortgage loan is qualifying income for purposes of the 75% gross income test applicable to REITs to the extent that the mortgage loan is secured by real property. If a mortgage loan has a loan-to-value ratio greater than 100%, however, then only a proportionate part of the interest income is qualifying income for purposes of the 75% gross income test and only a proportionate part of the value of the loan is treated as a “real estate asset” for purposes of the 75% asset test applicable to REITs. This loan-to-value ratio is generally measured at the time that the REIT commits to acquire the loan. Although the IRS has ruled generally that the interest income from non-collateralized mortgage obligation (“CMO”) RMBS is qualifying income for purposes of the 75% gross income test, it is not entirely clear how this guidance would apply if we purchase non-CMO RMBS in the secondary market at a time when the loan-to-value ratio of one or more of the mortgage loans backing the non-CMO RMBS is greater than 100%, and, accordingly, a portion of any income from such non-CMO RMBS may be treated as non-qualifying income for purposes of the 75% gross income test. In addition, that guidance does not apply to CMO RMBS. In the case of CMO RMBS, if less than 95% of the assets of the issuer of the CMO RMBS constitute “real estate assets,” then only a proportionate part of our income derived from the CMO RMBS will qualify for purposes of the 75% gross income test. Although the law is not clear, the IRS may take the position that the determination of the loan-to-value ratio for mortgage loans that back CMO RMBS is to be made on a quarterly basis. A decline in the value of the real estate securing the mortgage loans that back our CMO RMBS could cause a portion of the interest income from those RMBS to be treated as non-qualifying income for purposes of the 75% gross income test. If such non-qualifying income caused us to fail the 75% gross income test and we did not qualify for certain statutory relief provisions, we would fail to qualify as a REIT.

***Our ability to invest in and dispose of “to be announced” securities could be limited by our REIT status, and we could lose our REIT status as a result of these investments.***

In connection with our investment in the Midway Residential Mortgage Portfolio, we may purchase Agency RMBS through TBAs, or dollar roll transactions. In certain instances, rather than take delivery of the Agency RMBS subject to a TBA, we will dispose of the TBA through a dollar roll transaction in which we agree to purchase similar securities in the future at a predetermined price or otherwise, which may result in the recognition of income or gains. We account for dollar roll transactions as purchases and sales. The law is unclear regarding whether TBAs will be qualifying assets for the 75% asset test and whether income and gains from dispositions of TBAs will be qualifying income for the 75% gross income test.

Until such time as we seek and receive a favorable private letter ruling from the IRS, or we are advised by counsel that TBAs should be treated as qualifying assets for purposes of the 75% asset test, we will limit our investment in TBAs and any non-qualifying assets to no more than 25% of our assets at the end of any calendar quarter. Further, until such time as we seek and receive a favorable private letter ruling from the IRS or we are advised by counsel that income and gains from the disposition of TBAs should be treated as qualifying income for purposes of the 75% gross income test, we will limit our gains from dispositions of TBAs and any non-qualifying income to no more than 25% of our gross income for each calendar year. Accordingly, our ability to purchase Agency RMBS through TBAs and to dispose of TBAs, through dollar roll transactions or otherwise, could be limited.

Moreover, even if we are advised by counsel that TBAs should be treated as qualifying assets or that income and gains from dispositions of TBAs should be treated as qualifying income, it is possible that the IRS could successfully take the position that such assets are not qualifying assets and such income is not qualifying income. In that event, we could be subject to a penalty tax or we could fail to qualify as a REIT if (i) the value of our TBAs, together with our non-qualifying assets for the 75% asset test, exceeded 25% of our gross assets at the end of any calendar quarter or (ii) our income and gains from the disposition of TBAs, together with our non-qualifying income for the 75% gross income test, exceeded 25% of our gross income for any taxable year.

#### **Item 1B. UNRESOLVED STAFF COMMENTS**

**None.**

#### **Item 2. PROPERTIES**

Other than real estate owned, acquired through, or in lieu of, foreclosures on mortgage loans, the Company does not own any properties. As of December 31, 2010, our principal executive and administrative offices are located in leased space at 52 Vanderbilt Avenue, Suite 403, New York, New York 10017.

#### **Item 3. LEGAL PROCEEDINGS**

We are at times subject to various legal proceedings arising in the ordinary course of our business. As of the date of this report, we do

not believe that any of our current legal proceedings, individually or in the aggregate, will have a material adverse effect on our operations, financial condition or cash flows.

**Item 4. (REMOVED AND RESERVED)**

## PART II

### Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

#### *Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters*

Our common stock is traded on the NASDAQ Capital Market under the trading symbol "NYMT". As of December 31, 2010, we had 9,425,442 shares of common stock outstanding and as of February 18, 2011, there were approximately 26 holders of record of our common stock. This figure does not reflect the beneficial ownership of shares held in nominee name.

The following table sets forth, for the periods indicated, the high, low and quarter end closing sales prices per share of our common stock and the cash dividends paid or payable on our common stock on a per share basis.

|                                     | Common Stock Prices |         |         | Cash Dividends |                 |                  |
|-------------------------------------|---------------------|---------|---------|----------------|-----------------|------------------|
|                                     | High                | Low     | Close   | Declared       | Paid or Payable | Amount per Share |
| <b>Year Ended December 31, 2010</b> |                     |         |         |                |                 |                  |
| Fourth quarter                      | \$ 6.96             | \$ 6.23 | \$ 6.96 | 12/20/10       | 01/25/11        | \$ 0.18          |
| Third quarter                       | 6.52                | 5.68    | 6.26    | 10/04/10       | 10/25/10        | 0.18             |
| Second quarter                      | 7.77                | 6.51    | 6.62    | 06/16/10       | 07/26/10        | 0.18             |
| First quarter                       | 8.03                | 6.54    | 7.55    | 03/16/10       | 04/26/10        | 0.25             |

|                                     | Common Stock Prices |         |         | Cash Dividends |                 |                  |
|-------------------------------------|---------------------|---------|---------|----------------|-----------------|------------------|
|                                     | High                | Low     | Close   | Declared       | Paid or Payable | Amount per Share |
| <b>Year Ended December 31, 2009</b> |                     |         |         |                |                 |                  |
| Fourth quarter                      | \$ 8.75             | \$ 5.74 | \$ 7.19 | 12/21/09       | 01/26/10        | \$ 0.25          |
| Third quarter                       | 8.03                | 5.05    | 7.60    | 09/28/09       | 10/26/09        | 0.25             |
| Second quarter                      | 5.97                | 2.23    | 5.16    | 06/14/09       | 07/27/09        | 0.23             |
| First quarter                       | 3.80                | 1.82    | 3.80    | 03/25/09       | 04/27/09        | 0.18             |

We intend to continue to pay quarterly dividends to holders of shares of common stock. Future dividends will be at the discretion of the Board of Directors and will depend on our earnings and financial condition, maintenance of our REIT qualification, restrictions on making distributions under Maryland law and such other factors as our Board of Directors deems relevant.

#### *Purchases of Equity Securities by the Issuer and Affiliated Purchasers*

The Company has a share repurchase program, which it previously announced in November 2005. At management's discretion, the Company is authorized to repurchase shares of Company common stock in the open market or through privately negotiated transactions through December 31, 2015. The plan may be temporarily or permanently suspended or discontinued at any time. The Company has not repurchased any shares since March 2006 and currently has no intention to recommence repurchases in the near-future.

*Securities Authorized for Issuance Under Equity Compensation Plans*

The following table sets forth information as of December 31, 2010 with respect to compensation plans under which equity securities of the Company are authorized for issuance. The Company has no such plans that were not approved by security holders.

| <b>Plan Category</b>                                      | <b>Number of Securities to<br/>be Issued upon Exercise<br/>of Outstanding Options,<br/>Warrants and Rights</b> | <b>Weighted Average<br/>Exercise Price of<br/>Outstanding Options,<br/>Warrants and Rights</b> | <b>Number of Securities<br/>Remaining Available for<br/>Future Issuance under<br/>Equity Compensation Plans</b> |
|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Equity compensation plans approved by<br>security holders | —                                                                                                              | \$ —                                                                                           | 1,182,823                                                                                                       |



**Item 6. *SELECTED FINANCIAL DATA***

We are a Smaller Reporting Company and, therefore, are not required to provide the information required by this Item.

## **Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

### **General**

New York Mortgage Trust, Inc., together with its consolidated subsidiaries ("NYMT," the "Company," "we," "our" and "us"), is a real estate investment trust, or REIT, in the business of acquiring, investing in, financing and managing primarily mortgage-related assets. Our principal business objective is to generate net income for distribution to our stockholders resulting from the spread between the interest and other income we earn on our interest-earning assets and the interest expense we pay on the borrowings that we use to finance our leveraged assets and our operating costs, which we refer to as our net interest income. We intend to achieve this objective by investing in a broad class of mortgage-related and financial assets that in aggregate will generate what we believe are attractive risk-adjusted total returns for our stockholders. Our targeted assets currently include Agency RMBS consisting of pass-through certificates, CMOs, REMICs, IOs and POs, non-Agency RMBS, which may include non-Agency IOs and POs, prime ARM loans held in securitization trusts, CMBS, commercial mortgage loans and other commercial real estate-related debt investments. We also may opportunistically acquire and manage various other types of mortgage-related and financial assets that we believe will compensate us appropriately for the risks associated with them.

Prior to 2009, our investment portfolio was primarily comprised of Agency RMBS, certain non-agency RMBS originally rated in the highest rating category by two rating agencies and prime ARM loans held in securitization trusts. In early 2009, we commenced a repositioning of our investment portfolio to transition the portfolio from one primarily focused on leveraged Agency RMBS and prime ARM loans held in securitization trusts, which primarily involve interest rate risk, to a more diversified portfolio that includes elements of credit risk with reduced leverage. During 2010, we continued to diversify our investment portfolio by opportunistically disposing of approximately \$51.7 million of Agency RMBS and non-Agency RMBS, while investing approximately \$19.4 million in a limited partnership formed to invest in and manage a pool of performing whole residential mortgage loans, and approximately \$7.6 million of other mortgage-related investments. We intend to accelerate our portfolio diversification strategy in 2011 through the formation and funding of our recently announced Midway Residential Mortgage Portfolio. This portfolio will be externally managed by The Midway Group, L.P. We have initially provided \$24 million to the Midway Residential Mortgage Portfolio and we anticipate contributing additional capital to this investment in the future, such that this investment will become a significant contributor to our revenues and earnings and will represent a significant portion of our total assets in the future. For more information regarding the investment, financing and hedging strategies of this investment, see "Item 1 . Business — Our Residential Mortgage Portfolio Strategy." In addition, in-line with our diversification strategy and our focus on asset performance, we have in the recent past pursued, and anticipate continuing to pursue in the future, investment opportunities in the commercial mortgage market.

We have elected to be taxed as a REIT and have complied, and intend to continue to comply, with the provisions of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), with respect thereto. Accordingly, we do not expect to be subject to federal income tax on our REIT taxable income that we currently distribute to our stockholders if certain asset, income and ownership tests and recordkeeping requirements are fulfilled. Even if we maintain our qualification as a REIT, we may be subject to some federal, state and local taxes on our income generated in our taxable REIT subsidiary.

## Factors that Affect our Results of Operations and Financial Condition

Our results of operations and financial condition are affected by various factors, including, among other things:

- changes in interest rates;
- rates of prepayment, default and recovery on our assets or the mortgages or loans underlying such assets;
- general economic and financial and credit market conditions;
- our leverage, our access to funding and our borrowing costs;
- our hedging activities;
- changes in the credit ratings of the loans, securities, and other assets we own;
- the market value of our investments;
- liabilities related to our discontinued operation, including repurchase obligations on the sales of mortgage loans;
- actions taken by the U.S. Federal Reserve and the U.S. Government; and
- requirements to maintain REIT status and to qualify for an exemption from registration under the Investment Company Act.

We earn income and generate cash through our investments. Our income is generated primarily from the net spread, which we refer to as net interest income, which is the difference between the interest income we earn on our investment portfolio and the cost of our borrowings and hedging activities and other operating costs, including management fees. Our net interest income will vary based upon, among other things, the difference between the interest rates earned on our interest-earning assets and the borrowing costs of the liabilities used to finance those investments, prepayment speeds and default and recovery rates on the assets or the loans underlying such assets. Because changes in interest rates may significantly affect our activities, our operating results depend, in large part, upon our ability to manage interest rate risks and prepayment risks effectively while maintaining our status as a REIT.

We anticipate that, for any period during which changes in the interest rates earned on our assets do not coincide with interest rate changes on our borrowings, such assets will reprice more slowly than the corresponding liabilities. Consequently, changes in interest rates, particularly short-term interest rates, may significantly influence our net interest income. With the maturities of our assets generally of longer duration than those of our liabilities, interest rate increases will tend to decrease the net interest income we derive from, and the market value of our interest rate sensitive assets (and therefore our book value). Such rate increases could possibly result in operating losses or adversely affect our ability to make distributions to our stockholders.

The yield on our assets may be affected by a difference between the actual prepayment rates and our projections. Prepayment rates, as reflected by the rate of principal paydown, and interest rates vary according to the type of investment, conditions in the economy and financial markets, competition and other factors, none of which can be predicted with any certainty. To the extent we have acquired assets at a premium or discount to par, or face value, changes in prepayment rates may impact our anticipated yield. In periods of declining interest rates, prepayments on our mortgage-related assets will likely increase. If we are unable to reinvest the proceeds of such prepayments at comparable yields, our net interest income will be negatively impacted. The current climate of government intervention in the mortgage markets significantly increases the risk associated with prepayments.

While we historically have used, and intend to use in the future, hedging to mitigate some of our interest rate risk, we do not hedge all of our exposure to changes in interest rates and prepayment rates, as there are practical limitations on our ability to insulate our portfolio from all potential negative consequences associated with changes in short-term interest rates in a manner that will allow us to seek attractive net spreads on our assets.

In addition, our returns will be affected by the credit performance of our more credit-sensitive assets, such as non-agency RMBS, equity investment in a pool of mortgage loans and CLOs. These investments and other assets we intend to target under our Midway Residential Mortgage Portfolio strategy, as well as other assets we may acquire from time-to-time, expose us to credit risk. To mitigate the credit risks associated with these assets, we may acquire more senior pieces of the capital structure, purchase the assets at discounted prices or hedge with credit sensitive derivative instruments. Nevertheless, if credit losses on our investments, loans, or the loans underlying our investments exceed our expectations or our ability to adequately hedge against these losses, it may have an adverse effect on our performance and our earnings.

As it relates to loans sold previously under certain loan sale agreements by our discontinued mortgage lending business, we may be required to repurchase some of those loans or indemnify the loan purchaser for damages caused by a breach of the loan sale agreement. In the past, we have complied with the repurchase demands by repurchasing the loan with cash and reselling it at a loss, thus reducing our cash position. More recently, we have addressed these requests by negotiating a net cash settlement based on the actual or assumed loss on the loan in lieu of repurchasing the loans. As of December 31, 2010, the amount of repurchase requests outstanding was approximately \$2.0 million, against which we had a reserve of approximately \$0.3 million. We cannot assure you that we will be successful in settling the remaining repurchase demands on favorable terms, or at all. If we are unable to continue to resolve our current repurchase demands through negotiated net cash settlements, our liquidity could be adversely affected.

For more information regarding the factors and risks that affect our operations and performance, see “Item 1A. Risk Factors” above and “Item 7A. Quantitative and Qualitative Disclosures About Market Risk” below.

## Current Market Conditions and Commentary

*Government Actions.* In recent years, the residential housing, mortgage, credit and financial markets in the United States have experienced a variety of difficulties and changed economic conditions, including increased rates of loan defaults, significant credit losses and decreased liquidity. Currently, the U.S. economy appears to be in a weak recovery with little or no broad inflationary pressures. In response to these conditions, the U.S. Government, Federal Reserve, U.S. Treasury, Federal Deposit Insurance Corporation (FDIC) and other governmental and regulatory bodies have taken significant actions to stabilize or improve market and economic conditions. These actions include, among other things, the conservatorship of, and other programs involving, Fannie Mae and Freddie Mac, the Emergency Economic Stabilization Act of 2008 (EESA), the Troubled-Asset Relief Program (TARP), the Capital Purchase Program (CPP), the Term Asset-Backed Securities Loan Facility (TALF), the American Recovery and Reinvestment Act of 2009 (ARRA), the Homeowner Affordability and Stability Plan (HASp), the Homeowner Affordable Modification Program (HAMP) and the Hope for Homeowners program. While the impact from many of these programs has not been as extensive as initially anticipated, a number of these programs have impacted and may in the future continue to impact our portfolio and our results of operations.

In July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed by the U.S. Congress. This legislation aims to restore responsibility and accountability to the financial system. It is unclear how this legislation may impact the borrowing environment, investing environment for RMBS and other targeted assets, interest rate swaps and other derivatives as much of the legislation's implementation has not yet been defined by regulators.

In November 2010, the U.S. Federal Reserve announced a program to purchase an additional \$600 billion of longer-term U.S. Treasury securities by the end of the second quarter of 2011, at a pace of about \$75 billion per month. One of the effects of this program may be to increase the price of Agency RMBS, which may also decrease our net interest margin. Once the program is terminated it may cause a decrease in demand for these securities, which likely would reduce their market price.

*Developments Related to Fannie Mae and Freddie Mac.* Payments on the Agency RMBS in which we invest are guaranteed by Fannie Mae and Freddie Mac. As broadly publicized, Fannie Mae and Freddie Mac have experienced significant losses in recent years, causing the U.S. Government to place Fannie Mae and Freddie Mac under federal conservatorship. In February 2011, the U.S. Department of the Treasury along with the U.S. Department Housing and Urban Development released a much-awaited report titled “Reforming America's Housing Finance Market”, which outlines recommendations for reforming the U.S. housing system, specifically the roles of Fannie Mae and Freddie Mac and transforming the government's involvement in the housing market. It is unclear how future legislation may impact the housing finance market and the investing environment for mortgage-related securities and more specifically, Agency RMBS and non-Agency RMBS, as the method of reform is undecided and has not yet been defined by the regulators. The scope and nature of the actions that the U.S. Government will ultimately undertake with respect to the future of Fannie Mae and Freddie Mac are unknown and will continue to evolve. New regulations and programs related to Fannie Mae and Freddie Mac may adversely affect the pricing, supply, liquidity and value of RMBS and otherwise materially harm our business and operations. A brief summary of certain other material developments involving Fannie Mae and Freddie Mac is set forth below:

- The Federal Reserve's Agency RMBS purchase program, which provided for purchases of up to \$1.25 trillion of Agency RMBS, was completed on March 31, 2010. While the market expectation was that the termination of this purchase program would cause a decrease in demand for Agency RMBS and, in turn, reduced market prices for Agency RMBS, we continue to see strong demand and pricing for these securities. In the event the U.S. Government decides to sell significant portions of its portfolio, then we may see meaningful price declines in Agency RMBS.
- During the first quarter of 2010, Fannie Mae and Freddie Mac announced that they would execute wholesale repurchases of loans which they considered seriously delinquent from existing mortgage pools. Freddie Mac implemented its purchase program in February 2010 with actual purchases beginning in March 2010. Fannie Mae began their process in March 2010 and announced it would implement the initial purchases over a period of four months, beginning in April 2010. Further, both agencies announced that on an ongoing basis they would purchase loans from the pools of mortgage loans underlying their mortgage pass-through certificates that became 120 days delinquent. The impact of these programs thus far is reflected in the constant prepayment rate, or CPR, of our portfolio. These actions increased prepayments which decreased our income and book value in 2010. See “— Balance Sheet Analysis —Prepayment Experience” below for further information.
- During 2010, there were indications that Fannie Mae and Freddie Mac, as well as certain bond insurers and large private investors, intended to pursue more aggressively in the future, repurchase demands for breaches of representation and warranties involved in the sale of loans now in default. We could experience an increase in repurchase requests in the future if such large-scale repurchase demands become prevalent.

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*Mortgage and Other Asset Values* . Throughout 2010, we continued to observe strong demand and high prices for Agency RMBS. Market demand for non-Agency RMBS has steadily increased since early 2009 and throughout 2010, with some recent flattening in terms of pricing. We believe the steadily increasing prices were due to increased demand and the reduced market yields for Agency RMBS. We also expect market values for certain of our other targeted assets, such as CMBS, CLOs, and residential and commercial whole loans to improve as the economic outlook in the U.S. and abroad improves.

*Credit Quality*. U.S. residential mortgage delinquency rates have continued to remain at high levels for various types of mortgage loans during the 2010 fourth quarter. Recent months have seen some stabilization or improvement of certain measures of credit quality, although this stabilization and/or improvement may ultimately prove to be temporary. While RMBS backed by subprime mortgages and option ARMs are experiencing the highest delinquency and loss rates, our portfolio of prime ARM loans held in securitization trusts continue to experience high delinquency rates.

Homeowner assistance programs such as HAMP, as well as future legislative or regulatory actions, may affect the value of, and the returns on, our RMBS portfolio. To the extent that these programs are successful and fewer borrowers default on their mortgage obligations, the actual default rates realized on our non-Agency RMBS may be less than the default assumptions made by us at the purchase of such non-Agency RMBS, which, in turn, could cause the realized yields on our non-Agency RMBS portfolio to be higher than previously expected. Conversely, any forced reductions in principal that emanate from such programs could cause a reduction in the market value of RMBS, particularly non-Agency RMBS.

*Financing Markets and Liquidity*. The liquidity facilities created by the Federal Reserve during 2007 and 2008 and its lowering of the Federal Funds Target Rate to 0 – 0.25% have lowered our financing costs (which most closely correlates with the 30-day LIBOR) and stabilized the availability of repurchase agreement financing for Agency RMBS. The 30-day LIBOR, which was 0.26% as of December 31, 2010, has remained relatively unchanged since December 31, 2009. The Federal Reserve has continued to reaffirm its plan to hold the Fed Funds Rate near zero percent. While we expect interest rates to rise over the longer term, we believe that interest rates, and thus our financing costs, are likely to remain at these historically low levels until such time as the economic data begin to confirm a sustainable improvement in the overall economy.

Over the past year, many investment banks have resumed making term financing available for non-Agency RMBS. The return of financing availability and the stabilization of borrowing costs have somewhat improved liquidity in the market for these securities, although such financing is currently available only in limited amounts and with respect to only certain types of those securities, so such improved liquidity is likely to be limited in the near term.

In addition to an improved financing environment for Agency RMBS, the collateral requirements of our repurchase agreement lenders also improved throughout 2009 and 2010, with the average “haircut” related to our repurchase agreement financing declining to approximately 6% at December 31, 2010. As of December 31, 2010, the Company had available cash of \$19.4 million to meet short term liquidity requirements.

*Prepayment rates*. As a result of various government initiatives, including HASP, HAMP and the reduction in intermediate and longer-term treasury yields, rates on conforming mortgages continue to be historically low. While these trends have historically resulted in higher rates of refinancing and thus higher prepayment speeds, we have observed little impact from refinancing on the CPR for our portfolio. However, and as discussed above, the CPR on our RMBS portfolio was negatively impacted during the year ended December 31, 2010, and in particular, during the three months ended June 30, 2010, by repurchase programs implemented by Freddie Mac and Fannie Mae as discussed above. See “— Balance Sheet Analysis —Prepayment Experience” below.

## **Note Regarding Discontinued Operation**

In connection with the sale of our wholesale and retail mortgage lending platform assets in 2007, we classified our mortgage lending business as a discontinued operation. As a result, we have reported revenues and expenses related to the mortgage lending business as a discontinued operation and the related assets and liabilities as assets and liabilities related to a discontinued operation for all periods presented in the accompanying consolidated financial statements. Certain assets, such as the deferred tax asset, and certain liabilities, such as subordinated debt and liabilities related to leased facilities not assigned, are part of our ongoing operations and accordingly, have not been classified as a discontinued operation. As of December 31, 2010 discontinued operations consist of \$4.0 million in assets, including \$3.8 million in loans held for sale, and \$0.6 million in liabilities, down from \$4.2 million in assets and \$1.8 million in liabilities at December 31, 2009, and are included in receivables and other assets and accrued expenses and other liabilities in the consolidated balance sheets included in this Annual Report.

Prior to March 31, 2007, we originated a wide range of residential mortgage loan products including prime, alternative-A, and to a lesser extent sub-prime loans, home equity lines of credit, second mortgages, and bridge loans. Our sale of the mortgage lending platform assets on March 31, 2007 marked our exit from the mortgage lending business.

The discontinued operations had net income of \$1.1 million and \$0.8 million for the years ended December 31, 2010 and 2009, respectively. The Company continues to wind down the discontinued operations and anticipates to be substantially complete by the end of 2011.



## Financial Condition

As of December 31, 2010, we had approximately \$374.3 million of total assets, as compared to approximately \$488.8 million of total assets as of December 31, 2009. The decline in total assets is primarily a function of the repositioning of our investment portfolio away from a heavily weighted leveraged Agency RMBS portfolio to a more diversified portfolio with reduced leverage.

## Balance Sheet Analysis

**Investment Securities - Available for Sale .** At December 31, 2010 our securities portfolio consists of Agency RMBS, non-Agency RMBS and CLOs. At December 31, 2010, we had no investment securities in a single issuer or entity, other than Fannie Mae, that had an aggregate book value in excess of 10% of our total assets. The following tables set forth the balances of our investment securities available for sale as of December 31, 2010 and December 31, 2009:

### Balances of Our Investment Securities (dollar amounts in thousands):

| December 31, 2010              | Par<br>Value      | Carrying<br>Value | % of<br>Portfolio |
|--------------------------------|-------------------|-------------------|-------------------|
| Agency RMBS                    | \$ 45,042         | \$ 47,529         | 55.3%             |
| Non-Agency RMBS                | 11,104            | 8,985             | 10.4%             |
| Collateralized Loan Obligation | 45,950            | 29,526            | 34.3%             |
| Total                          | <u>\$ 102,096</u> | <u>\$ 86,040</u>  | <u>100.0%</u>     |
| December 31, 2009              | Par<br>Value      | Carrying<br>Value | % of<br>Portfolio |
| Agency RMBS                    | \$ 110,324        | \$ 116,226        | 65.8%             |
| Non-Agency RMBS                | 56,984            | 42,866            | 24.2%             |
| Collateralized Loan Obligation | 45,950            | 17,599            | 10.0%             |
| Total                          | <u>\$ 213,258</u> | <u>\$ 176,691</u> | <u>100.0%</u>     |

The following table sets forth the stated reset periods of our investment securities available for sale at December 31, 2010 and December 31, 2009 (dollar amounts in thousands):

|                                | <b>Less than<br/>6 Months</b> | <b>More than<br/>6 Months<br/>To 24 Months</b> | <b>More than<br/>24 Months<br/>To 60 Months</b> | <b>Total</b>              |
|--------------------------------|-------------------------------|------------------------------------------------|-------------------------------------------------|---------------------------|
|                                | <b>Carrying<br/>Value</b>     | <b>Carrying<br/>Value</b>                      | <b>Carrying<br/>Value</b>                       | <b>Carrying<br/>Value</b> |
| <b>December 31, 2010</b>       |                               |                                                |                                                 |                           |
| Agency RMBS                    | \$ 25,816                     | \$ 5,313                                       | \$ 16,400                                       | \$ 47,529                 |
| Non-Agency RMBS                | 8,985                         | —                                              | —                                               | 8,985                     |
| Collateralized Loan Obligation | 29,526                        | —                                              | —                                               | 29,526                    |
| Total                          | <u>\$ 64,327</u>              | <u>\$ 5,313</u>                                | <u>\$ 16,400</u>                                | <u>\$ 86,040</u>          |
|                                |                               |                                                |                                                 |                           |
|                                | <b>Less than<br/>6 Months</b> | <b>More than<br/>6 Months<br/>To 24 Months</b> | <b>More than<br/>24 Months<br/>To 60 Months</b> | <b>Total</b>              |
|                                | <b>Carrying<br/>Value</b>     | <b>Carrying<br/>Value</b>                      | <b>Carrying<br/>Value</b>                       | <b>Carrying<br/>Value</b> |
| <b>December 31, 2009</b>       |                               |                                                |                                                 |                           |
| Agency RMBS                    | \$ —                          | \$ 42,893                                      | \$ 73,333                                       | \$ 116,226                |
| Non-Agency RMBS                | 22,065                        | 4,865                                          | 15,936                                          | 42,866                    |
| Collateralized Loan Obligation | 17,599                        | —                                              | —                                               | 17,599                    |
| Total                          | <u>\$ 39,664</u>              | <u>\$ 47,758</u>                               | <u>\$ 89,269</u>                                | <u>\$ 176,691</u>         |

## Performance Characteristics of Non-Agency RMBS

The following table details performance characteristics of our non-Agency RMBS portfolio as of December 31, 2010 and 2009 (dollar amounts in thousands):

### December 31, 2010

|                                                                         | Acquired prior<br>to<br>2009 <sup>(1)</sup> |
|-------------------------------------------------------------------------|---------------------------------------------|
| Current par value                                                       | \$ 11,104                                   |
| Collateral type                                                         |                                             |
| Fixed rate                                                              | \$ 10,495                                   |
| ARMs                                                                    | \$ 609                                      |
| Weighted average purchase price                                         | 90.70%                                      |
| Weighted average credit support                                         | 3.32%                                       |
| Weighted average 60+ delinquencies (including 60+, REO and foreclosure) | 6.64%                                       |
| Weighted average 3 month CPR                                            | 23.39%                                      |
| Weighted average 3 month voluntary prepayment rate                      | 21.33%                                      |

(1) All non-Agency RMBS acquired after 2008 were sold during the year ended December 31, 2010.

### December 31, 2009

|                                                                         | Acquired after<br>2008 | Acquired prior<br>to<br>2009 |
|-------------------------------------------------------------------------|------------------------|------------------------------|
| Current par value                                                       | \$ 38,682              | \$ 18,302                    |
| Collateral type                                                         |                        |                              |
| Fixed rate                                                              | \$ 3,738               | \$ 17,693                    |
| ARMs                                                                    | \$ 34,944              | \$ 609                       |
| Weighted average purchase price                                         | 60.51%                 | 92.05%                       |
| Weighted average credit support                                         | 8.76%                  | 4.06%                        |
| Weighted average 60+ delinquencies (including 60+, REO and foreclosure) | 20.61%                 | 3.66%                        |
| Weighted average 3 month CPR                                            | 16.24%                 | 17.46%                       |
| Weighted average 3 month voluntary prepayment rate                      | 9.78%                  | 15.84%                       |

## Detailed Composition of Loans Securitizing Our CLOs

The following tables summarize the loans securitizing our CLOs grouped by range of outstanding balance and industry as of December 31, 2010 and 2009, respectively (dollar amounts in thousands).

| Range of<br>Outstanding Balance | As of December 31, 2010 |                      |                 | As of December 31, 2009 |                      |                 |
|---------------------------------|-------------------------|----------------------|-----------------|-------------------------|----------------------|-----------------|
|                                 | Number of Loans         | Maturity Date        | Total Principal | Number of Loans         | Maturity Date        | Total Principal |
| \$0 - \$500                     | 11                      | 11/2014 –<br>11/2017 | \$ 5,404        | 7                       | 03/2014 -<br>03/2017 | \$ 3,471        |
| \$500 - \$2,000                 | 72                      | 5/2013 –<br>12/2017  | 95,704          | 18                      | 12/2011 -<br>12/2015 | 24,722          |
| \$2,000 - \$5,000               | 88                      | 8/2012 –<br>11/2017  | 276,265         | 55                      | 5/2011 - 2/2016      | 198,895         |
| \$5,000 - \$10,000              | 11                      | 11/2011 –<br>3/2016  | 77,366          | 28                      | 11/2010 -<br>10/2014 | 202,080         |
| +\$10,000                       | —                       | —                    | —               | 3                       | 12/2009 -<br>10/2012 | 32,292          |
| Total                           | 182                     |                      | \$ 454,739      | 111                     |                      | \$ 461,460      |



December 31, 2010

| Industry                                                       | Number of Loans | Outstanding Balance | % of Outstanding Balance |
|----------------------------------------------------------------|-----------------|---------------------|--------------------------|
| Healthcare, Education & Childcare                              | 19              | \$ 52,537           | 11.55%                   |
| Retail Store                                                   | 10              | 29,388              | 6.46%                    |
| Electronics                                                    | 10              | 29,148              | 6.41%                    |
| Telecommunications                                             | 13              | 26,410              | 5.81%                    |
| Leisure , Amusement, Motion Pictures & Entertainment           | 10              | 22,316              | 4.91%                    |
| Personal, Food & Misc Services                                 | 10              | 21,179              | 4.66%                    |
| Chemicals, Plastics and Rubber                                 | 9               | 20,962              | 4.61%                    |
| Beverage, Food & Tobacco                                       | 9               | 18,666              | 4.10%                    |
| Utilities                                                      | 5               | 17,035              | 3.75%                    |
| Aerospace & Defense                                            | 7               | 16,468              | 3.62%                    |
| Insurance                                                      | 3               | 16,245              | 3.57%                    |
| Hotels, Motels, Inns and Gaming                                | 5               | 15,389              | 3.38%                    |
| Farming & Agriculture                                          | 5               | 14,983              | 3.29%                    |
| Cargo Transport                                                | 3               | 14,372              | 3.16%                    |
| Diversified/Conglomerate Mfg                                   | 6               | 13,914              | 3.06%                    |
| Personal & Non-Durable Consumer Products                       | 5               | 13,774              | 3.03%                    |
| Printing & Publishing                                          | 4               | 11,944              | 2.63%                    |
| Diversified/Conglomerate Service                               | 5               | 10,841              | 2.38%                    |
| Broadcasting & Entertainment                                   | 4               | 10,037              | 2.21%                    |
| Ecological                                                     | 4               | 8,763               | 1.93%                    |
| Finance                                                        | 3               | 7,803               | 1.72%                    |
| Containers, Packaging and Glass                                | 4               | 7,635               | 1.68%                    |
| Machinery (Non-Agriculture, Non-Construction & Non-Electronic) | 4               | 7,482               | 1.65%                    |
| Personal Transportation                                        | 3               | 7,306               | 1.61%                    |
| Buildings and Real Estate                                      | 3               | 6,970               | 1.53%                    |
| Banking                                                        | 2               | 6,750               | 1.48%                    |
| Automobile                                                     | 5               | 6,544               | 1.44%                    |
| Mining, Steel, Iron and Non-Precious Metals                    | 3               | 5,466               | 1.20%                    |
| Textiles & Leather                                             | 3               | 4,359               | 0.96%                    |
| Oil & Gas                                                      | 2               | 3,994               | 0.88%                    |
| Grocery                                                        | 3               | 3,808               | 0.84%                    |
| Diversified Natural Resources, Precious Metals and Minerals    | 1               | 2,251               | 0.49%                    |
|                                                                | 182             | \$ 454,739          | 100.00%                  |

December 31, 2009

| Industry                                            | Number of<br>Loans | Outstanding<br>Balance | % of<br>Outstanding<br>Balance |
|-----------------------------------------------------|--------------------|------------------------|--------------------------------|
| Healthcare, Education & Childcare                   | 14                 | \$ 57,190              | 12.4%                          |
| Diversified/Conglomerate Service                    | 6                  | 42,348                 | 9.2%                           |
| Personal, Food & Misc. Services                     | 6                  | 38,638                 | 8.4%                           |
| Electronics                                         | 7                  | 26,532                 | 5.7%                           |
| Printing & Publishing                               | 4                  | 23,990                 | 5.2%                           |
| Telecommunications                                  | 6                  | 23,098                 | 5.0%                           |
| Insurance / Finance                                 | 5                  | 22,915                 | 5.0%                           |
| Utilities / Oil & Gas                               | 6                  | 21,782                 | 4.7%                           |
| Personal & Non-Durable Consumer Products            | 6                  | 21,298                 | 4.6%                           |
| Retail Store                                        | 6                  | 21,211                 | 4.6%                           |
| Aerospace & Defense                                 | 6                  | 20,462                 | 4.4%                           |
| Cargo Transport / Personal Transportation           | 3                  | 19,499                 | 4.2%                           |
| Chemicals, Plastics and Rubber                      | 6                  | 18,532                 | 4.0%                           |
| Hotels, Motels, Inns and Gaming                     | 4                  | 18,183                 | 3.9%                           |
| Broadcasting & Entertainment                        | 3                  | 16,496                 | 3.6%                           |
| Beverage, Food & Tobacco                            | 6                  | 15,880                 | 3.4%                           |
| Leisure, Amusement, Motion Pictures & Entertainment | 4                  | 11,146                 | 2.4%                           |
| Other                                               | 13                 | 42,260                 | 9.3%                           |
| Total                                               | 111                | \$ 461,460             | 100.0%                         |

**Prepayment Experience** . The constant prepayment rate (“CPR”) on our overall portfolio averaged approximately 19% during 2010 and 2009. CPRs on our purchased portfolio of investment securities averaged approximately 25% while the CPRs on loans held in our securitization trusts averaged approximately 16% during 2010, as compared to 18% and 19%, respectively, during 2009. When prepayment expectations over the remaining life of assets increase, we have to amortize premiums over a shorter time period resulting in a reduced yield to maturity on our investment assets. Conversely, if prepayment expectations decrease, the premium would be amortized over a longer period resulting in a higher yield to maturity. We monitor our prepayment experience on a monthly basis and adjust the amortization rate to reflect current market conditions.

**Mortgage Loans Held in Securitization Trusts** . Included in our portfolio are ARM loans that we originated or purchased in bulk from third parties that met our investment criteria and portfolio requirements and that we subsequently securitized. The Company has completed four securitizations; three were classified as financings and one, New York Mortgage Trust 2006-1, qualified as a sale, which resulted in the recording of residual assets and mortgage servicing rights. The Company sold all the residual assets related to the 2006-1 securitization during the third quarter ended September 30, 2009, incurring a realized loss of approximately \$32,000.

At December 31, 2010, mortgage loans held in securitization trusts totaled approximately \$228.2 million, or 61.0% of our total assets. The Company has a net equity investment of approximately \$8.9 million in the three securitization trusts at December 31, 2010. Of the mortgage loans held in securitized trusts, 100% are traditional ARMs or hybrid ARMs, 80.9% of which are ARM loans that are interest only. On our hybrid ARMs, interest rate reset periods are predominately five years or less and the interest-only period is typically 10 years, which mitigates the “payment shock” at the time of interest rate reset. None of the mortgage loans held in securitization trusts are payment option-ARMs or ARMs with negative amortization.

The following table details mortgage loans held in securitization trusts at December 31, 2010 and December 31, 2009 (dollar amounts in thousands):

|                   | <b># of Loans</b> | <b>Par Value</b> | <b>Coupon</b> | <b>Carrying Value</b> |
|-------------------|-------------------|------------------|---------------|-----------------------|
| December 31, 2010 | 559               | \$ 229,323       | 3.16%         | \$ 228,185            |
| December 31, 2009 | 647               | \$ 277,007       | 5.19%         | \$ 276,176            |

*Characteristics of Our Mortgage Loans Held in Securitization:*

The following table sets forth the composition of our loans held in securitization trusts as of December 31, 2010 (dollar amounts in thousands):

|                                                     | <u>Average</u> | <u>High</u>                          | <u>Low</u>                               |
|-----------------------------------------------------|----------------|--------------------------------------|------------------------------------------|
| <b>General Loan Characteristics:</b>                |                |                                      |                                          |
| Original Loan Balance (dollar amounts in thousands) | \$ 443         | \$ 2,950                             | \$ 48                                    |
| Current Coupon Rate                                 | 3.16%          | 7.25%                                | 1.38%                                    |
| Gross Margin                                        | 2.36%          | 4.13%                                | 1.13%                                    |
| Lifetime Cap                                        | 11.28%         | 13.25%                               | 9.13%                                    |
| Original Term (Months)                              | 360            | 360                                  | 360                                      |
| Remaining Term (Months)                             | 292            | 300                                  | 259                                      |
| Average Months to Reset                             | 4              | 11                                   | 1                                        |
| Original Average FICO Score                         | 729            | 818                                  | 593                                      |
| Original Average LTV                                | 70.48%         | 95.00%                               | 13.94%                                   |
|                                                     |                | <u>% of Outstanding Loan Balance</u> | <u>Weighted Average Gross Margin (%)</u> |
| <b>Index Type/Gross Margin:</b>                     |                |                                      |                                          |
| One Month LIBOR                                     |                | 2.6%                                 | 1.69%                                    |
| Six Month LIBOR                                     |                | 72.9%                                | 2.40%                                    |
| One Year LIBOR                                      |                | 16.6%                                | 2.26%                                    |
| One Year Constant Maturity Treasury                 |                | 7.9%                                 | 2.65%                                    |
| <b>Total</b>                                        |                | <b>100.0%</b>                        | <b>2.36%</b>                             |

The following table sets forth the composition of our loans held in securitization trusts as of December 31, 2009 (dollar amounts in thousands):

|                                                     | <u>Average</u> | <u>High</u>                          | <u>Low</u>                               |
|-----------------------------------------------------|----------------|--------------------------------------|------------------------------------------|
| <b>General Loan Characteristics:</b>                |                |                                      |                                          |
| Original Loan Balance (dollar amounts in thousands) | \$ 456         | \$ 2,950                             | \$ 48                                    |
| Current Coupon Rate                                 | 5.19%          | 7.25%                                | 1.38%                                    |
| Gross Margin                                        | 2.37%          | 5.00%                                | 1.13%                                    |
| Lifetime Cap                                        | 11.26%         | 13.25%                               | 9.13%                                    |
| Original Term (Months)                              | 360            | 360                                  | 360                                      |
| Remaining Term (Months)                             | 304            | 312                                  | 271                                      |
| Average Months to Reset                             | 6              | 12                                   | 1                                        |
| Original Average FICO Score                         | 732            | 820                                  | 593                                      |
| Original Average LTV                                | 70.3           | 95.0                                 | 13.9                                     |
|                                                     |                | <u>% of Outstanding Loan Balance</u> | <u>Weighted Average Gross Margin (%)</u> |
| <b>Index Type/Gross Margin:</b>                     |                |                                      |                                          |
| One Month LIBOR                                     |                | 3.0%                                 | 1.67%                                    |
| Six Month LIBOR                                     |                | 71.8%                                | 2.40%                                    |
| One Year LIBOR                                      |                | 16.6%                                | 2.27%                                    |
| One Year Constant Maturity Treasury                 |                | 8.6%                                 | 2.66%                                    |
| <b>Total</b>                                        |                | <b>100.0%</b>                        | <b>2.37%</b>                             |



The following table details loan summary information for loans held in securitization trusts at December 31, 2010 (dollar amounts in thousands):

| Description          |                    | Interest Rate |             |             | Final Maturity |                 | Periodic Payment |               | Original Amount of Principal |                   | Current Amount of Principal |           | Principal Amount of Loans Subject to Delinquent Principal or Interest |
|----------------------|--------------------|---------------|-------------|-------------|----------------|-----------------|------------------|---------------|------------------------------|-------------------|-----------------------------|-----------|-----------------------------------------------------------------------|
| Property Type        | Balance            | Loan Count    | Max         | Min         | Avg            | Min             | Max              | Term (months) | Prior Liens                  | Principal         | Principal                   | Principal | Interest                                                              |
| <b>Single FAMILY</b> | <= \$100           | 12            | 3.88        | 2.63        | 3.21           | 12/01/34        | 11/01/35         | 360           | NA                           | \$ 1,508          | \$ 914                      | \$ -      | -                                                                     |
|                      | <= \$250           | 70            | 6.25        | 2.63        | 3.40           | 09/01/32        | 12/01/35         | 360           | NA                           | 14,580            | 12,615                      |           | 417                                                                   |
|                      | <= \$500           | 103           | 6.50        | 2.63        | 3.23           | 10/01/32        | 01/01/36         | 360           | NA                           | 39,299            | 35,981                      |           | 7,606                                                                 |
|                      | <=\$1,000          | 39            | 5.75        | 1.50        | 3.01           | 08/01/33        | 12/01/35         | 360           | NA                           | 31,128            | 29,236                      |           | 3,411                                                                 |
|                      | >\$1,000           | 21            | 3.25        | 2.75        | 2.97           | 01/01/35        | 11/01/35         | 360           | NA                           | 37,357            | 36,857                      |           | 10,162                                                                |
|                      | <b>Summary</b>     | <b>245</b>    | <b>6.50</b> | <b>1.50</b> | <b>3.22</b>    | <b>09/01/32</b> | <b>01/01/36</b>  | <b>360</b>    | <b>NA</b>                    | <b>\$ 123,872</b> | <b>\$ 115,603</b>           | <b>\$</b> | <b>21,596</b>                                                         |
| <b>2-4 FAMILY</b>    | <= \$100           | 1             | 3.88        | 3.88        | 3.88           | 02/01/35        | 02/01/35         | 360           | NA                           | \$ 80             | \$ 73                       | \$        | 75                                                                    |
|                      | <= \$250           | 7             | 4.00        | 2.75        | 3.25           | 12/01/34        | 07/01/35         | 360           | NA                           | 1,415             | 1,221                       |           | 191                                                                   |
|                      | <= \$500           | 15            | 7.25        | 2.13        | 3.53           | 09/01/34        | 01/01/36         | 360           | NA                           | 5,554             | 5,259                       |           | 254                                                                   |
|                      | <=\$1,000          | -             | -           | -           | -              | 01/01/00        | 01/01/00         | 360           | NA                           | -                 | -                           |           | -                                                                     |
|                      | >\$1,000           | -             | -           | -           | -              | 01/01/00        | 01/01/00         | 360           | NA                           | -                 | -                           |           | -                                                                     |
|                      | <b>Summary</b>     | <b>23</b>     | <b>7.25</b> | <b>2.13</b> | <b>3.46</b>    | <b>09/01/34</b> | <b>01/01/36</b>  | <b>360</b>    | <b>NA</b>                    | <b>\$ 7,049</b>   | <b>\$ 6,553</b>             | <b>\$</b> | <b>520</b>                                                            |
| <b>Condo</b>         | <= \$100           | 15            | 3.50        | 2.75        | 3.04           | 01/01/35        | 12/01/35         | 360           | NA                           | \$ 1,912          | \$ 938                      | \$        | 55                                                                    |
|                      | <= \$250           | 74            | 6.38        | 2.75        | 3.35           | 02/01/34        | 01/01/36         | 360           | NA                           | 14,512            | 13,036                      |           | 444                                                                   |
|                      | <= \$500           | 64            | 6.25        | 1.50        | 3.20           | 09/01/32        | 12/01/35         | 360           | NA                           | 21,957            | 20,844                      |           | 272                                                                   |
|                      | <=\$1,000          | 21            | 4.00        | 1.63        | 2.96           | 08/01/33        | 10/01/35         | 360           | NA                           | 15,489            | 14,558                      |           | -                                                                     |
|                      | > \$1,000          | 10            | 3.25        | 2.75        | 2.96           | 01/01/35        | 09/01/35         | 360           | NA                           | 14,914            | 14,654                      |           | -                                                                     |
|                      | <b>Summary</b>     | <b>184</b>    | <b>6.38</b> | <b>1.50</b> | <b>3.21</b>    | <b>09/01/32</b> | <b>01/01/36</b>  | <b>360</b>    | <b>NA</b>                    | <b>\$ 68,784</b>  | <b>\$ 64,030</b>            | <b>\$</b> | <b>771</b>                                                            |
| <b>CO-OP</b>         | <= \$100           | 4             | 3.00        | 2.63        | 2.84           | 10/01/34        | 08/01/35         | 360           | NA                           | \$ 443            | \$ 331                      | \$        | -                                                                     |
|                      | <= \$250           | 19            | 6.13        | 2.25        | 3.16           | 10/01/34        | 12/01/35         | 360           | NA                           | 4,135             | 3,399                       |           | 212                                                                   |
|                      | <= \$500           | 26            | 6.38        | 1.38        | 3.16           | 08/01/34        | 12/01/35         | 360           | NA                           | 10,724            | 9,533                       |           | -                                                                     |
|                      | <=\$1,000          | 12            | 3.25        | 2.75        | 2.91           | 12/01/34        | 10/01/35         | 360           | NA                           | 9,089             | 8,896                       |           | -                                                                     |
|                      | > \$1,000          | 4             | 6.00        | 2.25        | 3.44           | 11/01/34        | 12/01/35         | 360           | NA                           | 5,659             | 5,339                       |           | -                                                                     |
|                      | <b>Summary</b>     | <b>65</b>     | <b>6.38</b> | <b>1.38</b> | <b>3.16</b>    | <b>08/01/34</b> | <b>12/01/35</b>  | <b>360</b>    | <b>NA</b>                    | <b>\$ 30,050</b>  | <b>\$ 27,498</b>            | <b>\$</b> | <b>212</b>                                                            |
| <b>PUD</b>           | <= \$100           | 1             | 3.00        | 3.00        | 3.00           | 07/01/35        | 07/01/35         | 360           | NA                           | \$ 100            | \$ 92                       | \$        | -                                                                     |
|                      | <= \$250           | 16            | 6.50        | 2.63        | 3.66           | 01/01/35        | 12/01/35         | 360           | NA                           | 3,260             | 3,092                       |           | 113                                                                   |
|                      | <= \$500           | 14            | 6.13        | 2.63        | 3.37           | 08/01/32        | 12/01/35         | 360           | NA                           | 4,969             | 4,671                       |           | 770                                                                   |
|                      | <=\$1,000          | 4             | 3.50        | 2.75        | 3.19           | 05/01/34        | 07/01/35         | 360           | NA                           | 2,832             | 2,650                       |           | -                                                                     |
|                      | > \$1,000          | 4             | 6.13        | 2.75        | 3.66           | 04/01/34        | 12/01/35         | 360           | NA                           | 5,233             | 5,134                       |           | 1,085                                                                 |
|                      | <b>Summary</b>     | <b>39</b>     | <b>6.50</b> | <b>2.63</b> | <b>3.49</b>    | <b>08/01/32</b> | <b>12/01/35</b>  | <b>360</b>    | <b>NA</b>                    | <b>\$ 16,394</b>  | <b>\$ 15,639</b>            | <b>\$</b> | <b>1,968</b>                                                          |
| <b>Summary</b>       | <= \$100           | 33            | 3.88        | 2.63        | 3.10           | 10/01/34        | 12/01/35         | 360           | NA                           | \$ 4,043          | \$ 2,348                    | \$        | 130                                                                   |
|                      | <= \$250           | 186           | 6.50        | 2.25        | 3.38           | 09/01/32        | 01/01/36         | 360           | NA                           | 37,902            | 33,363                      |           | 1,377                                                                 |
|                      | <= \$500           | 222           | 7.25        | 1.38        | 3.23           | 08/01/32        | 01/01/36         | 360           | NA                           | 82,503            | 76,288                      |           | 8,902                                                                 |
|                      | <=\$1,000          | 76            | 5.75        | 1.50        | 2.99           | 08/01/33        | 12/01/35         | 360           | NA                           | 58,538            | 55,340                      |           | 3,411                                                                 |
|                      | > \$1,000          | 39            | 6.13        | 2.25        | 3.09           | 04/01/34        | 12/01/35         | 360           | NA                           | 63,163            | 61,984                      |           | 11,247                                                                |
|                      | <b>Grand Total</b> | <b>556</b>    | <b>7.25</b> | <b>1.38</b> | <b>3.16</b>    | <b>08/01/32</b> | <b>01/01/36</b>  | <b>360</b>    | <b>NA</b>                    | <b>\$ 246,149</b> | <b>\$ 229,323</b>           | <b>\$</b> | <b>25,067</b>                                                         |

The following table details activity for loans held in securitization trusts (net) for the year ended December 31, 2010 (dollar amounts in thousands).

|                                   | Principal  | Premium  | Allowance for<br>Loan Losses | Net Carrying<br>Value |
|-----------------------------------|------------|----------|------------------------------|-----------------------|
| <b>Balance, December 31, 2009</b> | \$ 277,007 | \$ 1,750 | \$ (2,581)                   | \$ 276,176            |
| Additions                         | —          | —        | —                            | —                     |
| Principal repayments              | (45,721)   | —        | —                            | (45,721)              |
| Provision for loan loss           | —          | —        | (1,560)                      | (1,560)               |
| Transfer to real estate owned     | (1,963)    | —        | 564                          | (1,399)               |
| Charge-Offs                       | —          | —        | 988                          | 988                   |
| Amortization for premium          | —          | (299)    | —                            | (299)                 |
| <b>Balance, December 31, 2010</b> | \$ 229,323 | \$ 1,451 | \$ (2,589)                   | \$ 228,185            |

#### Delinquency Status of Our Mortgage Loans Held in Securitization Trusts

As of December 31, 2010, we had 46 delinquent loans totaling approximately \$25.1 million categorized as Mortgage Loans Held in Securitization Trusts (net). Of the \$25.1 million in delinquent loans, \$17.8 million, or 71% are currently under some form of modified payment plan. As these borrowers are not current, they continue to be reported as delinquent even though they are working towards a credit resolution. The table below shows delinquencies in our portfolio of loans held in securitization trusts as of December 31, 2010 (dollar amounts in thousands):

| Days Late               | Number of Delinquent Loans | Total<br>Dollar Amount | % of<br>Loan Portfolio |
|-------------------------|----------------------------|------------------------|------------------------|
| 30-60                   | 7                          | \$ 2,515               | 1.09%                  |
| 61-90                   | 4                          | \$ 4,362               | 1.89%                  |
| 90+                     | 35                         | \$ 18,191              | 7.90%                  |
| Real Estate Owned (REO) | 3                          | \$ 894                 | 0.39%                  |

As of December 31, 2009, we had 41 delinquent loans totaling approximately \$19.9 million categorized as Mortgage Loans Held in Securitization Trusts. Of the \$19.9 million in delinquent loans, \$8.2 million, or 41% are currently under some form of modified payment plan. As these borrowers are not current, they continue to be reported as delinquent even though they are working towards a credit resolution. The table below shows delinquencies in our loan portfolio as of December 31, 2009 (dollar amounts in thousands):

| Days Late               | Number of Delinquent Loans | Total<br>Dollar Amount | % of<br>Loan Portfolio |
|-------------------------|----------------------------|------------------------|------------------------|
| 30-60                   | 5                          | \$ 2,816               | 1.01%                  |
| 61-90                   | 4                          | \$ 1,150               | 0.41%                  |
| 90+                     | 32                         | \$ 15,915              | 5.73%                  |
| Real Estate Owned (REO) | 2                          | \$ 739                 | 0.27%                  |

Interest is recognized as revenue when earned according to the terms of the mortgage loans and when, in the opinion of management, it is collectible. The accrual of interest on loans is discontinued when, in management's opinion, the interest is not collectible in the normal course of business, but in no case beyond when payment on a loan becomes 90 days delinquent. Interest collected on loans for which accrual has been discontinued is recognized as income upon receipt.

**Equity Investment in Limited Partnership.** The following table details loan summary information held in the limited partnership accounted for under the equity method (dollar amounts in thousands).

| <b>Loan Summary</b>                                                        | <b>December 31,<br/>2010</b> |
|----------------------------------------------------------------------------|------------------------------|
| Number of Loans                                                            | 159                          |
| Aggregate Current Loan Balance                                             | \$ 26,953                    |
| Average Current Loan Balance                                               | \$ 170                       |
| Weighted Average Original Term (Months)                                    | 377                          |
| Weighted Average Remaining Term (Months)                                   | 326                          |
| Weighted Average Gross Coupon (%)                                          | 6.80%                        |
| Weighted Average Original Loan-to-Value of Loan (%)                        | 86.60%                       |
| Weighted Average Loan-to-Value at Funding Date based on Purchase Price (%) | 85.28%                       |
| Average Cost-to-Principal of Asset at Funding (%)                          | 66.99%                       |
| Fixed Rate Mortgages (%)                                                   | 69.63%                       |
| Adjustable Rate Mortgages (%)                                              | 30.37%                       |
| First Lien Mortgages (%)                                                   | 100.00%                      |

**Cash and Cash Equivalents.** We had unrestricted cash and cash equivalents of \$19.4 million at December 31, 2010.

Receivables and other assets totaled \$8.9 million as of December 31, 2010, and consist primarily of \$4.0 million of assets related to discontinued operations, \$1.4 million of restricted cash, \$1.1 million related to escrow advances, \$0.7 million of real estate owned (“REO”) in securitization trusts, \$0.6 million of capitalization expenses related to equity and bond issuance cost, \$0.6 million of accrued interest receivable, \$0.4 million of prepaid expenses and \$0.1 million of deferred tax asset. The restricted cash of \$1.4 million includes \$1.2 million held by counterparties as collateral for hedging instruments and \$0.2 million as collateral for a letter of credit related to the lease of the Company’s corporate headquarters.

**Financing Arrangements, Portfolio Investments .** During the year ended December 31, 2010, we continued to employ a balanced and diverse funding mix to finance our assets. As of December 31, 2010, our Agency RMBS portfolio was funded with approximately \$35.6 million of repurchase agreement borrowings, which represents approximately 11.7% of our total liabilities. Our repurchase agreements typically provide for terms of 30 days. As of December 31, 2010, the current weighted average borrowing rate on these financing facilities was 0.39%. For the year ended December 31, 2010, the ending balance, yearly average and maximum balance at any month-end for our repurchase agreement borrowings were \$35.6 million, \$58.9 million and \$83.8 million, respectively.

**Collateralized Debt Obligations .** As of December 31, 2010, we had \$220.0 million of collateralized debt obligations, or CDOs, outstanding with a weighted average interest rate of 0.65%.

**Subordinated Debentures .** As of December 31, 2010, our wholly owned subsidiary, HC, had trust preferred securities outstanding of \$45.0 million with a weighted average interest rate of 4.13%. The securities are fully guaranteed by us with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities are classified as subordinated debentures in the liability section of our consolidated balance sheet included in this Annual Report.

\$25.0 million of our subordinated debentures have a floating interest rate equal to three-month LIBOR plus 3.75%, resetting quarterly, 4.05% at December 31, 2010. These securities mature on March 15, 2035 and may be called at par by us any time after March 15, 2010. HC entered into an interest rate cap agreement to limit the maximum interest rate cost of these trust preferred securities to 7.5% through March 15, 2010, at which point the interest rate cap expired.

\$20.0 million of our subordinated debentures had a fixed interest rate equal to 8.35% up to and including July 30, 2010, at which point the interest rate converted to a floating rate equal to one-month LIBOR plus 3.95% until maturity, 4.24% at December 31, 2010. The securities mature on October 30, 2035 and may be called at par by us any time after October 30, 2010.

**Convertible Preferred Debentures** . As of December 31, 2010, the 1.0 million shares of our Series A Preferred Stock issued in January 2008 matured, at which time we redeemed all outstanding shares at the \$20.00 per share liquidation preference plus the fourth quarter accrued dividends. We funded this redemption from working capital. The Company recorded the dividend as interest expense because of the mandatory redemption feature.

We issued these shares of Series A Preferred Stock to JMP Group Inc. and certain of its affiliates for an aggregate purchase price of \$20.0 million. The Series A Preferred Stock entitled the holders to receive a minimum cumulative dividend of 10% per year, subject to an increase to the extent any quarterly common stock dividends exceeded \$0.20 per share.

**Derivative Assets and Liabilities** . We generally hedge the risk related to changes in the benchmark interest rate used in the variable rate index, usually LIBOR.

In order to reduce this risk, we enter into interest rate swap agreements whereby we receive floating rate payments in exchange for fixed rate payments, effectively converting our short term repurchase agreement borrowing or CDOs to a fixed rate. We also enter into interest rate cap agreements whereby, in exchange for a fee, we are reimbursed for interest paid in excess of a contractually specified capped rate.

Derivative financial instruments contain credit risk to the extent that the institutional counterparties may be unable to meet the terms of the agreements. We minimize this risk by limiting our counterparties to major financial institutions with good credit ratings. In addition, we regularly monitor the potential risk of loss with any one party resulting from this type of credit risk. Accordingly, we do not expect any material losses as a result of default by other parties, but cannot guaranty we do not have counterparty failures.

We enter into derivative transactions solely for risk management purposes. The decision of whether or not a given transaction, or a portion thereof, is hedged is made on a case-by-case basis, based on the risks involved and other factors as determined by senior management, including the financial impact on income and asset valuation and the restrictions imposed on REIT hedging activities by the Internal Revenue Code, among others. In determining whether to hedge a risk, we may consider whether other assets, liabilities, firm commitments and anticipated transactions already offset or reduce the risk. All transactions undertaken as a hedge are entered into with a view towards minimizing the potential for economic losses that could be incurred by us. Generally, all derivatives entered into are intended to qualify as cash flow hedges. To this end, terms of the hedges are matched closely to the terms of hedged items.

The following table summarizes the estimated fair value of derivative assets and liabilities as of December 31, 2010 and December 31, 2009 (dollar amounts in thousands):

|                                     | <b>December 31,<br/>2010</b> | <b>December 31,<br/>2009</b> |
|-------------------------------------|------------------------------|------------------------------|
| <b>Derivative assets:</b>           |                              |                              |
| Interest rate caps                  | \$ —                         | \$ 4                         |
| <b>Total derivative assets</b>      | <b>\$ —</b>                  | <b>\$ 4</b>                  |
| <b>Derivative liabilities:</b>      |                              |                              |
| Interest rate swaps                 | \$ 1,087                     | \$ 2,511                     |
| <b>Total derivative liabilities</b> | <b>\$ 1,087</b>              | <b>\$ 2,511</b>              |

#### **Balance Sheet Analysis - Stockholders' Equity**

Stockholders' equity at December 31, 2010 was \$68.5 million and included \$17.7 million of net unrealized gains, \$1.1 million in unrealized derivative losses related to cash flow hedges and \$18.8 million in unrealized gains primarily related to our CLOs presented as accumulated other comprehensive income.

## Statement of Operations Analysis

The following is a brief description of key terms from our statements of operations:

**Interest income and interest expense .** Our primary source of income is net interest income on our portfolio of assets. Net interest income is the difference between interest income, which is the income that we earn on our assets, and interest expense, which is the expense we pay on our portfolio borrowings, subordinated debt and convertible preferred debentures.

**Other Income (expense).** Other income (expense) includes loan losses for costs incurred with respect to the disposition of non-performing or early payment default loans we have originated or purchased from third parties or from losses incurred on non-performing loans held in securitization trusts. In addition, other income (expense) includes net gains (losses) from the sale of investments securities or the early termination of interest rate swaps and income from our investment in a limited partnership.

**General, administrative and other expenses .** Expenses we incur in our business consist primarily of salary and employee benefits, fees payable to HCS pursuant to the advisory agreement, professional fees, insurance and other general and administrative expenses. Other general and administrative expenses include expenses for office rent, supplies and equipment, computer and software expenses, telephone, travel and entertainment and other miscellaneous operating expenses.

**Income from discontinued operation.** Income from discontinued operations includes all revenues and expenses related to our discontinued mortgage lending business excluding those costs that will be retained by us.

### Results of Operations - Comparison of Years Ended December 31, 2010 and 2009

(dollar amounts in thousands)

|                                     | For the Years Ended December 31, |           |          |
|-------------------------------------|----------------------------------|-----------|----------|
|                                     | 2010                             | 2009      | % Change |
| Net interest income                 | \$ 10,288                        | \$ 16,860 | (39.0)%  |
| Other income                        | \$ 3,332                         | \$ 901    | 269.8%   |
| Total expenses                      | \$ 7,950                         | \$ 6,877  | 15.6%    |
| Income for continuing operations    | \$ 5,670                         | \$ 10,884 | (47.9)%  |
| Income from discontinued operations | \$ 1,135                         | \$ 786    | 44.4%    |
| Net income                          | \$ 6,805                         | \$ 11,670 | (41.7)%  |
| Basic income per common share       | \$ 0.72                          | \$ 1.25   | (42.4)%  |
| Diluted income per common share     | \$ 0.72                          | \$ 1.19   | (39.5)%  |

For the year ended December 31, 2010, we reported net income of \$6.8 million as compared to net income of \$11.7 million for the year ended December 31, 2009, which represents a \$4.9 million decrease. The decrease in net income was due primarily to a \$6.6 million decrease in net interest margin on our investment portfolio and loans held in securitization trusts, a \$1.1 million increase in general, administrative and other expenses and a \$0.2 million increase in impairment on investments resulting from our investment in New Bridger Holdings LLC, partially offset by a \$2.1 million increase in realized gain on securities, a \$0.5 million increase in income from an equity investment in a limited partnership and a \$0.4 million increase in income from discontinued operations. The provision for loan losses also includes a \$0.5 million provision related to our investment in New Bridger. The decline in net interest margin for the year ended December 31, 2010 as compared to the year ended December 31, 2009 was primarily due to a \$241.1 million decrease in our average interest earning assets to approximately \$370.8 million for the year ended December 31, 2010, which was partially offset by a 25 basis point increase in yield. The general, administrative and other expenses increase of \$1.1 million for the year ended December 31, 2010 as compared to December 31, 2009 was due primarily to a \$1.6 million increase in management fees to HCS, \$1.5 million of which resulted from an increase in incentive management fees, which was due, in part, to the sale by the Company in 2010 of certain non-Agency RMBS that were deemed managed assets under the Prior Advisory Agreement and the performance of other managed assets, and partially offset by a \$0.3 million decrease in salaries and benefits and a \$0.2 million decrease in other expenses.

## Comparative Net Interest Income

Our results of operations for our investment portfolio during a given period typically reflect the net interest spread earned on our investment portfolio of Agency RMBS, non-Agency RBMS, loans held in securitization trusts, loans held for investment and CLOs (our “Interest Earning Assets”). The net interest spread is impacted by factors such as our cost of financing, the interest rate our investments are earning and our interest rate hedging strategies. Furthermore, the amount of premium or discount paid on purchased portfolio investments and the prepayment rates on portfolio investments will impact the net interest spread as such factors will be amortized over the expected term of such investments. The following tables set forth the changes in net interest income, yields earned on our Interest Earning Assets and rates on financial arrangements for the years ended December 31, 2010 and 2009 (dollar amounts in thousands, except as noted):

|                                  | For the Years Ended December 31,       |                  |                    |                                        |                  |                    |
|----------------------------------|----------------------------------------|------------------|--------------------|----------------------------------------|------------------|--------------------|
|                                  | 2010                                   |                  |                    | 2009                                   |                  |                    |
|                                  | Average<br>Balance (1)<br>(\$Millions) | Amount           | Yield/<br>Rate (2) | Average<br>Balance (1)<br>(\$Millions) | Amount           | Yield/<br>Rate (2) |
| <b>Interest Income:</b>          |                                        |                  |                    |                                        |                  |                    |
| Interest earning assets          | \$ 416.2                               | \$ 16,567        | 3.98%              | \$ 643.2                               | \$ 30,085        | 4.68%              |
| Amortization of net discount     | (45.4)                                 | 3,332            | 1.39%              | (31.3)                                 | 1,010            | 0.40%              |
| <b>Total</b>                     | <b>\$ 370.8</b>                        | <b>\$ 19,899</b> | <b>5.37%</b>       | <b>\$ 611.9</b>                        | <b>\$ 31,095</b> | <b>5.08%</b>       |
| <b>Interest Expense:</b>         |                                        |                  |                    |                                        |                  |                    |
| Investment securities and loans  | \$ 302.7                               | \$ 4,864         | 1.61%              | \$ 537.0                               | \$ 8,572         | 1.57%              |
| Subordinated debentures          | 45.0                                   | 2,473            | 5.49%              | 45.0                                   | 3,189            | 6.99%              |
| Convertible preferred debentures | 20.0                                   | 2,274            | 11.37%             | 20.0                                   | 2,474            | 12.20%             |
| <b>Interest expense</b>          | <b>\$ 367.7</b>                        | <b>\$ 9,611</b>  | <b>2.61%</b>       | <b>\$ 602.0</b>                        | <b>\$ 14,235</b> | <b>2.33%</b>       |
| <b>Net interest income</b>       |                                        | <b>\$ 10,288</b> | <b>2.76%</b>       |                                        | <b>\$ 16,860</b> | <b>2.75%</b>       |

- (1) Our average balance of Interest Earning Assets is calculated each period as the daily average balance for the period of our Interest Earning Assets, excluding unrealized gains and losses. Our average balance of interest bearing liabilities is calculated each period as the daily average balance for the period of our financing arrangements (portfolio investments), CDOs, subordinated debentures and convertible preferred debentures.
- (2) Our net yield on Interest Earning Assets is calculated by dividing our interest income from our Interest Earning Assets for the period by our average Interest Earning Assets during the same period. Our interest expense rate is calculated by dividing our interest expense from our interest bearing liabilities for the period by our average interest bearing liabilities. The interest expense includes interest incurred on interest rate swaps.

### Comparative Net Interest Spread- Interest Earning Assets

The following table sets forth, among other things, the net interest spread for our portfolio of Interest Earning Assets by quarter for the eight most recently completed quarters, excluding the costs of our subordinated debentures and convertible preferred debentures.

| Quarter Ended      | Average<br>Interest<br>Earning<br>Assets<br>(\$ millions)<br>(1) | Weighted<br>Average<br>Coupon (2) | Weighted<br>Average<br>Cash Yield<br>on Interest<br>Earning<br>Assets (3) | Cost of Funds<br>(4) | Net Interest<br>Spread (5) | Constant<br>Prepayment<br>Rate<br>(CPR) (6) |
|--------------------|------------------------------------------------------------------|-----------------------------------|---------------------------------------------------------------------------|----------------------|----------------------------|---------------------------------------------|
| December 31, 2010  | \$ 318.0                                                         | 3.24%                             | 4.98%                                                                     | 1.45%                | 3.53%                      | 13.8%                                       |
| September 30, 2010 | \$ 343.5                                                         | 3.76%                             | 5.29%                                                                     | 1.66%                | 3.63%                      | 21.1%                                       |
| June 30, 2010      | \$ 393.8                                                         | 4.22 %                            | 5.28 %                                                                    | 1.58 %               | 3.70 %                     | 20.5 %                                      |
| March 31, 2010     | \$ 425.1                                                         | 4.50 %                            | 5.85 %                                                                    | 1.60 %               | 4.25 %                     | 18.6%                                       |
| December 31, 2009  | \$ 476.8                                                         | 4.75%                             | 5.78%                                                                     | 1.45%                | 4.33%                      | 18.1%                                       |
| September 30, 2009 | \$ 571.0                                                         | 4.98 %                            | 5.60 %                                                                    | 1.47 %               | 4.13 %                     | 22.5 %                                      |
| June 30, 2009      | \$ 600.5                                                         | 4.99 %                            | 5.09 %                                                                    | 1.48 %               | 3.61 %                     | 21.4 %                                      |
| March 31, 2009     | \$ 797.2                                                         | 4.22 %                            | 4.31 %                                                                    | 1.79 %               | 2.52 %                     | 12.3 %                                      |
| December 31, 2008  | \$ 841.7                                                         | 4.77 %                            | 4.65 %                                                                    | 3.34 %               | 1.31 %                     | 9.2 %                                       |

- (1) Our average Interest Earning Assets is calculated each quarter as the daily average balance of our Interest Earning Assets for the quarter, excluding unrealized gains and losses.
- (2) The Weighted Average Coupon reflects the weighted average rate of interest paid on our Interest Earning Assets for the quarter, net of fees paid. The percentages indicated in this column are the interest rates that will be effective through the interest rate reset date, where applicable, and have not been adjusted to reflect the purchase price we paid for the face amount of the security.
- (3) Our Weighted Average Cash Yield on Interest Earning Assets was calculated by dividing our annualized interest income from Interest Earning Assets for the quarter by our average Interest Earning Assets.
- (4) Our Cost of Funds was calculated by dividing our annualized interest expense from our Interest Earning Assets for the quarter by our average financing arrangements, portfolio investments and CDOs.
- (5) Net Interest Spread is the difference between our Weighted Average Cash Yield on Interest Earning Assets and our Cost of Funds.
- (6) Our Constant Prepayment Rate, or CPR, is the proportion of principal of our pool of loans that were paid off during each quarter.

### Comparative Net Interest Spread — Core Interest Earning Assets, a Non GAAP Financial Measure

Net Interest Spread—Core Interest Earning Assets represents a non-GAAP financial measure and is defined as GAAP Net Interest Spread plus unconsolidated investments in interest earning assets, such as our investment in limited partnership. Our investment in limited partnership represents our equity investment in a limited partnership that owns a pool of residential whole mortgage loans and from which we receive distributions equal to principal and interest payments and sales net of certain administrative expenses. Because the income we receive includes interest from the pool of mortgage loans, management considers the investment to be a functional equivalent to its Interest Earning Assets under GAAP. In order to evaluate the effective Net Interest Income of our investments, management uses Net Interest Spread—Core Interest Earning Assets to reflect the net interest spread of our investments as adjusted to reflect the addition of unconsolidated investments in interest earning assets. Management believes that Net Interest Spread—Core Interest Earning Assets provides useful information to investors as the income stream from this unconsolidated investment is similar to the net interest spread for the majority of our assets. Net Interest Spread—Core Interest Earning Assets should not be considered a substitute for our GAAP based calculation of Net Interest Spread.

The following table reconciles our GAAP net interest spread for our portfolio of Interest Earning Assets for the three months ended December 31, 2010, to our non-GAAP measure of Net Interest Spread — Core Interest Earning Assets. We acquired our unconsolidated investment in a limited partnership during the third and fourth quarters of 2010.

| Quarter Ended December 31, 2010   | Average<br>Interest<br>Earning<br>Assets<br>(\$ millions)<br>(1) | Weighted<br>Average<br>Coupon (2) | Weighted<br>Average<br>Cash Yield<br>on Interest<br>Earning<br>Assets (3) | Cost of<br>Funds (4) | Net Interest<br>Spread (5) |
|-----------------------------------|------------------------------------------------------------------|-----------------------------------|---------------------------------------------------------------------------|----------------------|----------------------------|
| Net Interest Spread –             |                                                                  |                                   |                                                                           |                      |                            |
| Interest Earning Assets           | \$ 318.0                                                         | 3.24%                             | 4.98%                                                                     | 1.45%                | 3.53%                      |
| Investment in Limited Partnership | \$ 11.1                                                          | 7.06%                             | 12.19%                                                                    | —%                   | 12.19%                     |
| Net Interest Spread –             |                                                                  |                                   |                                                                           |                      |                            |
| Core Interest Earning Assets      | \$ 329.1                                                         | 3.41%                             | 5.22%                                                                     | 1.45%                | 3.77%                      |

- (1) Our average Interest Earning Assets is calculated each quarter as the daily average balance of our Interest Earning Assets for the quarter, excluding unrealized gains and losses.
- (2) The Weighted Average Coupon reflects the weighted average rate of interest paid on our Interest Earning Assets for the quarter, net of fees paid. The percentages indicated in this column are the interest rates that will be effective through the interest rate reset date, where applicable, and have not been adjusted to reflect the purchase price we paid for the face amount of the security.
- (3) Our Weighted Average Cash Yield on Interest Earning Assets was calculated by dividing our annualized interest income from Interest Earning Assets for the quarter by our average Interest Earning Assets.
- (4) Our Cost of Funds was calculated by dividing our annualized interest expense from our Interest Earning Assets for the quarter by our average financing arrangements, portfolio investments and CDOs.
- (5) Net Interest Spread is the difference between our Weighted Average Cash Yield on Interest Earning Assets and our Cost of Funds.



**Comparative Expenses (dollar amounts in thousands)**

| <b>General, administrative and other expenses:</b> | <b>For the Year Ended December 31,</b> |                 |                 |
|----------------------------------------------------|----------------------------------------|-----------------|-----------------|
|                                                    | <b>2010</b>                            | <b>2009</b>     | <b>% Change</b> |
| Salaries and benefits                              | \$ 1,780                               | \$ 2,118        | (16.0)%         |
| Professional fees                                  | 1,199                                  | 1,284           | (6.6)%          |
| Insurance                                          | 651                                    | 524             | 24.2%           |
| Management fees                                    | 2,852                                  | 1,252           | 127.8%          |
| Other                                              | 1,468                                  | 1,699           | (13.6)%         |
| Total                                              | <u>\$ 7,950</u>                        | <u>\$ 6,877</u> | <u>15.6%</u>    |

The increase in general, administrative and other expenses of \$1.1 million for the year ended December 31, 2010 as compared to the year ended December 31, 2009 was primarily due to an increase in management fees of \$1.6 million to HCS, \$1.5 million of which resulted from an increase in incentive management fees, which was due to the performance of assets managed under the advisory agreement. The investments in these assets were originally acquired during 2009. The incentive fees were generated from realized gains from sales of non-Agency RMBS and excess interest returns from our CLO and non-Agency RMBS investments.

**Discontinued Operations (dollar amount in thousands)**

|                                                         | <b>For the Year Ended December 31,</b> |                 |                 |
|---------------------------------------------------------|----------------------------------------|-----------------|-----------------|
|                                                         | <b>2010</b>                            | <b>2009</b>     | <b>% Change</b> |
| <b>Revenues:</b>                                        |                                        |                 |                 |
| Net interest income                                     | \$ 220                                 | \$ 235          | (6.4)%          |
| Loan losses                                             | —                                      | (280)           | (100.0)%        |
| Other income (net)                                      | 1,183                                  | 1,290           | (8.3)%          |
| Total net revenues                                      | <u>\$ 1,403</u>                        | <u>\$ 1,245</u> | <u>12.7%</u>    |
| <b>Expenses:</b>                                        |                                        |                 |                 |
| General and administrative                              | 268                                    | 459             | (41.7)%         |
| Total expenses                                          | 268                                    | 459             | (41.7)%         |
| <b>Income before income tax provision</b>               | <u>1,135</u>                           | <u>786</u>      | <u>44.4%</u>    |
| Income tax provision                                    | —                                      | —               |                 |
| <b>Income from discontinued operations – net of tax</b> | <u>\$ 1,135</u>                        | <u>\$ 786</u>   | <u>44.4 %</u>   |

## Off-Balance Sheet Arrangements

Since inception, we have not maintained any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. Further, we have not guaranteed any obligations of unconsolidated entities nor do we have any commitment or intent to provide funding to any such entities. Accordingly, we are not materially exposed to any market, credit, liquidity or financing risk that could arise if we had engaged in such relationships.

## Liquidity and Capital Resources

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments, fund our operations, pay dividends to our stockholders and other general business needs. We recognize the need to have funds available for our operating businesses and to meet these potential cash requirements. Our investments and assets generate liquidity on an ongoing basis through principal and interest payments, prepayments net earnings held prior to payment of dividends and distributions from unconsolidated investments. In addition, depending on market conditions, the sale of investment securities or capital market transactions may provide additional liquidity. We intend to meet our liquidity needs through normal operations with the goal of avoiding unplanned sales of assets or emergency borrowing of funds. At December 31, 2010, we had cash balances of \$19.4 million, a receivable for securities sold of \$5.7 million, \$47.6 million in unencumbered securities, including \$18.0 million of RMBS, of which \$9.1 million are Agency RMBS, and borrowings of \$35.6 million under outstanding repurchase agreements. At December 31, 2010, we also had longer-term debt, including CDOs outstanding of \$220.0 million and subordinated debt of \$45.0 million. The CDOs are collateralized by the mortgage loans held in securitization trusts. On December 31, 2010, we redeemed all outstanding shares of our Series A Preferred Stock for an aggregate liquidation preference of \$20.0 million plus accrued dividends of \$0.5 million. Based on our current investment portfolio, new investment initiatives, leverage ratio and available borrowing arrangements, we believe our existing cash balances, funds available under our current repurchase agreements and cash flows from operations will meet our liquidity requirements for at least the next 12 months.

At December 31, 2010, our leverage ratio for our RMBS investment portfolio, which we define as our outstanding indebtedness under repurchase agreements divided by stockholders' equity, was less than 1 to 1. We have continued to utilize significantly less leverage than our previously targeted leverage due to the ongoing repositioning of our investment portfolio to a more diversified portfolio that includes elements of credit risk with reduced leverage, as well as the greater than anticipated amount of time involved in identifying and redeploying capital to suitable new investment opportunities. Because financing for certain of the assets that introduce credit risk remains unfavorable, to date, we have used cash from operating activities to finance assets other than Agency RMBS and prime ARM loans held in securitization trusts. As previously discussed above in "Item 1. Business," we recently formed our Midway Residential Mortgage Portfolio strategy. As of February 28, 2011, we had provided the Midway Residential Mortgage Portfolio with an aggregate of \$24.0 million, and we anticipate contributing additional capital to this investment in the future. Moreover, we expect that the Midway Residential Mortgage Portfolio will utilize some leverage in building the Midway Residential Mortgage Portfolio.

We had outstanding repurchase agreements, a form of collateralized short-term borrowing, with four different financial institutions as of December 31, 2010. These agreements are secured by certain of our Agency RMBS and bear interest rates that have historically moved in close relationship to LIBOR. Our borrowings under repurchase agreements are based on the fair value of our mortgage backed securities portfolio. Interest rate changes can have a negative impact on the valuation of these securities, reducing the amount we can borrow under these agreements. Moreover, our repurchase agreements allow the counterparties to determine a new market value of the collateral to reflect current market conditions and because these lines of financing are not committed, the counterparty can call the loan at any time. If a counterparty determines that the value of the collateral has decreased, the counterparty may initiate a margin call and require us to either post additional collateral to cover such decrease or repay a portion of the outstanding borrowing, on minimal notice. Moreover, in the event an existing counterparty elected to not renew the outstanding balance at its maturity into a new repurchase agreement, we would be required to repay the outstanding balance with cash or proceeds received from a new counterparty or to surrender the mortgage-backed securities that serve as collateral for the outstanding balance, or any combination thereof. If we are unable to secure financing from a new counterparty and had to surrender the collateral, we would expect to incur a significant loss.

We enter into interest rate swap agreements as a mechanism to reduce the interest rate risk of the RMBS portfolio. At December 31, 2010, we had \$58.8 million in notional interest rate swaps outstanding. Should market rates for similar term interest rate swaps drop below the fixed rates we have agreed to on our interest rate swaps, we will be required to post additional margin to the swap counterparty, reducing available liquidity. At December 31, 2010, the Company pledged \$1.2 million in cash margin to cover decreased valuations of interest rate swaps. The weighted average maturity of the swaps was 1.6 years at December 31, 2010.

We also own approximately \$3.8 million of loans held for sale, which are included in discontinued operations. Our inability to sell these loans at all or on favorable terms could adversely affect our profitability as any sale for less than the current reserved balance would result in a loss. Currently, these loans are not financed or pledged.

As it relates to loans sold previously under certain loan sale agreements by our discontinued mortgage lending business, we may be required to repurchase some of those loans or indemnify the loan purchaser for damages caused by a breach of the loan sale agreement. Most recently, we have addressed these requests by negotiating a net cash settlement based on the actual or assumed loss on the loan in lieu of repurchasing the loans. The Company periodically receives repurchase requests, each of which management reviews to determine, based on management's experience, whether such request may reasonably be deemed to have merit. As of December 31, 2010, we had a total of \$2.0 million of unresolved repurchase requests that management concluded may reasonably be deemed to have merit, against which we had a reserve of approximately \$0.3 million.

We paid quarterly cash dividends of \$0.25, \$0.25, \$0.18 and \$0.18 per common share in January, April, July, and October 2010, respectively. On December 20, 2010, we declared a 2010 fourth quarter cash dividend of \$0.18 per common share. The dividend was paid on January 25, 2011 to common stockholders of record as of December 30, 2010. On December 31, 2010, we paid a \$0.50 per share cash dividend, or approximately \$0.5 million in the aggregate, on shares of our Series A Preferred Stock to holders of record as of December 30, 2010. We also paid a \$0.63, \$0.63, \$0.50 and \$0.50 per share cash dividend on shares of our Series A Preferred Stock in January, April, July, and October 2010, respectively. Each of these dividends was paid out of the Company's working capital. We expect to continue to pay quarterly cash dividends on our common stock during the near term. However, our Board of Directors will continue to evaluate our dividend policy each quarter and will make adjustments as necessary, based on a variety of factors, including, among other things, the need to maintain our REIT status, our financial condition, liquidity, earnings projections and business prospects. Our dividend policy does not constitute an obligation to pay dividends, which only occurs when our Board of Directors declares a dividend.

We intend to make distributions to our stockholders to comply with the various requirements to maintain our REIT status and to minimize or avoid corporate income tax and the nondeductible excise tax. However, differences in timing between the recognition of REIT taxable income and the actual receipt of cash could require us to sell assets or to borrow funds on a short-term basis to meet the REIT distribution requirements and to avoid corporate income tax and the nondeductible excise tax.

## Inflation

For the periods presented herein, inflation has been relatively low and we believe that inflation has not had a material effect on our results of operations. The impact of inflation is primarily reflected in the increased costs of our operations. Virtually all our assets and liabilities are financial in nature. Our consolidated financial statements and corresponding notes thereto have been prepared in accordance with GAAP, which require the measurement of financial position and operating results in terms of historical dollars without considering the changes in the relative purchasing power of money over time due to inflation. As a result, interest rates and other factors influence our performance far more than inflation. Inflation affects our operations primarily through its effect on interest rates, since interest rates typically increase during periods of high inflation and decrease during periods of low inflation. During periods of increasing interest rates, demand for mortgages and a borrower's ability to qualify for mortgage financing in a purchase transaction may be adversely affected. During periods of decreasing interest rates, borrowers may prepay their mortgages, which in turn may adversely affect our yield and subsequently the value of our portfolio of mortgage assets.

## Contractual Obligations and Commitments

The Company had the following contractual obligations at December 31, 2010:

| (\$ amounts in thousands)     | Total             | Less than<br>1 year | 1 to 3 years     | 3 to 5 years     | More than<br>5 years |
|-------------------------------|-------------------|---------------------|------------------|------------------|----------------------|
| Operating leases              | \$ 458            | \$ 193              | \$ 265           | \$ —             | \$ —                 |
| Repurchase agreements         | 35,632            | 35,632              | —                | —                | —                    |
| CDOs (1)(2)                   | 235,156           | 20,472              | 32,998           | 29,479           | 152,207              |
| Subordinated debentures (1)   | 91,356            | 1,890               | 3,785            | 3,780            | 81,901               |
| Management Fees (3)           | 3,000             | 1,000               | 2,000            | —                | —                    |
| Interest rate swaps (1)       | 1,472             | 900                 | 572              | —                | —                    |
| Total contractual obligations | <u>\$ 367,074</u> | <u>\$ 60,087</u>    | <u>\$ 39,620</u> | <u>\$ 33,259</u> | <u>\$ 234,108</u>    |

- (1) Amounts include projected interest payments during the period. Interest based on interest rates in effect on December 31, 2010.
- (2) Maturities of our CDOs are dependent upon cash flows received from the underlying loans receivable. Our estimate of their repayment is based on scheduled principal payments and estimated principal prepayments based on our internal prepayment model on the underlying loans receivable. This estimate will differ from actual amounts to the extent prepayments and/or loan losses are experienced.
- (3) This disclosure assumes that we do not renew the HCS Advisory Agreement.

## **Advisory and Management Agreements**

As of December 31, 2010, the Company, HC and NYMF were parties to the HCS Advisory Agreement. Subsequent to December 31, 2010, the Company entered into the Midway Management Agreement. We have agreed to pay the external manager that is a party to each of those agreements certain fees for the performance of certain services thereunder. See “Item 1. Business” for a description of the fees and expenses payable by us under these agreements.

For the years ended December 31, 2010 and 2009, HCS earned aggregate base advisory and consulting fees of approximately \$0.9 million and \$0.8 million, respectively, and an incentive fee of approximately \$2.0 million and \$0.5 million, respectively. As of December 31, 2010, HCS was managing approximately \$48.2 million of assets on the Company’s behalf. As of December 31, 2010 and 2009, the Company had a management fee payable totaling \$0.7 million and \$0.3 million, respectively, included in accrued expenses and other liabilities.

## **Significance of Estimates and Critical Accounting Policies**

We prepare our consolidated financial statements in conformity with U.S. GAAP, many of which require the use of estimates, judgments and assumptions that affect reported amounts. These estimates are based, in part, on our judgment and assumptions regarding various economic conditions that we believe are reasonable based on facts and circumstances existing at the time of reporting. The results of these estimates affect reported amounts of assets, liabilities and accumulated other comprehensive income at the date of the consolidated financial statements and the reported amounts of income, expenses and other comprehensive income during the periods presented.

Changes in the estimates and assumptions could have a material effect on these financial statements. Accounting policies and estimates related to specific components of our consolidated financial statements are disclosed in the notes to our consolidated financial statements. In accordance with SEC guidance, those material accounting policies and estimates that we believe are most critical to an investor’s understanding of our financial results and condition and which require complex management judgment are discussed below.

*Revenue Recognition* . Interest income on our residential mortgage loans and mortgage-backed securities is a combination of the interest earned based on the outstanding principal balance of the underlying loan/security, the contractual terms of the assets and the amortization of yield adjustments, principally premiums and discounts, using generally accepted interest methods. The net GAAP cost over the par balance of self-originated loans held for investment and premium and discount associated with the purchase of mortgage-backed securities and loans are amortized into interest income over the lives of the underlying assets using the effective yield method as adjusted for the effects of estimated prepayments. Estimating prepayments and the remaining term of our interest yield investments require management judgment, which involves, among other things, consideration of possible future interest rate environments and an estimate of how borrowers will react to those environments, historical trends and performance. The actual prepayment speed and actual lives could be more or less than the amount estimated by management at the time of origination or purchase of the assets or at each financial reporting period.

With respect to interest rate swaps and caps that have not been designated as hedges, any net payments under, or fluctuations in the fair value of, such swaps and caps will be recognized in current earnings.

*Fair value*. The Company has established and documented processes for determining fair values. Fair value is based upon quoted market prices, where available. If listed prices or quotes are not available, then fair value is based upon internally developed models that primarily use inputs that are market-based or independently-sourced market parameters, including interest rate yield curves.

A financial instrument’s categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The three levels of valuation hierarchy are defined as follows:

*Level 1* - inputs to the valuation methodology are quoted prices (unadjusted) for identical assets or liabilities in active markets.

*Level 2* - inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.

*Level 3* - inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The following describes the valuation methodologies used for the Company's financial instruments measured at fair value, as well as the general classification of such instruments pursuant to the valuation hierarchy.

*a. Investment Securities Available for Sale (RMBS)* - Fair value for the RMBS in our portfolio is based on quoted prices provided by dealers who make markets in similar financial instruments. The dealers will incorporate common market pricing methods, including a spread measurement to the Treasury curve or interest rate swap curve as well as underlying characteristics of the particular security including coupon, periodic and life caps, collateral type, rate reset period and seasoning or age of the security. If quoted prices for a security are not reasonably available from a dealer, the security will be re-classified as a Level 3 security and, as a result, management will determine the fair value based on characteristics of the security that the Company receives from the issuer and based on available market information. Management reviews all prices used in determining valuation to ensure they represent current market conditions. This review includes surveying similar market transactions, comparisons to interest pricing models as well as offerings of like securities by dealers. The Company's investment securities that are comprised of RMBS are valued based upon readily observable market parameters and are classified as Level 2 fair values.

*b. Investment Securities Available for Sale (CLO)* - The fair value of the CLO notes, as of December 31, 2009, was based on management's valuation determined by using a discounted future cash flows model that management believes would be used by market participants to value similar financial instruments. At December 31, 2010, the fair value of the CLO notes was based on quoted prices provided by dealers who make markets in similar financial instruments. The CLO notes were previously classified as Level 3 fair values and were re-classified as Level 2 fair values in the fourth quarter of 2010.

*c. Interest Rate Swaps and Caps* - The fair value of interest rate swaps and caps are based on dealer quotes. The model utilizes readily observable market parameters, including treasury rates, interest rate swap spreads and swaption volatility curves. The Company's interest rate caps and swaps are classified as Level 2 fair values.

*Mortgage Loans Held for Sale (net)* - The fair value of mortgage loans held for sale (net) are estimated by the Company based on the price that would be received if the loans were sold as whole loans taking into consideration the aggregated characteristics of the loans such as, but not limited to, collateral type, index, interest rate, margin, length of fixed interest rate period, life cap, periodic cap, underwriting standards, age and credit.

*Mortgage Loans Held in Securitization Trusts (net) - Impaired Loans* - Impaired mortgage loans held in the securitization trusts are recorded at amortized cost less specific loan loss reserves. Impaired loan value is based on management's estimate of the net realizable value taking into consideration local market conditions of the distressed property, updated appraisal values of the property and estimated expenses required to remediate the impaired loan.

*Real Estate Owned Held in Securitization Trusts* - Real estate owned held in the securitization trusts are recorded at net realizable value. Any subsequent adjustment will result in the reduction in carrying value with the corresponding amount charge to earnings. Net realizable value based on an estimate of disposal taking into consideration local market conditions of the distressed property, updated appraisal values of the property and estimated expenses required sell the property.

*Mortgage Loans Held for Investment* - Mortgage loans held for investment are stated at unpaid principal balance, adjusted for any unamortized premium or discount, deferred fees or expenses, net of valuation allowances. Loans are considered to be impaired when it is probable that based upon current information and events, the Company will be unable to collect all amounts due under the contractual terms of the loan agreement. Based on the facts and circumstances of the individual loans being impaired, loan specific valuation allowances are established for the excess carrying value of the loan over either: (i) the present value of expected future cash flows discounted at the loan's original effective interest rate, (ii) the estimated fair value of the loan's underlying collateral if the loan is in the process of foreclosure or otherwise collateral dependent, or (iii) the loan's observable market price.

*Investment in Limited Partnership Interest* - Management periodically reviews its investments for impairment based on projected cash flows from the entity over the holding period. When any impairment is identified, the investments are written down to recoverable amounts.

## **Recent Accounting Pronouncements**

A discussion of recent accounting pronouncements and the possible effects on our financial statements is included in Note 1 — Summary of Significant Accounting Policies included in Item 8 of this Annual Report on Form 10-K.

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**Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Market risk is the exposure to loss resulting from changes in interest rates, credit spreads, foreign currency exchange rates, commodity prices and equity prices. Because we are invested solely in U.S.-dollar denominated instruments, primarily residential mortgage instruments, and our borrowings are also domestic and U.S. dollar denominated, we are not subject to foreign currency exchange, or commodity and equity price risk; the primary market risk that we are exposed to is interest rate risk and its related ancillary risks. Interest rate risk is highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political considerations and other factors beyond our control. All of our market risk sensitive assets, liabilities and related derivative positions are for non-trading purposes only.

Management recognizes the following primary risks associated with our business and the industry in which we conduct business:

- Interest rate risk
- Liquidity risk
- Prepayment risk
- Credit risk
- Market (fair value) risk

**Interest Rate Risk**

Interest rates are sensitive to many factors, including governmental, monetary, tax policies, domestic and international economic conditions, and political or regulatory matters beyond our control. Changes in interest rates affect the value of our RMBS and ARM loans we manage and hold in our investment portfolio, the variable-rate borrowings we use to finance our portfolio, and the interest rate swaps and caps we use to hedge our portfolio. All of our portfolio interest market risk sensitive assets, liabilities and related derivative positions are managed with a long term perspective and are not for trading purposes.

Interest rate risk is measured by the sensitivity of our current and future earnings to interest rate volatility, variability of spread relationships, the difference in re-pricing intervals between our assets and liabilities and the effect that interest rates may have on our cash flows, especially the speed at which prepayments occur on our residential mortgage-related assets. Changes in interest rates can affect our net interest income, which is the difference between the interest income earned on assets and our interest expense incurred in connection with our borrowings.

Our adjustable-rate hybrid ARM assets reset on various dates that are not matched to the reset dates on our repurchase agreements. In general, the repricing of our repurchase agreements occurs more quickly than the repricing of our assets. First, our floating rate borrowings may react to changes in interest rates before our adjustable rate assets because the weighted average next re-pricing dates on the related borrowings may have shorter time periods than that of the adjustable rate assets. Second, interest rates on adjustable rate assets may be limited to a “periodic cap” or an increase of typically 1% or 2% per adjustment period, while our borrowings do not have comparable limitations. Third, our adjustable rate assets typically lag changes in the applicable interest rate indices by 45 days due to the notice period provided to adjustable rate borrowers when the interest rates on their loans are scheduled to change.



We seek to manage interest rate risk in the portfolio by utilizing interest rate swaps and interest rate caps, with the goal of optimizing the earnings potential while seeking to maintain long term stable portfolio values. We continually monitor the duration of our mortgage assets and have a policy to hedge the financing such that the net duration of the assets, our borrowed funds related to such assets, and related hedging instruments, are less than one year.

Interest rates can also affect our net return on hybrid ARM securities and loans net of the cost of financing hybrid ARMs. We continually monitor and estimate the duration of our hybrid ARMs and have a policy to hedge the financing of the hybrid ARMs such that the net duration of the hybrid ARMs, our borrowed funds related to such assets, and related hedging instruments are less than one year. During a declining interest rate environment, the prepayment of hybrid ARMs may accelerate (as borrowers may opt to refinance at a lower rate) causing the amount of liabilities that have been extended by the use of interest rate swaps to increase relative to the amount of hybrid ARMs, possibly resulting in a decline in our net return on hybrid ARMs as replacement hybrid ARMs may have a lower yield than those being prepaid. Conversely, during an increasing interest rate environment, hybrid ARMs may prepay slower than expected, requiring us to finance a higher amount of hybrid ARMs than originally forecast and at a time when interest rates may be higher, resulting in a decline in our net return on hybrid ARMs. Our exposure to changes in the prepayment speeds of hybrid ARMs is mitigated by regular monitoring of the outstanding balance of hybrid ARMs, and adjusting the amounts anticipated to be outstanding in future periods and, on a regular basis, making adjustments to the amount of our fixed-rate borrowing obligations for future periods.

We utilize a model based risk analysis system to assist in projecting portfolio performances over a scenario of different interest rates. The model incorporates shifts in interest rates, changes in prepayments and other factors impacting the valuations of our financial securities, including mortgage-backed securities, repurchase agreements, interest rate swaps and interest rate caps.

Based on the results of the model, as of December 31, 2010, instantaneous changes in interest rates would have had the following effect on net interest income: (dollar amounts in thousands):

| <b>Changes in Net Interest Income</b> |                                       |
|---------------------------------------|---------------------------------------|
| <b>Changes in Interest Rates</b>      | <b>Changes in Net Interest Income</b> |
| <b>+200</b>                           | \$ (1,959)                            |
| <b>+100</b>                           | \$ (937)                              |
| <b>-100</b>                           | \$ 89                                 |

Interest rate changes may also impact our net book value as our mortgage assets and related hedge derivatives are marked-to-market each quarter. Generally, as interest rates increase, the value of our mortgage assets decrease and as interest rates decrease, the value of such investments will increase. In general, we would expect however that, over time, decreases in value of our portfolio attributable to interest rate changes will be offset, to the degree we are hedged, by increases in value of our interest rate swaps, and vice versa. However, the relationship between spreads on securities and spreads on swaps may vary from time to time, resulting in a net aggregate book value increase or decline. That said, unless there is a material impairment in value that would result in a payment not being received on a security or loan, changes in the book value of our portfolio will not directly affect our recurring earnings or our ability to make a distribution to our stockholders.

## ***Liquidity Risk***

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments, pay dividends to our stockholders and other general business needs. We recognize the need to have funds available to operate our business. It is our policy to have adequate liquidity at all times. We plan to meet liquidity through normal operations with the goal of avoiding unplanned sales of assets or emergency borrowing of funds.

Our principal sources of liquidity are the repurchase agreements on our RMBS, the CDOs we have issued to finance our loans held in securitization trusts, the principal and interest payments from mortgage assets and cash proceeds from the issuance of equity securities (as market and other conditions permit). We believe our existing cash balances and cash flows from operations will be sufficient for our liquidity requirements for at least the next 12 months.

As it relates to our investment portfolio, derivative financial instruments we use to hedge interest rate risk subject us to “margin call” risk. If the value of our pledged assets decrease, due to a change in interest rates, credit characteristics, or other pricing factors, we may be required to post additional cash or asset collateral, or reduce the amount we are able to borrow versus the collateral. Under our interest rate swaps typically we pay a fixed rate to the counterparties while they pay us a floating rate. If interest rates drop below the fixed rate we are paying on an interest rate swap, we may be required to post cash margin.

## ***Prepayment Risk***

When borrowers repay the principal on their mortgage loans before maturity or faster than their scheduled amortization, the effect is to shorten the period over which interest is earned, and therefore, reduce the yield for mortgage assets purchased at a premium to their then current balance, as with the majority of our assets. Conversely, mortgage assets purchased for less than their then current balance exhibit higher yields due to faster prepayments. Furthermore, prepayment speeds exceeding or lower than our modeled prepayment speeds impact the effectiveness of any hedges we have in place to mitigate financing and/or fair value risk. Generally, when market interest rates decline, borrowers have a tendency to refinance their mortgages, thereby increasing prepayments.

Our prepayment model will help determine the amount of hedging we use to off-set changes in interest rates. If actual prepayment rates are higher than modeled, the yield will be less than modeled in cases where we paid a premium for the particular mortgage asset. Conversely, when we have paid a premium, if actual prepayment rates experienced are slower than modeled, we would amortize the premium over a longer time period, resulting in a higher yield to maturity.

In an increasing prepayment environment, the timing difference between the actual cash receipt of principal paydowns and the announcement of the principal paydown may result in additional margin requirements from our repurchase agreement counterparties.

We mitigate prepayment risk by constantly evaluating our mortgage assets relative to prepayment speeds observed for assets with a similar structure, quality and characteristics. Furthermore, we stress-test the portfolio as to prepayment speeds and interest rate risk in order to further develop or make modifications to our hedge balances. Historically, we have not hedged 100% of our liability costs due to prepayment risk.

## ***Credit Risk***

Credit risk is the risk that we will not fully collect the principal we have invested in mortgage loans or other assets due to either borrower defaults, or a counterparty failure. Our portfolio of loans held in securitization trusts as of December 31, 2010 consisted of approximately \$229.3 million of securitized first liens originated in 2005 and earlier. The securitized first liens were principally originated in 2005 by our subsidiary, HC, prior to our exit from the mortgage lending business. These are predominately high-quality loans with an average loan-to-value (“LTV”) ratio at origination of approximately 70.5%, and average borrower FICO score of approximately 729. In addition, approximately 65.5% of these loans were originated with full income and asset verification. While we feel that our origination and underwriting of these loans will help to mitigate the risk of significant borrower default on these loans, we cannot assure you that all borrowers will continue to satisfy their payment obligations under these loans and thereby avoid default.

As of December 31, 2010, we owned approximately \$9.0 million on non-Agency RMBS senior securities. The non-Agency RMBS has a weighted average amortized purchase price of approximately 90.7% of current par value. Management believes the purchase price discount coupled with the credit support within the bond structure protects us from principal loss under most stress scenarios for these non-Agency RMBS. In addition, as of December 31, 2010 we own approximately \$29.5 million of notes issued by a CLO at a discounted purchase price equal to 24.6% of par. The securities are backed by a portfolio of middle market corporate loans.

### ***Market (Fair Value) Risk***

Changes in interest rates also expose us to market risk that the market value (fair value) on our assets may decline. For certain of the financial instruments that we own, fair values will not be readily available since there are no active trading markets for these instruments as characterized by current exchanges between willing parties. Accordingly, fair values can only be derived or estimated for these investments using various valuation techniques, such as computing the present value of estimated future cash flows using discount rates commensurate with the risks involved. However, the determination of estimated future cash flows is inherently subjective and imprecise. Minor changes in assumptions or estimation methodologies can have a material effect on these derived or estimated fair values. These estimates and assumptions are indicative of the interest rate environments as of December 31, 2010, and do not take into consideration the effects of subsequent interest rate fluctuations.

We note that the values of our investments in mortgage-backed securities and in derivative instruments, primarily interest rate hedges on our debt, will be sensitive to changes in market interest rates, interest rate spreads, credit spreads and other market factors. The value of these investments can vary and has varied materially from period to period. Historically, the values of our mortgage loan portfolio have tended to vary inversely with those of its derivative instruments.

The following describes the methods and assumptions we use in estimating fair values of our financial instruments:

Fair value estimates are made as of a specific point in time based on estimates using present value or other valuation techniques. These techniques involve uncertainties and are significantly affected by the assumptions used and the judgments made regarding risk characteristics of various financial instruments, discount rates, estimate of future cashflows, future expected loss experience and other factors.

Changes in assumptions could significantly affect these estimates and the resulting fair values. Derived fair value estimates cannot be substantiated by comparison to independent markets and, in many cases, could not be realized in an immediate sale of the instrument. Also, because of differences in methodologies and assumptions used to estimate fair values, the fair values used by us should not be compared to those of other companies.

The fair values of our investment securities are generally based on market prices provided by dealers who make markets in these financial instruments. If the fair value of a security is not reasonably available from a dealer, management estimates the fair value based on characteristics of the security that we receive from the issuer and on available market information.

The fair value of mortgage loans held in securitization trusts is estimated using pricing models and taking into consideration the aggregated characteristics of groups of loans such as, but not limited to, collateral type, index, interest rate, margin, length of fixed-rate period, life cap, periodic cap, underwriting standards, age and credit estimated using the estimated market prices for similar types of loans. Due to significant market dislocation over the past 18 months, secondary market prices were given minimal weighting in determining the fair value of these loans at December 31, 2010 and 2009.

The fair value of these CDOs is based on discounted cash flows as well as market pricing on comparable CDOs.

The market risk management discussion and the amounts estimated from the analysis that follows are forward-looking statements that assume that certain market conditions occur. Actual results may differ materially from these projected results due to changes in our portfolio assets and borrowings mix and due to developments in the domestic and global financial and real estate markets. Developments in the financial markets include the likelihood of changing interest rates and the relationship of various interest rates and their impact on our portfolio yield, cost of funds and cash flows. The analytical methods that we use to assess and mitigate these market risks should not be considered projections of future events or operating performance.

As a financial institution that has only invested in U.S.-dollar denominated instruments, primarily residential mortgage instruments, and has only borrowed money in the domestic market, we are not subject to foreign currency exchange or commodity price risk. Rather, our market risk exposure is largely due to interest rate risk. Interest rate risk impacts our interest income, interest expense and the market value on a large portion of our assets and liabilities. The management of interest rate risk attempts to maximize earnings and to preserve capital by minimizing the negative impacts of changing market rates, asset and liability mix, and prepayment activity.

The table below presents the sensitivity of the market value and net duration changes of our portfolio as of December 31, 2010, using a discounted cash flow simulation model assuming an instantaneous interest rate shift. Application of this method results in an estimation of the fair market value change of our assets, liabilities and hedging instruments per 100 basis point (“bp”) shift in interest rates.

The use of hedging instruments is a critical part of our interest rate risk management strategies, and the effects of these hedging instruments on the market value of the portfolio are reflected in the model's output. This analysis also takes into consideration the value of options embedded in our mortgage assets including constraints on the re-pricing of the interest rate of assets resulting from periodic and lifetime cap features, as well as prepayment options. Assets and liabilities that are not interest rate-sensitive such as cash, payment receivables, prepaid expenses, payables and accrued expenses are excluded.

Changes in assumptions including, but not limited to, volatility, mortgage and financing spreads, prepayment behavior, defaults, as well as the timing and level of interest rate changes will affect the results of the model. Therefore, actual results are likely to vary from modeled results.

| Changes in<br>Interest Rates | Market Value Changes       |                   |
|------------------------------|----------------------------|-------------------|
|                              | Changes in<br>Market Value | Net<br>Duration   |
|                              | (Amount in thousands)      |                   |
| +200                         | \$ (5,113)                 | 0.86 years        |
| +100                         | \$ (2,559)                 | 0.80 years        |
| <b>Base</b>                  | <b>—</b>                   | <b>0.70 years</b> |
| -100                         | \$ 1,075                   | 0.42 years        |

It should be noted that the model is used as a tool to identify potential risk in a changing interest rate environment but does not include any changes in portfolio composition, financing strategies, market spreads or changes in overall market liquidity.

Based on the assumptions used, the model output suggests a very low degree of portfolio price change given increases in interest rates, which implies that our cash flow and earning characteristics should be relatively stable for comparable changes in interest rates.

Although market value sensitivity analysis is widely accepted in identifying interest rate risk, it does not take into consideration changes that may occur such as, but not limited to, changes in investment and financing strategies, changes in market spreads and changes in business volumes. Accordingly, we make extensive use of an earnings simulation model to further analyze our level of interest rate risk.

There are a number of key assumptions in our earnings simulation model. These key assumptions include changes in market conditions that affect interest rates, the pricing of ARM products, the availability of investment assets and the availability and the cost of financing for portfolio assets. Other key assumptions made in using the simulation model include prepayment speeds and management's investment, financing and hedging strategies, and the issuance of new equity. We typically run the simulation model under a variety of hypothetical business scenarios that may include different interest rate scenarios, different investment strategies, different prepayment possibilities and other scenarios that provide us with a range of possible earnings outcomes in order to assess potential interest rate risk. The assumptions used represent our estimate of the likely effect of changes in interest rates and do not necessarily reflect actual results. The earnings simulation model takes into account periodic and lifetime caps embedded in our assets in determining the earnings at risk.

**Item 8. *FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA***

Our financial statements and the related notes, together with the Report of Independent Registered Public Accounting Firm thereon, as required by this Item 8, are set forth beginning on page F-1 of this Annual Report on Form 10-K and are incorporated herein by reference.

**Item 9. *CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.***

None.

## **Item 9A. CONTROLS AND PROCEDURES**

*Evaluation of Disclosure Controls and Procedures* - We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to our management as appropriate to allow timely decisions regarding required disclosures. An evaluation was performed under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended) as of December 31, 2010. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of December 31, 2010.

*Management's Report on Internal Control Over Financial Reporting* . Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rule 13a-15(f). Our internal control system was designed to provide reasonable assurance to our management and Board of Directors regarding the reliability, preparation and fair presentation of published financial statements in accordance with generally accepted accounting principles. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control - Integrated Framework* , issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in *Internal Control - Integrated Framework* , our management concluded that our internal control over financial reporting was effective as of December 31, 2010.

This Annual Report on Form 10-K does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by our independent registered public accounting firm pursuant to the rules of the SEC that permit us to provide only management's report in this Annual Report on Form 10-K.

*Changes in Internal Control Over Financial Reporting.* There have been no changes in our internal control over financial reporting during the quarter ended December 31, 2010 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **Item 9B. OTHER INFORMATION**

None.

### **PART III**

#### **Item 10. *DIRECTORS, EXECUTIVE OFFICER AND CORPORATE GOVERNANCE***

The information required by this item is included in our Proxy Statement for our 2011 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year ended December 31, 2010 (the “2011 Proxy Statement”) and is incorporated herein by reference.

#### **Item 11. *EXECUTIVE COMPENSATION***

The information required by this item is included in the 2011 Proxy Statement and is incorporated herein by reference.

#### **Item 12. *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS***

Except as set forth below, the information required by this item is included in the 2011 Proxy Statement and is incorporated herein by reference.

The information presented under the heading “Market for the Registrant’s Common Equity and Related Stockholder Matters — Securities Authorized for Issuance Under Equity Compensation Plans” in Item 5 of Part II of this Form 10-K is incorporated herein by reference.

#### **Item 13. *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE***

The information required by this item is included in the 2011 Proxy Statement and is incorporated herein by reference.

#### **Item 14. *PRINCIPAL ACCOUNTING FEES AND SERVICES***

The information required by this item is included in the 2011 Proxy Statement and is incorporated herein by reference.

## PART IV

### Item 15. *EXHIBITS, FINANCIAL STATEMENT SCHEDULES*

(a) Financial Statements

|                                                                              | <u>Page</u> |
|------------------------------------------------------------------------------|-------------|
| Report of Independent Registered Public Accounting Firm - Grant Thornton LLP | F-2         |
| Consolidated Balance Sheets                                                  | F-3         |
| Consolidated Statements of Operations                                        | F-4         |
| Consolidated Statements of Stockholders' Equity                              | F-5         |
| Consolidated Statements of Cash Flows                                        | F-6         |
| Notes to Consolidated Financial Statements                                   | F-7         |

(b) Exhibits.

The information set forth under "Exhibit Index" below is incorporated herein by reference.



## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### NEW YORK MORTGAGE TRUST, INC.

Date: March 4, 2011

By: /s/ Steven R. Mumma

Steven R. Mumma  
Chief Executive Officer and President  
(Principal Executive Officer)

Date: March 4, 2011

By: /s/ Fredric S. Starker

Fredric S. Starker  
Chief Financial Officer  
(Principal Financial and Accounting Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

| <u>Signature</u>                                     | <u>Title</u>                                                                     | <u>Date</u>   |
|------------------------------------------------------|----------------------------------------------------------------------------------|---------------|
| <u>/s/ Steven R. Mumma</u><br>Steven R. Mumma        | Chief Executive Officer, President and Director<br>(Principal Executive Officer) | March 4, 2011 |
| <u>/s/ Fredric S. Starker</u><br>Frederic S. Starker | Chief Financial Officer<br>(Principal Financial and Accounting Officer)          | March 4, 2011 |
| <u>/s/ James J. Fowler</u><br>James J. Fowler        | Chairman of the Board                                                            | March 3, 2011 |
| <u>/s/ Alan L. Hainey</u><br>Alan L. Hainey          | Director                                                                         | March 3, 2011 |
| <u>/s/ Steven G. Norcutt</u><br>Steven G. Norcutt    | Director                                                                         | March 3, 2011 |
| <u>/s/ Daniel K. Osborne</u><br>Daniel K. Osborne    | Director                                                                         | March 3, 2011 |

**NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES**  
**CONSOLIDATED FINANCIAL STATEMENTS**  
**AND**  
**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

For Inclusion in Form 10-K

Filed with

United States Securities and Exchange Commission

December 31, 2010

**NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES**

**Index to Consolidated Financial Statements**

|                                                                              | <b>Page</b> |
|------------------------------------------------------------------------------|-------------|
| <b>FINANCIAL STATEMENTS:</b>                                                 |             |
| Report of Independent Registered Public Accounting Firm - Grant Thornton LLP | F-2         |
| Consolidated Balance Sheets                                                  | F-3         |
| Consolidated Statements of Operations                                        | F-4         |
| Consolidated Statements of Stockholders' Equity                              | F-5         |
| Consolidated Statements of Cash Flows                                        | F-6         |
| Notes to Consolidated Financial Statements                                   | F-7         |

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders  
New York Mortgage Trust, Inc.

We have audited the accompanying consolidated balance sheets of New York Mortgage Trust, Inc. (a Maryland corporation) and subsidiaries (the “Company”) as of December 31, 2010 and 2009, and the related consolidated statements of operations, stockholders’ equity, and cash flows for each of the two years in the period ended December 31, 2010. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of New York Mortgage Trust, Inc. as of December 31, 2010 and 2009, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2010 in conformity with accounting principles generally accepted in the United States of America.

/s/ Grant Thornton LLP

New York, New York  
March 3, 2011

**NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(Dollar amounts in thousands)

|                                                                                                                                                                   | <b>December 31,<br/>2010</b> | <b>December 31,<br/>2009</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|------------------------------|
| <b>ASSETS</b>                                                                                                                                                     |                              |                              |
| Investment securities - available for sale, at fair value (including pledged securities of \$38,475 and \$91,071 at December 31, 2010 and 2009, respectively)     | \$ 86,040                    | \$ 176,691                   |
| Mortgage loans held in securitization trusts (net)                                                                                                                | 228,185                      | 276,176                      |
| Mortgage loans held for investment                                                                                                                                | 7,460                        | -                            |
| Investment in limited partnership                                                                                                                                 | 18,665                       | -                            |
| Cash and cash equivalents                                                                                                                                         | 19,375                       | 24,522                       |
| Receivable for securities sold                                                                                                                                    | 5,653                        | -                            |
| Receivables and other assets                                                                                                                                      | 8,916                        | 11,425                       |
| <b>Total Assets</b>                                                                                                                                               | <b>\$ 374,294</b>            | <b>\$ 488,814</b>            |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>                                                                                                                       |                              |                              |
| <b>Liabilities:</b>                                                                                                                                               |                              |                              |
| Financing arrangements, portfolio investments                                                                                                                     | \$ 35,632                    | \$ 85,106                    |
| Collateralized debt obligations                                                                                                                                   | 219,993                      | 266,754                      |
| Derivative liabilities                                                                                                                                            | 1,087                        | 2,511                        |
| Accrued expenses and other liabilities                                                                                                                            | 4,095                        | 6,713                        |
| Convertible preferred debentures (net)                                                                                                                            | -                            | 19,851                       |
| Subordinated debentures (net)                                                                                                                                     | 45,000                       | 44,892                       |
| <b>Total liabilities</b>                                                                                                                                          | <b>305,807</b>               | <b>425,827</b>               |
| <b>Commitments and Contingencies</b>                                                                                                                              |                              |                              |
| <b>Stockholders' Equity:</b>                                                                                                                                      |                              |                              |
| Common stock, \$0.01 par value, 400,000,000 shares authorized, 9,425,442 and 9,415,094, shares issued and outstanding at December 31, 2010 and 2009, respectively | 94                           | 94                           |
| Additional paid-in capital                                                                                                                                        | 135,300                      | 142,519                      |
| Accumulated other comprehensive income                                                                                                                            | 17,732                       | 11,818                       |
| Accumulated deficit                                                                                                                                               | (84,639)                     | (91,444)                     |
| Total stockholders' equity                                                                                                                                        | 68,487                       | 62,987                       |
| <b>Total Liabilities and Stockholders' Equity</b>                                                                                                                 | <b>\$ 374,294</b>            | <b>\$ 488,814</b>            |

See notes to consolidated financial statements.

**NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(Dollar amounts in thousands, except per share data)

|                                                               | <b>For the Year<br/>Ended December 31,</b> |                  |
|---------------------------------------------------------------|--------------------------------------------|------------------|
|                                                               | <u>2010</u>                                | <u>2009</u>      |
| INTEREST INCOME                                               | \$ 19,899                                  | \$ 31,095        |
| INTEREST EXPENSE:                                             |                                            |                  |
| Investment securities and loans held in securitization trusts | 4,864                                      | 8,572            |
| Subordinated debentures                                       | 2,473                                      | 3,189            |
| Convertible preferred debentures                              | 2,274                                      | 2,474            |
| Total interest expense                                        | <u>9,611</u>                               | <u>14,235</u>    |
| NET INTEREST INCOME                                           | <u>10,288</u>                              | <u>16,860</u>    |
| OTHER INCOME (EXPENSE):                                       |                                            |                  |
| Provision for loan losses                                     | (2,230)                                    | (2,262)          |
| Impairment loss on investments                                | (296)                                      | (119)            |
| Income from investment in limited partnership                 | 496                                        | -                |
| Realized gain on investment securities and related hedges     | 5,362                                      | 3,282            |
| Total other income (expense)                                  | <u>3,332</u>                               | <u>901</u>       |
| General, administrative and other expenses                    | <u>7,950</u>                               | <u>6,877</u>     |
| INCOME FROM CONTINUING OPERATIONS                             | 5,670                                      | 10,884           |
| Income from discontinued operation - net of tax               | 1,135                                      | 786              |
| NET INCOME                                                    | <u>\$ 6,805</u>                            | <u>\$ 11,670</u> |
| Basic income per common share                                 | <u>\$ 0.72</u>                             | <u>\$ 1.25</u>   |
| Diluted income per common share                               | <u>\$ 0.72</u>                             | <u>\$ 1.19</u>   |
| Dividends declared per common share                           | <u>\$ 0.79</u>                             | <u>\$ 0.91</u>   |
| Weighted average shares outstanding-basic                     | <u>9,422</u>                               | <u>9,367</u>     |
| Weighted average shares outstanding-diluted                   | <u>9,422</u>                               | <u>11,867</u>    |

See notes to consolidated financial statements.

**NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
**For the Years Ended December 31, 2010 and 2009**  
**(Dollar amounts in thousands)**

|                                                                                   | <b>Common<br/>Stock</b> | <b>Additional<br/>Paid-In<br/>Capital</b> | <b>Accumulated<br/>Deficit</b> | <b>Accumulated<br/>Other<br/>Comprehensive<br/>Income/(Loss)</b> | <b>Comprehensive<br/>Income</b> | <b>Total</b>     |
|-----------------------------------------------------------------------------------|-------------------------|-------------------------------------------|--------------------------------|------------------------------------------------------------------|---------------------------------|------------------|
| Balance, January 1, 2009                                                          | \$ 93                   | \$ 150,790                                | \$ (103,114)                   | \$ (8,521)                                                       |                                 | \$ 39,248        |
| Net income                                                                        |                         |                                           | 11,670                         |                                                                  | \$ 11,670                       | 11,670           |
| Dividends declared                                                                |                         | (8,531)                                   |                                |                                                                  |                                 | (8,531)          |
| Restricted stock                                                                  | 1                       | 260                                       |                                |                                                                  |                                 | 261              |
| Reclassification adjustment for<br>net gain included in net income                |                         |                                           |                                | (2,657)                                                          | (2,657)                         | (2,657)          |
| Increase in net unrealized gain on<br>available for sale securities               |                         |                                           |                                | 20,340                                                           | 20,340                          | 20,340           |
| Increase in fair value of derivative<br>instruments utilized for cash flow hedges |                         |                                           |                                | 2,656                                                            | 2,656                           | 2,656            |
| Comprehensive income                                                              |                         |                                           |                                |                                                                  | 32,009                          |                  |
| Balance, January 1, 2010                                                          | <u>94</u>               | <u>142,519</u>                            | <u>(91,444)</u>                | <u>11,818</u>                                                    |                                 | <u>62,987</u>    |
| Net income                                                                        |                         |                                           | 6,805                          |                                                                  | 6,805                           | 6,805            |
| Dividends declared                                                                |                         | (7,444)                                   |                                |                                                                  |                                 | (7,444)          |
| Restricted stock                                                                  |                         | 225                                       |                                |                                                                  |                                 | 225              |
| Reclassification adjustment for<br>net gain included in net income                |                         |                                           |                                | (5,011)                                                          | (5,011)                         | (5,011)          |
| Increase in net unrealized gain on<br>available for sale securities               |                         |                                           |                                | 9,106                                                            | 9,106                           | 9,106            |
| Increase in fair value of derivative<br>instruments utilized for cash flow hedges |                         |                                           |                                | 1,819                                                            | 1,819                           | 1,819            |
| Comprehensive income                                                              |                         |                                           |                                |                                                                  | <u>\$ 12,719</u>                |                  |
| Balance, December 31, 2010                                                        | <u>\$ 94</u>            | <u>\$ 135,300</u>                         | <u>\$ (84,639)</u>             | <u>\$ 17,732</u>                                                 |                                 | <u>\$ 68,487</u> |

See notes to consolidated financial statements.

**NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Dollar amounts in thousands)

|                                                                                             | <b>For the Year Ended<br/>December 31,</b> |                         |
|---------------------------------------------------------------------------------------------|--------------------------------------------|-------------------------|
|                                                                                             | <u>2010</u>                                | <u>2009</u>             |
| <b>Cash Flows from Operating Activities:</b>                                                |                                            |                         |
| Net income                                                                                  | \$ 6,805                                   | \$ 11,670               |
| Adjustments to reconcile net income to net cash (used in) provided by operating activities: |                                            |                         |
| Depreciation and amortization                                                               | 669                                        | 1,435                   |
| Net accretion on investment securities and mortgage loans held in securitization trusts     | (3,248)                                    | (743)                   |
| Realized gain on securities and related hedges                                              | (5,362)                                    | (3,280)                 |
| Impairment loss on investment securities                                                    | 296                                        | 119                     |
| Proceeds from repayments or sales of mortgage loans                                         | 32                                         | 1,196                   |
| Provision for loan losses                                                                   | 2,230                                      | 2,262                   |
| Income from investment in limited partnership                                               | (496)                                      | -                       |
| Distributions from investment in limited partnership                                        | 234                                        | -                       |
| Restricted stock issuance                                                                   | 225                                        | 261                     |
| Other                                                                                       | -                                          | 270                     |
| Changes in operating assets and liabilities:                                                |                                            |                         |
| Receivables and other assets                                                                | 269                                        | 795                     |
| Accrued expenses and other liabilities                                                      | (1,959)                                    | (2,212)                 |
| Net cash (used in) provided by operating activities                                         | <u>(305)</u>                               | <u>11,773</u>           |
| <b>Cash Flows from Investing Activities:</b>                                                |                                            |                         |
| Restricted cash                                                                             | 1,610                                      | 4,910                   |
| Purchases of investment securities                                                          | (5)                                        | (43,869)                |
| Issuance of mortgage loans held for investment                                              | (7,460)                                    | -                       |
| Purchase of investment in limited partnership                                               | (19,359)                                   | -                       |
| Proceeds from investment in limited partnership                                             | 956                                        | -                       |
| Proceeds from sales of investment securities                                                | 46,024                                     | 296,553                 |
| Principal repayments received on mortgage loans held in securitization trusts               | 45,744                                     | 68,914                  |
| Principal paydowns on investment securities - available for sale                            | 52,174                                     | 70,343                  |
| Net cash provided by investing activities                                                   | <u>119,684</u>                             | <u>396,851</u>          |
| <b>Cash Flows from Financing Activities:</b>                                                |                                            |                         |
| Decrease in financing arrangements                                                          | (49,474)                                   | (317,223)               |
| Dividends paid                                                                              | (8,102)                                    | (7,108)                 |
| Redemption of convertible preferred debentures                                              | (20,000)                                   | -                       |
| Payments made on collateralized debt obligations                                            | (46,950)                                   | (69,158)                |
| Cash used in financing activities                                                           | <u>(124,526)</u>                           | <u>(393,489)</u>        |
| <b>Net (Decrease) Increase in Cash and Cash Equivalents</b>                                 | <u>(5,147)</u>                             | <u>15,135</u>           |
| <b>Cash and Cash Equivalents - Beginning of Year</b>                                        | <u>24,522</u>                              | <u>9,387</u>            |
| <b>Cash and Cash Equivalents - End of Year</b>                                              | <u><u>\$ 19,375</u></u>                    | <u><u>\$ 24,522</u></u> |
| <b>Supplemental Disclosure:</b>                                                             |                                            |                         |
| Cash paid for interest                                                                      | <u><u>\$ 9,730</u></u>                     | <u><u>\$ 13,456</u></u> |
| <b>Non-Cash Investment Activities:</b>                                                      |                                            |                         |
| Sale of investment securities not yet settled                                               | <u><u>\$ 5,653</u></u>                     | <u><u>\$ -</u></u>      |
| <b>Non-Cash Financing Activities:</b>                                                       |                                            |                         |
| Dividends declared to be paid in subsequent period                                          | <u><u>\$ 1,697</u></u>                     | <u><u>\$ 2,355</u></u>  |

|                           |               |               |
|---------------------------|---------------|---------------|
| Grant of restricted stock | \$ <u>183</u> | \$ <u>261</u> |
|---------------------------|---------------|---------------|

See notes to consolidated financial statements.



## NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### 1. Summary of Significant Accounting Policies

*Organization* - New York Mortgage Trust, Inc., together with its consolidated subsidiaries ("NYMT," the "Company," "we," "our" and "us"), is a real estate investment trust, or REIT, in the business of acquiring, investing in, financing and managing primarily mortgage-related assets. Our principal business objective is to generate net income for distribution to our stockholders resulting from the spread between the interest and other income we earn on our interest-earning assets and the interest expense we pay on the borrowings that we use to finance our leveraged assets and our operating costs, which we refer to as our net interest income. We intend to achieve this objective by investing in a broad class of mortgage-related and financial assets that in aggregate will generate what we believe are attractive risk-adjusted total returns for our stockholders. We also may opportunistically acquire and manage various other types of mortgage-related and financial assets that we believe will compensate us appropriately for the risks associated with them.

The Company conducts its business through the parent company, NYMT, and several subsidiaries, including special purpose subsidiaries established for loan securitization purposes, a taxable REIT subsidiary ("TRS") and a qualified REIT subsidiary ("QRS"). The Company conducts certain of its portfolio investment operations through its wholly-owned TRS, Hypotheca Capital, LLC ("HC"), in order to utilize, to the extent permitted by law, some or all of a net operating loss carry-forward held in HC that resulted from the Company's exit from the mortgage lending business. Prior to March 31, 2007, the Company conducted substantially all of its mortgage lending business through HC. The Company's wholly-owned QRS, New York Mortgage Funding, LLC ("NYMF"), currently holds certain mortgage-related assets for regulatory compliance purposes. The Company also may conduct certain other portfolio investment operations related to its alternative investment strategy through NYMF. The Company consolidates all of its subsidiaries under generally accepted accounting principles in the United States of America ("GAAP").

The Company is organized and conducts its operations to qualify as a REIT for federal income tax purposes. As such, the Company will generally not be subject to federal income tax on that portion of its income that is distributed to stockholders if it distributes at least 90% of its REIT taxable income to its stockholders by the due date of its federal income tax return and complies with various other requirements.

*Basis of Presentation* - The accompanying consolidated financial statements have been prepared on the accrual basis of accounting in accordance with U.S. generally accepted accounting principles ("GAAP"). The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The consolidated financial statements of the Company include the accounts of all subsidiaries; significant intercompany accounts and transactions have been eliminated.

Prior period amounts have been reclassified to conform to current period classifications, including the reclassification of assets and liabilities related to discontinued operations on the balance sheet from a separate line item to receivables and other assets and accounts payable, accrued expenses and liabilities.

The Company has evaluated all events or transactions through the date of this filing. The Company did not have any material subsequent events that impacted its consolidated financial statements.

Effective July 1, 2009, the Company adopted the provisions of the Financial Accounting Standards Board ("FASB"), Accounting Standards Codification, (the "Codification"), which is now the source of authoritative GAAP. While the Codification did not change GAAP, all existing authoritative accounting literature, with certain exceptions, was superseded and incorporated into the Codification. As a result, pre-Codification references to GAAP have been eliminated.

*Cash and Cash Equivalents* - Cash and cash equivalents include cash on hand, amounts due from banks and overnight deposits. The Company maintains its cash and cash equivalents in highly rated financial institutions, and at times these balances exceed insurable amounts.

*Receivables and Other Assets* – Receivables and other assets totaled \$8.9 million as of December 31, 2010, and consist of \$4.0 million of assets related to discontinued operations, \$1.4 million of restricted cash, \$1.1 million related to escrow advances, \$0.7 million of real estate owned (“REO”) in securitization trusts, \$0.6 million of capitalization expenses related to equity and bond issuance cost, \$0.6 million of accrued interest receivable, \$0.4 million of prepaid expenses and \$0.1 million of deferred tax asset. The restricted cash of \$1.4 million includes \$1.2 million held by counterparties as collateral for hedging instruments and \$0.2 million as collateral for a letter of credit related to the lease of the Company’s corporate headquarters. Receivables and other assets totaled \$11.4 million as of December 31, 2009, and consist of \$4.2 million of assets related to discontinued operations, \$3.0 million of restricted cash, \$2.0 million of accrued interest receivable, \$0.7 million of other assets, \$0.5 million of real estate owned (“REO”) in securitization trusts, \$0.5 million of capitalization expenses related to equity and bond issuance cost, \$0.3 million of prepaid expenses and \$0.2 million related to escrow advances. The restricted cash of \$3.0 million includes \$2.9 million held by counterparties as collateral for hedging instruments and \$0.1 million as collateral for a letter of credit related to the lease of the Company’s corporate headquarters.

*Investment Securities Available for Sale* - The Company's investment securities include RMBS comprised of Fannie Mae, Freddie Mac, non-Agency RMBS and CLOs. Investment securities are classified as available for sale securities and are reported at fair value with unrealized gains and losses reported in other comprehensive income (“OCI”). Realized gains and losses recorded on the sale of investment securities available for sale are based on the specific identification method and included in realized gain (loss) on sale of securities and related hedges in the consolidated statements of operations. Purchase premiums or discounts on investment securities are amortized or accreted to interest income over the estimated life of the investment securities using the effective yield method. Adjustments to amortization are made for actual prepayment activity.

When the fair value of an investment security is less than its amortized cost at the balance sheet date, the security is considered impaired. The Company assesses its impaired securities on at least a quarterly basis, and designates such impairments as either “temporary” or “other-than-temporary.” If the Company intends to sell an impaired security, or it is more likely than not that it will be required to sell the impaired security before its anticipated recovery, then it must recognize an other-than-temporary impairment through earnings equal to the entire difference between the investment’s amortized cost and its fair value at the balance sheet date. If the Company does not expect to sell an other-than-temporarily impaired security, only the portion of the other-than-temporary impairment related to credit losses is recognized through earnings with the remainder recognized as a component of other comprehensive income (loss) on the consolidated balance sheet. Impairments recognized through other comprehensive income (loss) do not impact earnings. Following the recognition of an other-than-temporary impairment through earnings, a new cost basis is established for the security and may not be adjusted for subsequent recoveries in fair value through earnings. However, other-than-temporary impairments recognized through earnings may be accreted back to the amortized cost basis of the security on a prospective basis through interest income. The determination as to whether an other-than-temporary impairment exists and, if so, the amount considered other-than-temporarily impaired is subjective, as such determinations are based on both factual and subjective information available at the time of assessment. As a result, the timing and amount of other-than-temporary impairments constitute material estimates that are susceptible to significant change.

*Mortgage Loans Held in Securitization Trusts* - Mortgage loans held in securitization trusts are certain adjustable rate mortgage ("ARM") loans transferred to New York Mortgage Trust 2005-1, New York Mortgage Trust 2005-2 and New York Mortgage Trust 2005-3 that have been securitized into sequentially rated classes of beneficial interests. Mortgage loans held in securitization trusts are carried at their unpaid principal balances, net of unamortized premium or discount, unamortized loan origination costs and allowance for loan losses.

Interest income is accrued and recognized as revenue when earned according to the terms of the mortgage loans and when, in the opinion of management, it is collectible. The accrual of interest on loans is discontinued when, in management's opinion, the interest is not collectible in the normal course of business, but in no case when payment becomes greater than 90 days delinquent. Loans return to accrual status when principal and interest become current and are anticipated to be fully collectible.

*Mortgage Loans Held for Investment* - Mortgage loans held for investment are stated at unpaid principal balance, adjusted for any unamortized premium or discount, deferred fees or expenses, net of valuation allowances. Interest income is accrued on the principal amount of the loan based on the loan's contractual interest rate. Amortization of premiums and discounts is recorded using the effective yield method. Interest income, amortization of premiums and discounts and prepayment fees are reported in interest income. Loans are considered to be impaired when it is probable that, based upon current information and events, the Company will be unable to collect all amounts due under the contractual terms of the loan agreement. Based on the facts and circumstances of the individual loans being impaired, loan specific valuation allowances are established for the excess carrying value of the loan over either: (i) the present value of expected future cash flows discounted at the loan's original effective interest rate, (ii) the estimated fair value of the loan's underlying collateral if the loan is in the process of foreclosure or otherwise collateral dependent, or (iii) the loan's observable market price.

*Investment in Limited Partnership Interest* - The Company has an equity investment in a limited partnership. In circumstances where the Company has a non-controlling interest but either owns a significant interest or is able to exert influence over the affairs of the enterprise, the Company utilizes the equity method of accounting. Under the equity method of accounting, the initial investment is increased each period for additional capital contributions and a proportionate share of the entity's earnings and decreased for cash distributions and a proportionate share of the entity's losses.

Management periodically reviews its investments for impairment based on projected cash flows from the entity over the holding period. When any impairment is identified, the investments are written down to recoverable amounts.

*Allowance for Loan Losses on Mortgage Loans Held in Securitization Trusts* - We establish an allowance for loan losses based on management's judgment and estimate of credit losses inherent in our portfolio of mortgage loans held in securitization trusts.

Estimation involves the consideration of various credit-related factors including but not limited to, macro-economic conditions, the current housing market conditions, loan-to-value ratios, delinquency status, historical credit loss severity rates, purchased mortgage insurance, the borrower's current economic condition and other factors deemed to warrant consideration. Additionally, we look at the balance of any delinquent loan and compare that to the current value of the collateralizing property. We utilize various home valuation methodologies including appraisals, broker pricing opinions ("BPOs"), internet-based property data services to review comparable properties in the same area or consult with a realtor in the property's area.

Comparing the current loan balance to the property value determines the current loan-to-value ("LTV") ratio of the loan. Generally, we estimate that a first lien loan on a property that goes into a foreclosure process and becomes real estate owned ("REO"), results in the property being disposed of at approximately 84% of the current appraised value. This estimate is based on management's experience as well as realized severity rates since issuance of our securitizations. During 2008, as a result of the significant deterioration in the housing market, we revised our policy to estimate recovery values based on current home valuations less expected costs to dispose. These costs typically approximate 16% of the current home value. It is possible given the deteriorating market conditions experienced since 2008 that we may realize less than that return in certain cases. Thus, for a first lien loan that is delinquent, we will adjust the property value down to approximately 84% of the current property value and compare that to the current balance of the loan. The difference determines the base provision for the loan loss taken for that loan. This base provision for a particular loan may be adjusted if we are aware of specific circumstances that may affect the outcome of the loss mitigation process for that loan. Predominately, however, we use the base reserve number for our reserve.

The allowance for loan losses will be maintained through ongoing provisions charged to operating income and will be reduced by loans that are charged off. As of December 31, 2010 the allowance for loan losses held in securitization trusts totaled \$2.6 million. The allowance for loan losses was \$2.6 million at December 31, 2009.

*Financing Arrangements, Portfolio Investments* - Investment securities available for sale are typically financed with repurchase agreements, a form of collateralized borrowing which is secured by the securities on the balance sheet. Such financings are recorded at their outstanding principal balance with any accrued interest due recorded as an accrued expense.



*Collateralized Debt Obligations (“CDO”)* - We use CDOs to permanently finance our loans held in securitization trusts. For financial reporting purposes, the ARM loans held as collateral are recorded as assets of the Company and the CDO is recorded as the Company’s debt. The transaction includes interest rate caps which are held by the securitization trust and recorded as an asset or liability of the Company. The Company has completed four securitizations since inception, the first three were accounted for as a permanent financing and the fourth was accounted for as a sale and accordingly, not included in the Company’s financial statements.

*Subordinated Debentures (Net)* - Subordinated debentures are trust preferred securities that are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities are classified as subordinated debentures in the liability section of the Company’s consolidated balance sheet.

*Convertible Preferred Debentures (Net)* - The Company issued \$20.0 million in Series A Convertible Preferred Stock that matured on December 31, 2010. The outstanding shares were redeemed by the Company at the \$20.00 per share liquidation preference plus accrued dividends on December 31, 2010.

*Derivative Financial Instruments* - The Company has developed risk management programs and processes, which include investments in derivative financial instruments designed to manage interest rate risk associated with its securities investment activities.

Derivative instruments contain an element of risk in the event that the counterparties may be unable to meet the terms of such agreements. The Company minimizes its risk exposure by limiting the counterparties with which it enters into contracts to banks and investment banks who meet established credit and capital guidelines. Management does not expect any counterparty to default on its obligations and, therefore, does not expect to incur any loss due to counterparty default. In addition, all outstanding interest rate swap agreements have bi-lateral margin call capabilities, meaning the Company will require margin for interest rate swaps that are in the Company’s favor, minimizing any amounts at risk.

*Interest Rate Risk* - The Company hedges the aggregate risk of interest rate fluctuations with respect to its borrowings, regardless of the form of such borrowings, which require payments based on a variable interest rate index. The Company generally intends to hedge only the risk related to changes in the benchmark interest rate (London Interbank Offered Rate (“LIBOR”). The Company applies hedge accounting utilizing the cash flow hedge criteria.

In order to reduce such risks, the Company enters into swap agreements whereby the Company receives floating rate payments in exchange for fixed rate payments, effectively converting the borrowing to a fixed rate. The Company also enters into cap agreements whereby, in exchange for a premium, the Company is reimbursed for interest paid in excess of a certain capped rate.

To qualify for cash flow hedge accounting, interest rate swaps and caps must meet certain criteria, including:

- the items to be hedged expose the Company to interest rate risk; and
- the interest rate swaps or caps are expected to be and continue to be highly effective in reducing the Company's exposure to interest rate risk.

The fair values of the Company's interest rate swap agreements and interest rate cap agreements are based on values provided by dealers who are familiar with the terms of these instruments. Correlation and effectiveness are periodically assessed at least quarterly based upon a comparison of the relative changes in the fair values or cash flows of the interest rate swaps and caps and the items being hedged.

For derivative instruments that are designated and qualify as a cash flow hedge (i.e. hedging the exposure to variability in expected future cash flows that is attributable to a particular risk), the effective portion of the gain or loss on the derivative instruments are reported as a component of OCI and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The remaining gain or loss on the derivative instruments in excess of the cumulative change in the present value of future cash flows of the hedged item, if any, is recognized in current earnings during the period of change.

With respect to interest rate swaps and caps that have not been designated as hedges, any net payments under, or fluctuations in the fair value of, such swaps and caps, will be recognized in current earnings.

*Termination of Hedging Relationships* - The Company employs a number of risk management monitoring procedures to ensure that the designated hedging relationships are demonstrating, and are expected to continue to demonstrate, a high level of effectiveness. Hedge accounting is discontinued on a prospective basis if it is determined that the hedging relationship is no longer highly effective or expected to be highly effective in offsetting changes in fair value of the hedged item.

Additionally, the Company may elect to un-designate a hedge relationship during an interim period and re-designate upon the rebalancing of a hedge profile and the corresponding hedge relationship. When hedge accounting is discontinued, the Company continues to carry the derivative instruments at fair value with changes recorded in current earnings.

*Revenue Recognition* . Interest income on our residential mortgage loans and mortgage-backed securities is a combination of the interest earned based on the outstanding principal balance of the underlying loan/security, the contractual terms of the assets and the amortization of yield adjustments, principally premiums and discounts, using generally accepted interest methods. The net GAAP cost over the par balance of self-originated loans held for investment and premium and discount associated with the purchase of mortgage-backed securities and loans are amortized into interest income over the lives of the underlying assets using the effective yield method as adjusted for the effects of estimated prepayments. Estimating prepayments and the remaining term of our interest yield investments require management judgment, which involves, among other things, consideration of possible future interest rate environments and an estimate of how borrowers will react to those environments, historical trends and performance. The actual prepayment speed and actual lives could be more or less than the amount estimated by management at the time of origination or purchase of the assets or at each financial reporting period.

With respect to interest rate swaps and caps that have not been designated as hedges, any net payments under, or fluctuations in the fair value of, such swaps and caps will be recognized in current earnings.

*Other Comprehensive Income (Loss)* - Other comprehensive income (loss) is comprised primarily of income (loss) from changes in value of the Company's available for sale securities, and the impact of deferred gains or losses on changes in the fair value of derivative contracts hedging future cash flows.

*Employee Benefits Plans* - The Company sponsors a defined contribution plan (the "Plan") for all eligible domestic employees. The Plan qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the Plan, participating employees may defer up to 15% of their pre-tax earnings, subject to the annual Internal Revenue Code contribution limit. The Company may match contributions up to a maximum of 25% of the first 5% of salary. Employees vest immediately in their contribution and vest in the Company's contribution at a rate of 25% after two full years and then an incremental 25% per full year of service until fully vested at 100% after five full years of service. There were no contributions to the Plan for the years ended December 31, 2010 and 2009.

*Stock Based Compensation* - Compensation expense for equity based awards is recognized over the vesting period of such awards, based upon the fair value of the stock at the grant date.

*Income Taxes* - The Company operates so as to qualify as a REIT under the requirements of the Internal Revenue Code. Requirements for qualification as a REIT include various restrictions on ownership of the Company's stock, requirements concerning distribution of taxable income and certain restrictions on the nature of assets and sources of income. A REIT must distribute at least 90% of its taxable income to its stockholders of which 85% plus any undistributed amounts from the prior year must be distributed within the taxable year in order to avoid the imposition of an excise tax. The remaining balance may extend until timely filing of the Company's tax return in the subsequent taxable year. Qualifying distributions of taxable income are deductible by a REIT in computing taxable income.

HC is a taxable REIT subsidiary and therefore subject to corporate federal income taxes. Accordingly, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax base upon the change in tax status. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

Accounting Standards Codification Topic 740 Accounting for Income Taxes ("ASC 740") provides guidance for how uncertain tax positions should be recognized, measured, presented, and disclosed in the financial statements. ASC 740 requires the evaluation of tax positions taken or expected to be taken in the course of preparing the Company's tax returns to determine whether the tax positions are "more-likely-than-not" of being sustained by the applicable tax authority. In situations involving uncertain tax positions related to income tax matters, we do not recognize benefits unless it is more likely than not that they will be sustained. ASC 740 was applied to all open taxable years as of the effective date. Management's determinations regarding ASC 740 may be subject to review and adjustment at a later date based on factors including, but not limited to, an ongoing analysis of tax laws, regulations and interpretations thereof. The Company will recognize interest and penalties, if any, related to uncertain tax positions as income tax expense.

*Earnings Per Share* - Basic earnings per share excludes dilution and is computed by dividing net income available to common stockholders by the weighted-average number of shares of common stock outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the earnings of the Company.

*Loans Sold to Third Parties* - The Company sold its discontinued mortgage lending business in March 2007. In the normal course of business, the Company is obligated to repurchase loans based on violations of representations and warranties in the loan sale agreements. The Company did not repurchase any loans during the twelve months ended December 31, 2010 and 2009.

The Company periodically receives repurchase requests based on alleged violations of representations and warranties, each of which management reviews to determine, based on management's experience, whether such requests may reasonably be deemed to have merit. As of December 31, 2010, we had a total of \$2.0 million of unresolved repurchase requests that management concluded may reasonably be deemed to have merit, against which the Company has a reserve of approximately \$0.3 million. The reserve is based on one or more of the following factors; historical settlement rates, property value securing the loan in question and specific settlement discussions with third parties.

*A Summary of Recent Accounting Pronouncements Follows:*

*Fair Value Measurements and Disclosures (ASC 820)*

In January 2010, the FASB issued ASU 2010-06, *Improving Disclosures about Fair Value Measurement*, to enhance the usefulness of fair value measurements. The amended guidance requires both the disaggregation of information in certain existing disclosures, as well as the inclusion of more robust disclosures about valuation techniques and inputs to recurring and nonrecurring fair value measurements. This ASU amends ASC 820 to add new requirements for disclosures about transfers into and out of Levels 1 and 2 and separate disclosures about purchases, sales, issuances, and settlements relating to Level 3 measurements. This ASU also clarifies existing fair value disclosures about the level of disaggregation and about inputs and valuation techniques used to measure fair value. Further, this ASU amends guidance on employers' disclosures about postretirement benefit plan assets under ASC 715 to require that disclosures be provided by classes of assets instead of by major categories of assets. This ASU is effective for the first reporting period (including interim periods) beginning after December 15, 2009, except for the requirement to provide the Level 3 activity of purchases, sales, issuances, and settlements on a gross basis, which will be effective for fiscal years beginning after December 15, 2010, and for interim periods within those fiscal years. Early adoption is permitted. The adoption of this standard did not affect our financial condition, results of operations or cash flows.

*Consolidation (ASC 810)*

In June 2009, the FASB amended the guidance for determining whether an entity is a variable interest entity, or VIE, including requiring a qualitative rather than quantitative analysis to determine the primary beneficiary of a VIE, continuous assessments of whether an enterprise is the primary beneficiary of a VIE, and enhanced disclosures about an enterprise's involvement with a VIE. The guidance requires an entity to consolidate a VIE if (i) it has the power to direct the activities that most significantly impact the VIE's economic performance and (ii) the obligation to absorb the losses of the VIE or the right to receive the benefits from the VIE, which could be significant to the VIE. The pronouncement is effective for fiscal years beginning after November 15, 2009. On January 1, 2010, the Company adopted the FASB guidance for determining whether an entity is a variable interest entity; such adoption did not have a material effect on our financial condition, results of operations or cash flows.

*Receivables (ASC 310)*

In July 2010, the FASB issued ASU No. 2010-20, *Receivables (Topic 310): Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses*. The ASU amends FASB Accounting Standards Codification Topic 310, *Receivables*, to improve the disclosures that an entity provides about the credit quality of its financing receivables and the related allowance for credit losses. As a result of these amendments, an entity is required to disaggregate, by portfolio segment or class of financing receivables, certain existing disclosures and provide certain new disclosures about its financing receivables and related allowance for credit losses. This ASU is effective for interim and annual reporting periods ending on or after December 15, 2010. The disclosures related to troubled debt restructurings have been temporarily delayed. Currently, that guidance is anticipated to be effective for interim and annual periods ending after June 15, 2011. The adoption of this standard did not affect our financial condition, results of operations or cash flows.



## 2. Investment Securities Available For Sale, at Fair Value

Investment securities available for sale consist of the following as of December 31, 2010 (dollar amounts in thousands):

|                 | <b>Amortized<br/>Cost</b> | <b>Unrealized<br/>Gains</b> | <b>Unrealized<br/>Losses</b> | <b>Carrying<br/>Value</b> |
|-----------------|---------------------------|-----------------------------|------------------------------|---------------------------|
| Agency RMBS (1) | \$ 45,865                 | \$ 1,664                    | \$ —                         | \$ 47,529                 |
| Non Agency RMBS | 10,071                    | 80                          | (1,166)                      | 8,985                     |
| CLOs            | 11,286                    | 18,240                      | —                            | 29,526                    |
| Total           | <u>\$ 67,222</u>          | <u>\$ 19,984</u>            | <u>\$ (1,166)</u>            | <u>\$ 86,040</u>          |

(1) Agency RMBS includes only Fannie Mae issued securities at December 31, 2010.

Investment securities available for sale consist of the following as of December 31, 2009 (dollar amounts in thousands):

|                 | <b>Amortized<br/>Cost</b> | <b>Unrealized<br/>Gains</b> | <b>Unrealized<br/>Losses</b> | <b>Carrying<br/>Value</b> |
|-----------------|---------------------------|-----------------------------|------------------------------|---------------------------|
| Agency RMBS (1) | \$ 112,525                | \$ 3,701                    | \$ —                         | \$ 116,226                |
| Non Agency RMBS | 40,257                    | 4,764                       | (2,155)                      | 42,866                    |
| CLOs            | 9,187                     | 8,412                       | —                            | 17,599                    |
| Total           | <u>\$ 161,969</u>         | <u>\$ 16,877</u>            | <u>\$ (2,155)</u>            | <u>\$ 176,691</u>         |

(1) Agency RMBS includes only Fannie Mae issued securities at December 31, 2009.

The Company commenced its strategy of diversifying its portfolio to manage more elements of credit risk by purchasing \$46.0 million face amount of CLOs on March 31, 2009 at a purchase price of approximately \$9.0 million. This marked the Company's first investment outside of RMBS or other mortgage-related assets. In addition, during the second and third quarters of 2009, the Company further diversified its portfolio by purchasing approximately \$45.6 million current par value of non-Agency RMBS at an average cost of 60% of par. The \$45.6 million current par value of non-Agency RMBS purchased represents the senior cash flows of the applicable deal structures.

The Company had proceeds from sales of investment securities of \$46.0 million and \$296.6 million for the years ended December 31, 2010 and 2009, respectively, and reclassified net gains from accumulated other comprehensive income into earnings of \$5.0 million and \$2.7 million for the years ended December 31, 2010 and 2009, respectively.

Actual maturities of our available for sale securities are generally shorter than stated contractual maturities (which range up to 27 years), as they are affected by the contractual lives of the underlying mortgages, periodic payments and prepayments of principal. As of December 31, 2010 and 2009, the weighted average expected life of the Company's available for sale securities portfolio is approximately 21 years and 26 years, respectively.

The following tables set forth the stated reset periods of our investment securities available for sale at December 31, 2010 (dollar amounts in thousands):

|                                | <b>Less than<br/>6 Months</b> | <b>More than<br/>6 Months<br/>To 24 Months</b> | <b>More than<br/>24 Months<br/>To 60 Months</b> | <b>Total</b>              |
|--------------------------------|-------------------------------|------------------------------------------------|-------------------------------------------------|---------------------------|
|                                | <b>Carrying<br/>Value</b>     | <b>Carrying<br/>Value</b>                      | <b>Carrying<br/>Value</b>                       | <b>Carrying<br/>Value</b> |
| Agency RMBS                    | \$ 25,816                     | \$ 5,313                                       | \$ 16,400                                       | \$ 47,529                 |
| Non-Agency RMBS                | 8,985                         | —                                              | —                                               | 8,985                     |
| Collateralized Loan Obligation | 29,526                        | —                                              | —                                               | 29,526                    |
| Total                          | <u>\$ 64,327</u>              | <u>\$ 5,313</u>                                | <u>\$ 16,400</u>                                | <u>\$ 86,040</u>          |

The following tables set forth the stated reset periods of our investment securities available for sale at December 31, 2009 (dollar amounts in thousands):

|                                | <b>Less than<br/>6 Months</b> | <b>More than<br/>6 Months<br/>To 24 Months</b> | <b>More than<br/>24 Months<br/>To 60 Months</b> | <b>Total</b>              |
|--------------------------------|-------------------------------|------------------------------------------------|-------------------------------------------------|---------------------------|
|                                | <b>Carrying<br/>Value</b>     | <b>Carrying<br/>Value</b>                      | <b>Carrying<br/>Value</b>                       | <b>Carrying<br/>Value</b> |
| Agency RMBS                    | \$ —                          | \$ 42,893                                      | \$ 73,333                                       | \$ 116,226                |
| Non-Agency RMBS                | 22,065                        | 4,865                                          | 15,936                                          | 42,866                    |
| Collateralized Loan Obligation | 17,599                        | —                                              | —                                               | 17,599                    |
| Total                          | <u>\$ 39,664</u>              | <u>\$ 47,758</u>                               | <u>\$ 89,269</u>                                | <u>\$ 176,691</u>         |

The following table presents the Company's investment securities available for sale in an unrealized loss position, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position at December 31, 2010 and December 31, 2009, respectively, as follows (dollar amounts in thousands):

| <b>December 31, 2010</b> | <b>Less than 12 Months</b> |                            | <b>Greater than 12 months</b> |                               | <b>Total</b>      |                               |
|--------------------------|----------------------------|----------------------------|-------------------------------|-------------------------------|-------------------|-------------------------------|
|                          | Carrying<br>Value          | Gross Unrealized<br>Losses | Carrying<br>Value             | Gross<br>Unrealized<br>Losses | Carrying<br>Value | Gross<br>Unrealized<br>Losses |
| Non-Agency RMBS          | \$ —                       | \$ —                       | \$ 6,436                      | \$ 1,166                      | \$ 6,436          | \$ 1,166                      |
| Total                    | <u>\$ —</u>                | <u>\$ —</u>                | <u>\$ 6,436</u>               | <u>\$ 1,166</u>               | <u>\$ 6,436</u>   | <u>\$ 1,166</u>               |

  

| <b>December 31, 2009</b> | <b>Less than 12 Months</b> |                            | <b>Greater than 12 months</b> |                               | <b>Total</b>      |                               |
|--------------------------|----------------------------|----------------------------|-------------------------------|-------------------------------|-------------------|-------------------------------|
|                          | Carrying<br>Value          | Gross Unrealized<br>Losses | Carrying<br>Value             | Gross<br>Unrealized<br>Losses | Carrying<br>Value | Gross<br>Unrealized<br>Losses |
| Non-Agency RMBS          | \$ —                       | \$ —                       | \$ 14,693                     | \$ 2,155                      | \$ 14,693         | \$ 2,155                      |
| Total                    | <u>\$ —</u>                | <u>\$ —</u>                | <u>\$ 14,693</u>              | <u>\$ 2,155</u>               | <u>\$ 14,693</u>  | <u>\$ 2,155</u>               |

### 3. Mortgage Loans Held in Securitization Trusts and Real Estate Owned

Mortgage loans held in securitization trusts (net) consist of the following at December 31, 2010 and December 31, 2009 (dollar amounts in thousands):

|                                  | December 31,      |                   |
|----------------------------------|-------------------|-------------------|
|                                  | 2010              | 2009              |
| Mortgage loans principal amount  | \$ 229,323        | \$ 277,007        |
| Deferred origination costs – net | 1,451             | 1,750             |
| Reserve for loan losses          | (2,589)           | (2,581)           |
| Total                            | <u>\$ 228,185</u> | <u>\$ 276,176</u> |

*Allowance for Loan losses* - The following table presents the activity in the Company's allowance for loan losses on mortgage loans held in securitization trusts for the years ended December 31, 2010 and 2009, respectively (dollar amounts in thousands):

|                                | Years ended December 31, |                 |
|--------------------------------|--------------------------|-----------------|
|                                | 2010                     | 2009            |
| Balance at beginning of period | \$ 2,581                 | \$ 844          |
| Provisions for loan losses     | 1,560                    | 2,192           |
| Transfer to real estate owned  | (564)                    | (406)           |
| Charge-offs                    | (988)                    | (49)            |
| Balance at the end of period   | <u>\$ 2,589</u>          | <u>\$ 2,581</u> |

On an ongoing basis, the Company evaluates the adequacy of its allowance for loan losses. The Company's allowance for loan losses at December 31, 2010 was \$2.6 million, representing 113 basis points of the outstanding principal balance of loans held in securitization trusts as of December 31, 2010, as compared to 93 basis points as of December 31, 2009. As part of the Company's allowance for loan adequacy analysis, management will access an overall level of allowances while also assessing credit losses inherent in each non-performing mortgage loan held in securitization trusts. These estimates involve the consideration of various credit related factors, including but not limited to, current housing market conditions, current loan to value ratios, delinquency status, borrower's current economic and credit status and other relevant factors.

*Real Estate Owned* – The following table presents the activity in the Company's real estate owned held in securitization trusts for the years ended December 31, 2010 and 2009 (dollar amounts in thousands):

|                                                            | December 31,  |               |
|------------------------------------------------------------|---------------|---------------|
|                                                            | 2010          | 2009          |
| Balance at beginning of period                             | \$ 546        | \$ 1,366      |
| Write downs                                                | (193)         | (70)          |
| Transfer from mortgage loans held in securitization trusts | 1,398         | 826           |
| Disposal                                                   | (1,011)       | (1,576)       |
| Balance at the end of period                               | <u>\$ 740</u> | <u>\$ 546</u> |

Real estate owned held in securitization trusts are included in receivables and other assets on the balance sheet and write downs are included in provision for loan losses in the statement of operations for reporting purposes.

All of the Company's mortgage loans and real estate owned held in securitization trusts are pledged as collateral for the collateralized debt obligations ("CDOs") issued by the Company. As of December 31, 2010 and December 31, 2009, the Company's net investment in the securitization trusts, which is the maximum amount of the Company's investment that is at risk to loss and represents the difference between the carrying amount of the loans and real estate owned held in securitization trusts and the amount of CDO's outstanding, was \$8.9 million and \$10.0 million, respectively.

The following sets forth delinquent loans, including real estate owned through foreclosure (REO) in our portfolio as of December 31, 2010 and December 31, 2009 (dollar amounts in thousands):

**December 31, 2010**

| <b>Days Late</b>                      | <b>Number of Delinquent<br/>Loans</b> | <b>Total<br/>Dollar Amount</b> | <b>% of Loan<br/>Portfolio</b> |
|---------------------------------------|---------------------------------------|--------------------------------|--------------------------------|
| 30-60                                 | 7                                     | \$ 2,515                       | 1.09%                          |
| 61-90                                 | 4                                     | \$ 4,362                       | 1.89%                          |
| 90+                                   | 35                                    | \$ 18,191                      | 7.90%                          |
| Real estate owned through foreclosure | 3                                     | \$ 894                         | 0.39%                          |

**December 31, 2009**

| <b>Days Late</b>                      | <b>Number of Delinquent<br/>Loans</b> | <b>Total<br/>Dollar Amount</b> | <b>% of Loan<br/>Portfolio</b> |
|---------------------------------------|---------------------------------------|--------------------------------|--------------------------------|
| 30-60                                 | 5                                     | \$ 2,816                       | 1.01%                          |
| 61-90                                 | 4                                     | \$ 1,150                       | 0.41%                          |
| 90+                                   | 32                                    | \$ 15,915                      | 5.73%                          |
| Real estate owned through foreclosure | 2                                     | \$ 739                         | 0.27%                          |

**4. Investment in Limited Partnership**

The Company has a non-controlling, unconsolidated limited partnership interest in an entity that is accounted for using the equity method of accounting. Capital contributions, distributions, and profits and losses of the entity are allocated in accordance with the terms of the limited partnership agreement. The Company owns 100% of the equity of the limited partnership, but has no decision-making powers, and therefore does not consolidate the limited partnership. Our maximum exposure to loss in this variable interest entity is our net cash invested of \$18.2 million at December 31, 2010.

During the third and fourth quarters of 2010, HC invested, in exchange for limited partnership interests, \$19.4 million in a limited partnership that was formed for the purpose of acquiring, servicing, selling or otherwise disposing of first-lien residential mortgage loans. The pool of mortgage loans was acquired by the partnership at a significant discount to the loans' unpaid principal balance.

At December 31, 2010, the Company had an investment in a limited partnership of \$18.7 million. For the year ended December 31, 2010, the Company recognized income from the investment in limited partnership of \$0.5 million.

The balance sheet of the investment in limited partnership at December 31, 2010 is as follows (dollar amounts in thousands):

|                                           |  |    |        |
|-------------------------------------------|--|----|--------|
| <b>Assets</b>                             |  |    |        |
| Cash                                      |  | \$ | 152    |
| Mortgage loans held for sale (net)        |  |    | 18,072 |
| Other assets                              |  |    | 478    |
| Total Assets                              |  | \$ | 18,702 |
| <b>Liabilities &amp; Partners' Equity</b> |  |    |        |
| Other liabilities                         |  | \$ | 37     |
| Partners' equity                          |  |    | 18,665 |
| Total Liabilities & Partners' Equity      |  | \$ | 18,702 |

The statement of operations of the investment in limited partnership for the year ended December 31, 2010 is as follows (dollar amounts in thousands):

|                                |  |    |       |
|--------------------------------|--|----|-------|
| <b>Statement of Operations</b> |  |    |       |
| Interest income                |  | \$ | 489   |
| Realized gain                  |  |    | 164   |
| Total Income                   |  |    | 653   |
| Other expenses                 |  |    | (157) |
| Net Income                     |  | \$ | 496   |



## 5. Derivative Instruments and Hedging Activities

The Company enters into derivative instruments to manage its interest rate risk exposure. These derivative instruments include interest rate swaps and caps entered into to reduce interest expense costs related to our repurchase agreements, CDOs and our subordinated debentures. The Company's interest rate swaps are designated as cash flow hedges against the benchmark interest rate risk associated with its short term repurchase agreements. There were no costs incurred at the inception of our interest rate swaps, under which the Company agrees to pay a fixed rate of interest and receive a variable interest rate based on one month LIBOR, on the notional amount of the interest rate swaps. The Company's interest rate swap notional amounts are based on an amortizing schedule fixed at the start date of the transaction. The Company's interest rate cap transactions are designated as cashflow hedges against the benchmark interest rate risk associated with the CDOs and the subordinated debentures. The interest rate cap transactions were initiated with an upfront premium that is being amortized over the life of the contract.

The Company documents its risk-management policies, including objectives and strategies, as they relate to its hedging activities, and upon entering into hedging transactions, documents the relationship between the hedging instrument and the hedged liability contemporaneously. The Company assesses, both at inception of a hedge and on an on-going basis, whether or not the hedge is "highly effective" when using the matched term basis.

The Company discontinues hedge accounting on a prospective basis and recognizes changes in the fair value through earnings when: (i) it is determined that the derivative is no longer effective in offsetting cash flows of a hedged item (including forecasted transactions); (ii) it is no longer probable that the forecasted transaction will occur; or (iii) it is determined that designating the derivative as a hedge is no longer appropriate. The Company's derivative instruments are carried on the Company's balance sheet at fair value, as assets, if their fair value is positive, or as liabilities, if their fair value is negative. The Company's derivative instruments are designated as "cash flow hedges," changes in their fair value are recorded in accumulated other comprehensive income(loss), provided that the hedges are effective. A change in fair value for any ineffective amount of the Company's derivative instruments would be recognized in earnings. The Company has not recognized any change in the value of its existing derivative instruments through earnings as a result of ineffectiveness of any of its hedges.

The following table presents the fair value of derivative instruments and their location in the Company's consolidated balance sheets at December 31, 2010 and December 31, 2009, respectively (dollar amounts in thousands):

| Derivative Designated as Hedging | Balance Sheet Location       | December 31,<br>2010 | December 31,<br>2009 |
|----------------------------------|------------------------------|----------------------|----------------------|
| Interest Rate Caps               | Receivables and other assets | \$ —                 | \$ 4                 |
| Interest Rate Swaps              | Derivative liabilities       | 1,087                | 2,511                |

The following table presents the impact of the Company's derivative instruments on the Company's accumulated other comprehensive income(loss) for the years ended December 31, 2010 and 2009 (dollar amounts in thousands):

| Derivative Designated as Hedging Instruments                                         | Years Ended December 31, |                   |
|--------------------------------------------------------------------------------------|--------------------------|-------------------|
|                                                                                      | 2010                     | 2009              |
| Accumulated other comprehensive income(loss) for derivative instruments:             |                          |                   |
| Balance at beginning of the period                                                   | \$ (2,904)               | \$ (5,560)        |
| Unrealized gain on interest rate caps                                                | 394                      | 974               |
| Unrealized gain (loss) on interest rate swaps                                        | 1,423                    | 1,682             |
| Reclassification adjustment for net gains (losses) included in net income for hedges | —                        | —                 |
| Balance at end of the period                                                         | <u>\$ (1,087)</u>        | <u>\$ (2,904)</u> |

The Company estimates that over the next 12 months, approximately \$0.9 million of the net unrealized losses on the interest rate swaps will be reclassified from accumulated other comprehensive income/(loss) into earnings.

The following table details the impact of the Company's interest rate swaps and interest rate caps included in interest expense for the years ended December 31, 2010 and 2009 (dollar amounts in thousands):

|                                            | Years Ended December 31, |        |
|--------------------------------------------|--------------------------|--------|
|                                            | 2010                     | 2009   |
| Interest Rate Caps:                        |                          |        |
| Interest expense-investment securities     |                          |        |
| and loans held in securitization trusts    | \$ 308                   | \$ 637 |
| Interest expense-subordinated debentures   | 92                       | 353    |
| Interest Rate Swaps:                       |                          |        |
| Interest expense-investment securities and |                          |        |
| loans held in securitization trusts        | 2,515                    | 3,228  |

*Interest Rate Swaps* - The Company is required to pledge assets under a bi-lateral margin arrangement, including either cash or Agency RMBS, as collateral for its interest rate swaps, whose collateral requirements vary by counterparty and change over time based on the market value, notional amount, and remaining term of the interest rate swap ("Swap"). In the event the Company is unable to meet a margin call under one of its Swap agreements, thereby causing an event of default or triggering an early termination event under one of its Swap agreements, the counterparty to such agreement may have the option to terminate all of such counterparty's outstanding Swap transactions with the Company. In addition, under this scenario, any close-out amount due to the counterparty upon termination of the counterparty's transactions would be immediately payable by the Company pursuant to the applicable agreement. The Company believes it was in compliance with all margin requirements under its Swap agreements as of December 31, 2010 and December 31, 2009. The Company had \$1.2 million and \$2.9 million of restricted cash related to margin posted for Swaps as of December 31, 2010 and December 31, 2009, respectively.

The use of interest rate swaps exposes the Company to counterparty credit risks in the event of a default by a Swap counterparty. If a counterparty defaults under the applicable Swap agreement the Company may be unable to collect payments to which it is entitled under its Swap agreements, and may have difficulty collecting the assets it pledged as collateral against such Swaps. The Company currently has in place with all outstanding Swap counterparties bi-lateral margin agreements thereby requiring a party to post collateral to the Company for any valuation deficit. This arrangement is intended to limit the Company's exposure to losses in the event of a counterparty default.

The following table presents information about the Company's interest rate swaps as of December 31, 2010 and 2009 (dollar amounts in thousands):

| Maturity (1)                | December 31, 2010 |                                          | December 31, 2009 |                                          |
|-----------------------------|-------------------|------------------------------------------|-------------------|------------------------------------------|
|                             | Notional Amount   | Weighted Average Fixed Pay Interest Rate | Notional Amount   | Weighted Average Fixed Pay Interest Rate |
| Within 30 Days              | \$ 24,080         | 2.99%                                    | \$ 2,070          | 2.99%                                    |
| Over 30 days to 3 months    | 2,110             | 3.03                                     | 3,700             | 2.99                                     |
| Over 3 months to 6 months   | 2,280             | 3.03                                     | 8,330             | 2.99                                     |
| Over 6 months to 12 months  | 5,600             | 3.03                                     | 34,540            | 2.98                                     |
| Over 12 months to 24 months | 16,380            | 3.01                                     | 34,070            | 3.00                                     |
| Over 24 months to 36 months | 8,380             | 2.93                                     | 16,380            | 3.01                                     |
| Over 36 months to 48 months | —                 | —                                        | 8,380             | 2.93                                     |
| Over 48 months              | —                 | —                                        | —                 | —                                        |
| Total                       | \$ 58,830         | 3.00%                                    | \$ 107,470        | 2.99%                                    |

- (1) The Company enters into scheduled amortizing interest rate swap transactions whereby the Company pays a fixed rate of interest and receives one month LIBOR.

*Interest Rate Caps* – Interest rate caps are designated by the Company as cash flow hedges against interest rate risk associated with the Company’s CDOs and the subordinated debentures. The interest rate caps associated with the CDOs are amortizing contractual notional schedules determined at origination. The Company had \$76.0 million and \$182.2 million of interest rate caps outstanding as of December 31, 2010 and December 31, 2009, respectively. These interest rate caps are utilized to cap the interest rate on the CDOs at a fixed-rate when one month LIBOR exceeds a predetermined rate.

## 6. Financing Arrangements, Portfolio Investments

The Company has entered into repurchase agreements with third party financial institutions to finance its RMBS portfolio. The repurchase agreements are short-term borrowings that bear interest rates typically based on a spread to LIBOR, and are secured by the RMBS which they finance. As of December 31, 2010, the Company had repurchase agreements with an outstanding balance of \$35.6 million and a weighted average interest rate of 0.39%. At December 31, 2009, the Company had repurchase agreements with an outstanding balance of \$85.1 million and a weighted average interest rate of 0.27%. At December 31, 2010 and December 31, 2009, securities pledged as collateral for repurchase agreements had estimated fair values and carrying values of \$38.5 million and \$91.1 million, respectively. As of December 31, 2010, the average days to maturity for all repurchase agreements are 29 days.

The follow table summarizes outstanding repurchase agreement borrowings secured by portfolio investments as of December 31, 2010 and December 31, 2009 (dollar amounts in thousands):

### Repurchase Agreements by Counterparty

| Counterparty Name                                          | December 31,<br>2010 | December 31,<br>2009 |
|------------------------------------------------------------|----------------------|----------------------|
| Cantor Fitzgerald                                          | \$ 4,990             | \$ 9,643             |
| Credit Suisse First Boston LLC                             | 12,080               | 20,477               |
| Jefferies & Company, Inc.                                  | 9,476                | 17,764               |
| RBS Greenwich Capital                                      | —                    | 22,962               |
| South Street Securities LLC                                | 9,086                | 14,260               |
| <b>Total Financing Arrangements, Portfolio Investments</b> | <b>\$ 35,632</b>     | <b>\$ 85,106</b>     |

As of December 31, 2010, the outstanding balance under our repurchase agreements was funded at an advance rate of 94% that implies a haircut of 6%.

In the event we are unable to obtain sufficient short-term financing through repurchase agreements or otherwise, or our lenders start to require additional collateral, we may have to liquidate our investment securities at a disadvantageous time, which could result in losses. Any losses resulting from the disposition of our investment securities in this manner could have a material adverse effect on our operating results and net profitability.

As of December 31, 2010, the Company had \$19.4 million in cash and \$47.6 million in unencumbered securities to meet additional haircut or market valuation requirements, including \$18.0 million of RMBS, of which \$9.1 million are Agency RMBS. The \$19.4 million of cash and the \$18.0 million in RMBS (which, collectively, represents 105% of our financing arrangements, portfolio investments) are liquid and could be monetized to pay down or collateralize the liability immediately.



## 7. Collateralized Debt Obligations

The Company's CDOs, which are recorded as liabilities on the Company's balance sheet, are secured by ARM loans pledged as collateral, which are recorded as assets of the Company. As of December 31, 2010 and December 31, 2009, the Company had CDOs outstanding of \$220.0 million and \$266.8 million, respectively. As of December 31, 2010 and December 31, 2009, the current weighted average interest rate on these CDOs was 0.65% and 0.61%, respectively. The CDOs are collateralized by ARM loans with a principal balance of \$229.3 million and \$277.0 million at December 31, 2010 and December 31, 2009, respectively. The Company retained the owner trust certificates, or residual interest for three securitizations, and, as of December 31, 2010 and December 31, 2009, had a net investment in the securitizations trusts of \$8.9 million and \$10.0 million, respectively.

The CDO transactions include amortizing interest rate cap contracts with an aggregate notional amount of \$76.0 million as of December 31, 2010 and an aggregate notional amount of \$182.2 million as of December 31, 2009, which are recorded as an asset of the Company. The interest rate caps are carried at fair value and totaled \$0 as of December 31, 2010 and \$4,476 as of December 31, 2009, respectively. The interest rate caps reduce interest rate exposure on these transactions.

## 8. Subordinated Debentures (Net)

The follow table summarizes outstanding repurchase agreement borrowings secured by portfolio investments as of December 31, 2010 and December 31, 2009 (dollar amounts in thousands):

|                                       | December 31, |           |
|---------------------------------------|--------------|-----------|
|                                       | 2010         | 2009      |
| Subordinated debentures               | \$ 45,000    | \$ 45,000 |
| Less: unamortized bond issuance costs | —            | (108)     |
| Subordinated debentures (net)         | \$ 45,000    | \$ 44,892 |

On September 1, 2005 the Company closed a private placement of \$20.0 million of trust preferred securities to Taberna Preferred Funding II, Ltd., a pooled investment vehicle. The securities were issued by NYM Preferred Trust II and are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities had a fixed interest rate equal to 8.35% up to and including July 30, 2010, at which point the interest rate was converted to a floating rate equal to three-month LIBOR plus 3.95% until maturity (4.24% at December 31, 2010). The securities mature on October 30, 2035 and may be called at par by the Company any time after October 30, 2010. The preferred stock of NYM Preferred Trust II has been classified as subordinated debentures in the liability section of the Company's consolidated balance sheet.

On March 15, 2005 the Company closed a private placement of \$25.0 million of trust preferred securities to Taberna Preferred Funding I, Ltd., a pooled investment vehicle. The securities were issued by NYM Preferred Trust I and are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities have a floating interest rate equal to three-month LIBOR plus 3.75%, resetting quarterly (4.05% at December 31, 2010 and 4.00% at December 31, 2009). The securities mature on March 15, 2035 and may be called at par by the Company any time after March 15, 2010. The preferred stock of NYM Preferred Trust I has been classified as subordinated debentures in the liability section of the Company's consolidated balance sheet.

As of March 2, 2011, the Company has not been notified, and is not aware, of any event of default under the covenants for the subordinated debentures.

## 9. Discontinued Operation

In connection with the sale of our mortgage origination platform assets during the quarter ended March 31, 2007, we classified our mortgage lending segment as a discontinued operation. As a result, we have reported revenues and expenses related to the segment as a discontinued operation for all periods presented in the accompanying consolidated financial statements. Certain assets, such as the deferred tax asset, and certain liabilities, such as subordinated debentures and liabilities related to lease facilities not sold, are part of our ongoing operations and accordingly, we have not included these items as part of the discontinued operation. Assets and liabilities related to the discontinued operation are \$4.0 million and \$0.6 million, respectively, at December 31, 2010, and \$4.2 million and \$1.8 million, respectively, at December 31, 2009, and are included in receivables and other assets and accounts payable, accrued expenses and other liabilities in the consolidated balance sheets.

### ***Balance Sheet Data***

The components of assets related to the discontinued operation as of December 31, 2010 and December 31, 2009 are as follows (dollar amounts in thousands):

|                                          | December 31,    |                 |
|------------------------------------------|-----------------|-----------------|
|                                          | 2010            | 2009            |
| Accounts and accrued interest receivable | \$ 18           | \$ 18           |
| Mortgage loans held for sale (net)       | 3,808           | 3,841           |
| Prepaid and other assets                 | 213             | 358             |
| Total assets                             | <u>\$ 4,039</u> | <u>\$ 4,217</u> |

The components of liabilities related to the discontinued operation as of December 31, 2010 and 2009 are as follows (dollar amounts in thousands):

|                                       | December 31,  |                 |
|---------------------------------------|---------------|-----------------|
|                                       | 2010          | 2009            |
| Due to loan purchasers                | \$ 342        | \$ 342          |
| Accounts payable and accrued expenses | 214           | 1,436           |
| Total liabilities                     | <u>\$ 556</u> | <u>\$ 1,778</u> |

### ***Statements of Operations Data***

The statements of operations of the discontinued operation for the years ended December 31, 2010 and 2009 are as follows (dollar amounts in thousands):

|                                                  | For the Year Ended December 31, |               |
|--------------------------------------------------|---------------------------------|---------------|
|                                                  | 2010                            | 2009          |
| Revenues                                         | \$ 1,403                        | \$ 1,242      |
| Expenses                                         | 268                             | 456           |
| Income from discontinued operations – net of tax | <u>\$ 1,135</u>                 | <u>\$ 786</u> |

## 10. Commitments and Contingencies

*Loans Sold to Third Parties* – The Company sold its discontinued mortgage lending business in March 2007. In the normal course of business, the Company is obligated to repurchase loans based on violations of representations and warranties in the loan sale agreements. The Company did not repurchase any loans during the years ended December 31, 2010 and 2009.

The Company periodically receives repurchase requests based on alleged violations of representations and warranties, each of which management reviews to determine, based on management's experience, whether such requests may reasonably be deemed to have merit. As of December 31, 2010, we had a total of \$2.0 million of unresolved repurchase requests that management concluded may reasonably be deemed to have merit, against which the Company has a reserve of approximately \$0.3 million. The reserve is based on one or more of the following factors; historical settlement rates, property value securing the loan in question and specific settlement discussions with third parties.

*Outstanding Litigation* - The Company is at times subject to various legal proceedings arising in the ordinary course of business. As of December 31, 2010, the Company does not believe that any of its current legal proceedings, individually or in the aggregate, will have a material adverse effect on its operations, financial condition or cash flows.

*Leases* - The Company leases its corporate office under a short-term lease agreement expiring in 2013. This lease is accounted for as an operating lease. Total property lease expense amounted to \$0.2 million for each of the years ended December 31, 2010 and December 31, 2009.

*Letters of Credit* – The Company maintains a letter of credit in the amount of \$0.2 million in lieu of a cash security deposit for its current corporate headquarters, located at 52 Vanderbilt Avenue in New York City, for its landlord, Vanderbilt Associates I, L.L.C, as beneficiary. This letter of credit is secured by cash deposited in a bank account maintained at JP Morgan Chase bank.

As of December 31, 2010 obligations under non-cancelable operating leases that have an initial term of more than one year are as follows (dollar amounts in thousands):

| <b>Year Ending December 31,</b> | <b>Total</b>  |
|---------------------------------|---------------|
| 2011                            | \$ 193        |
| 2012                            | 198           |
| 2013                            | 67            |
|                                 | <u>\$ 458</u> |

11. Concentrations of Credit Risk

At December 31, 2010 and 2009, there were geographic concentrations of credit risk exceeding 5% of the total loan balances within mortgage loans held in the securitization trusts and the real estate owned as follows:

|               | December 31, |       |
|---------------|--------------|-------|
|               | 2010         | 2009  |
| New York      | 37.9%        | 38.9% |
| Massachusetts | 25.0%        | 24.3% |
| New Jersey    | 8.7%         | 8.5%  |
| Florida       | 5.6%         | 5.7%  |

## 12. Fair Value of Financial Instruments

The Company has established and documented processes for determining fair values. Fair value is based upon quoted market prices, where available. If listed prices or quotes are not available, then fair value is based upon internally developed models that primarily use inputs that are market-based or independently-sourced market parameters, including interest rate yield curves.

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The three levels of valuation hierarchy are defined as follows:

*Level 1* - inputs to the valuation methodology are quoted prices (unadjusted) for identical assets or liabilities in active markets.

*Level 2* - inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.

*Level 3* - inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The following describes the valuation methodologies used for the Company's financial instruments measured at fair value, as well as the general classification of such instruments pursuant to the valuation hierarchy.

*a. Investment Securities Available for Sale (RMBS)* - Fair value for the RMBS in our portfolio is based on quoted prices provided by dealers who make markets in similar financial instruments. The dealers will incorporate common market pricing methods, including a spread measurement to the Treasury curve or interest rate swap curve as well as underlying characteristics of the particular security including coupon, periodic and life caps, collateral type, rate reset period and seasoning or age of the security. If quoted prices for a security are not reasonably available from a dealer, the security will be re-classified as a Level 3 security and, as a result, management will determine the fair value based on characteristics of the security that the Company receives from the issuer and based on available market information. Management reviews all prices used in determining valuation to ensure they represent current market conditions. This review includes surveying similar market transactions, comparisons to interest pricing models as well as offerings of like securities by dealers. The Company's investment securities that are comprised of RMBS are valued based upon readily observable market parameters and are classified as Level 2 fair values.

*b. Investment Securities Available for Sale (CLO)* - The fair value of the CLO notes, as of December 31, 2009, was based on management's valuation determined using a discounted future cash flows model that management believes would be used by market participants to value similar financial instruments. At December 31, 2010, the fair value of the CLO notes was based on quoted prices provided by dealers who make markets in similar financial instruments. The CLO notes were previously classified as Level 3 fair values and were re-classified as Level 2 fair values in the fourth quarter of 2010.

*c. Interest Rate Swaps and Caps* - The fair value of interest rate swaps and caps are based on dealer quotes. The model utilizes readily observable market parameters, including treasury rates, interest rate swap spreads and swaption volatility curves. The Company's interest rate caps and swaps are classified as Level 2 fair values.

The following table presents the Company's financial instruments measured at fair value on a recurring basis as of December 31, 2010 and December 31, 2009 on the Company's consolidated balance sheets (dollar amounts in thousands):

| Measured at Fair Value on a Recurring Basis<br>at December 31, 2010 |         |           |         |           |
|---------------------------------------------------------------------|---------|-----------|---------|-----------|
|                                                                     | Level 1 | Level 2   | Level 3 | Total     |
| <b>Assets carried at fair value:</b>                                |         |           |         |           |
| Investment securities available for sale:                           |         |           |         |           |
| Agency RMBS                                                         | \$ —    | \$ 47,529 | \$ —    | \$ 47,529 |
| Non-Agency RMBS                                                     | —       | 8,985     | —       | 8,985     |
| CLO                                                                 | —       | 29,526    | —       | 29,526    |
| Total                                                               | \$ —    | \$ 86,040 | \$ —    | \$ 86,040 |
| <b>Liabilities carried at fair value:</b>                           |         |           |         |           |
| Derivative liabilities (interest rate swaps)                        | \$ —    | \$ 1,087  | \$ —    | \$ 1,087  |
| Total                                                               | \$ —    | \$ 1,087  | \$ —    | \$ 1,087  |

  

| Measured at Fair Value on a Recurring Basis<br>at December 31, 2009 |         |            |           |            |
|---------------------------------------------------------------------|---------|------------|-----------|------------|
|                                                                     | Level 1 | Level 2    | Level 3   | Total      |
| <b>Assets carried at fair value:</b>                                |         |            |           |            |
| Investment securities available for sale:                           |         |            |           |            |
| Agency RMBS                                                         | \$ —    | \$ 116,226 | \$ —      | \$ 116,226 |
| Non-Agency RMBS                                                     | —       | 42,866     | —         | 42,866     |
| CLO                                                                 | —       | —          | 17,599    | 17,599     |
| Derivative assets (interest rate caps)                              | —       | 4          | —         | 4          |
| Total                                                               | \$ —    | \$ 159,096 | \$ 17,599 | \$ 176,695 |
| <b>Liabilities carried at fair value:</b>                           |         |            |           |            |
| Derivative liabilities (interest rate swaps)                        | \$ —    | \$ 2,511   | \$ —      | \$ 2,511   |
| Total                                                               | \$ —    | \$ 2,511   | \$ —      | \$ 2,511   |

The following table details changes in valuation for the Level 3 assets for the years ended December 31, 2010 and 2009, respectively (amounts in thousands):

**Investment securities available for sale: CLO**

|                                               | Years Ended December 31, |           |
|-----------------------------------------------|--------------------------|-----------|
|                                               | 2010                     | 2009      |
| Balance at beginning of period                | \$ 17,599                | \$ —      |
| Total gains (realized/unrealized)             |                          |           |
| Included in earnings (1)                      | 2,100                    | 459       |
| Included in other comprehensive income/(loss) | 9,827                    | 8,412     |
| Purchases                                     | —                        | 8,728     |
| Transfers out of Level 3 (2)                  | (29,526)                 | —         |
| Balance at the end of period                  | \$ —                     | \$ 17,599 |

(1) – Amounts included in interest income.

(2) – Transfers from Level 3 to Level 2 fair values due to management determining that there is a reliable market for these assets based upon quoted prices provided by dealers who make markets in similar investments.

Any changes to the valuation methodology are reviewed by management to ensure the changes are appropriate. As markets and products develop and the pricing for certain products becomes more transparent, the Company continues to refine its valuation methodologies. The methods described above may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Company believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies, or assumptions, to determine the fair value of certain financial instruments could result in a different estimate of fair value at the reporting date. The Company uses inputs that are current as of each reporting date, which may include periods of market dislocation, during which time price transparency may be reduced. This condition could cause the Company's financial instruments to be reclassified from Level 2 to Level 3 in future periods.

The following table presents assets measured at fair value on a non-recurring basis as of December 31, 2010 and December 31, 2009 on the consolidated balance sheets (dollar amounts in thousands):

| <b>Assets Measured at Fair Value on a Non-Recurring Basis<br/>at December 31, 2010</b> |                |                |                |              |
|----------------------------------------------------------------------------------------|----------------|----------------|----------------|--------------|
|                                                                                        | <b>Level 1</b> | <b>Level 2</b> | <b>Level 3</b> | <b>Total</b> |
| Mortgage loans held for investment                                                     | \$ —           | \$ —           | \$ 7,460       | \$ 7,460     |
| Mortgage loans held for sale (net) – included in discontinued operations               | —              | —              | 3,808          | 3,809        |
| Mortgage loans held in securitization trusts (net) – impaired loans                    | —              | —              | 6,576          | 6,576        |
| Real estate owned held in securitization trusts                                        | —              | —              | 740            | 740          |

| <b>Assets Measured at Fair Value on a Non-Recurring Basis<br/>at December 31, 2009</b> |                |                |                |              |
|----------------------------------------------------------------------------------------|----------------|----------------|----------------|--------------|
|                                                                                        | <b>Level 1</b> | <b>Level 2</b> | <b>Level 3</b> | <b>Total</b> |
| Mortgage loans held for sale (net) – included in discontinued operations               | \$ —           | \$ —           | \$ 3,841       | \$ 3,841     |
| Mortgage loans held in securitization trusts (net) – impaired loans                    | —              | —              | 7,090          | 7,090        |
| Real estate owned held in securitization trusts                                        | —              | —              | 546            | 546          |

The following table presents losses incurred for assets measured at fair value on a non-recurring basis for the years ended December 31, 2010 and December 31, 2009 on the Company's consolidated statements of operations (dollar amounts in thousands):

|                                                                          | <b>December 31, 2010</b> | <b>December 31, 2009</b> |
|--------------------------------------------------------------------------|--------------------------|--------------------------|
| Mortgage loans held for sale (net) – included in discontinued operations | \$ —                     | \$ 245                   |
| Mortgage loans held in securitization trusts (net) – impaired loans      | 1,560                    | 2,192                    |
| Real estate owned held in securitization trusts                          | 193                      | 70                       |

*Mortgage Loans Held for Sale (net)* – The fair value of mortgage loans held for sale (net) are estimated by the Company based on the price that would be received if the loans were sold as whole loans taking into consideration the aggregated characteristics of the loans such as, but not limited to, collateral type, index, interest rate, margin, length of fixed interest rate period, life time cap, periodic cap, underwriting standards, age and credit.

*Mortgage Loans Held in Securitization Trusts (net) – Impaired Loans* – Impaired mortgage loans held in the securitization trusts are recorded at amortized cost less specific loan loss reserves. Impaired loan value is based on management's estimate of the net realizable value taking into consideration local market conditions of the distressed property, updated appraisal values of the property and estimated expenses required to remediate the impaired loan.

*Real Estate Owned Held in Securitization Trusts* – Real estate owned held in the securitization trusts are recorded at net realizable value. Any subsequent adjustment will result in the reduction in carrying value with the corresponding amount charge to earnings. Net realizable value based on an estimate of disposal taking into consideration local market conditions of the distressed property, updated appraisal values of the property and estimated expenses required to sell the property.

The following table presents the carrying value and estimated fair value of the Company's financial instruments at December 31, 2010 and December 31, 2009 (dollar amounts in thousands):

|                                                                             | December 31, 2010 |                      | December 31, 2009 |                      |
|-----------------------------------------------------------------------------|-------------------|----------------------|-------------------|----------------------|
|                                                                             | Carrying Value    | Estimated Fair Value | Carrying Value    | Estimated Fair Value |
| <b>Financial assets:</b>                                                    |                   |                      |                   |                      |
| Cash and cash equivalents                                                   | \$ 19,375         | \$ 19,375            | \$ 24,522         | \$ 24,522            |
| Investment securities – available for sale                                  | 86,040            | 86,040               | 176,691           | 176,691              |
| Mortgage loans held in securitization trusts (net)                          | 228,185           | 206,560              | 276,176           | 253,833              |
| Derivative assets                                                           | —                 | —                    | 4                 | 4                    |
| Assets related to discontinued operation-mortgage loans held for sale (net) | 3,808             | 3,808                | 3,841             | 3,841                |
| Receivable for securities sold                                              | 5,653             | 5,653                | —                 | —                    |
| <b>Financial Liabilities:</b>                                               |                   |                      |                   |                      |
| Financing arrangements, portfolio investments                               | \$ 35,632         | \$ 35,632            | \$ 85,106         | \$ 85,106            |
| Collateralized debt obligations                                             | 219,993           | 185,609              | 266,754           | 211,032              |
| Derivative liabilities                                                      | 1,087             | 1,087                | 2,511             | 2,511                |
| Subordinated debentures (net)                                               | 45,000            | 36,399               | 44,892            | 26,563               |
| Convertible preferred debentures (net)                                      | —                 | —                    | 19,851            | 19,363               |

In addition to the methodology to determine the fair value of the Company's financial assets and liabilities reported at fair value on a recurring basis and non-recurring basis, as previously described, the following methods and assumptions were used by the Company in arriving at the fair value of the Company's other financial instruments in the following table:

- a. *Cash and cash equivalents* – Estimated fair value approximates the carrying value of such assets.
- b. *Mortgage Loans Held in Securitization Trusts (net)* – Mortgage loans held in the securitization trusts are recorded at amortized cost. Fair value is estimated using pricing models and taking into consideration the aggregated characteristics of groups of loans such as, but not limited to, collateral type, index, interest rate, margin, length of fixed-rate period, life cap, periodic cap, underwriting standards, age and credit estimated using the estimated market prices for similar types of loans.
- c. *Receivable for securities sold* – Estimated fair value approximates the carrying value of such assets.
- d. *Financing arrangements, portfolio investments* – The fair value of these financing arrangements approximates cost as they are short term in nature and mature in 30 days.
- e. *Collateralized debt obligations* – The fair value of these CDOs is based on discounted cashflows as well as market pricing on comparable obligations.
- f. *Subordinated debentures (net)* – The fair value of these subordinated debentures (net) is based on discounted cashflows using management's estimate for market yields.
- g. *Convertible preferred debentures (net)* – The fair value of the convertible preferred debentures (net) is based on discounted cashflows using management's estimate for market yields.



### 13. Income taxes

A reconciliation of the statutory income tax provision to the effective income tax provision for the years ended December 31, 2010 and 2009, are as follows (dollar amounts in thousands).

|                               | December 31, |               |      |               |
|-------------------------------|--------------|---------------|------|---------------|
|                               | 2010         |               | 2009 |               |
| Provision at statutory rate   | \$           | 2,382 (35.0)% | \$   | 3,546 (35.0)% |
| Non-taxable REIT income       |              | (813) 11.9%   |      | (3,008) 30.0% |
| State and local tax provision |              | 414 (6.1)%    |      | 142 (1.0)%    |
| Valuation allowance           |              | (1,983) 29.2% |      | (680) 6.0%    |
| Total provision               | \$           | — —%          | \$   | — —%          |

The income tax provision for the year ended December 31, 2010 is comprised of the following components (dollar amounts in thousands):

|                             |    |      |
|-----------------------------|----|------|
| Current income tax expense  | \$ | 83   |
| Deferred income tax expense |    | (83) |
| Total provision             | \$ | —    |

The income tax provision for the year ended December 31, 2009 is comprised of the following components (dollar amounts in thousands).

|                             |    |   |
|-----------------------------|----|---|
| Current income tax expense  | \$ | — |
| Deferred income tax expense |    | — |
| Total provision             | \$ | — |

The gross deferred tax asset at December 31, 2010 is \$26.0 million. The major sources of temporary differences included in the deferred tax assets and their deferred tax effect as of December 31, 2010 are as follows (dollar amounts in thousands):

Deferred tax assets:

|                              |    |          |
|------------------------------|----|----------|
| Net operating loss carryover | \$ | 25,662   |
| GAAP reserves                |    | 342      |
| Gross deferred tax asset     |    | 26,004   |
| Valuation allowance          |    | (25,921) |
| Net deferred tax asset       | \$ | 83       |

At December 31, 2010, the Company had approximately \$58 million of net operating loss carryforwards which may be used to offset future taxable income. The carryforwards will expire in 2024 through 2029. The Internal Revenue Code places certain limitations on the annual amount of net operating loss carryforwards that can be utilized if certain changes in the Company's ownership occur. The Company may have undergone an ownership change within the meaning of IRC section 382 that would impose such a limitation. The Company is assessing the amount of such limitation, if any. At this time, based on management's assessment of the limitations, management does not believe that the limitation would cause a significant amount of the Company's net operating losses to expire unused.

The gross deferred tax asset at December 31, 2009 is \$29.4 million. The major sources of temporary differences included in the deferred tax assets and their deferred tax effect as of December 31, 2009 are as follows (dollar amounts in thousands):

Deferred tax assets:

|                                      |    |          |
|--------------------------------------|----|----------|
| Net operating loss carryover         | \$ | 27,697   |
| Mark to market adjustment            |    | 469      |
| Sec. 267 disallowance                |    | 268      |
| Charitable contribution carryforward |    | 1        |
| GAAP reserves                        |    | 429      |
| Rent expense                         |    | 537      |
| Gross deferred tax asset             |    | 29,401   |
| Valuation allowance                  |    | (29,401) |
| Net deferred tax asset               | \$ | —        |

The Company files income tax returns with the U.S. federal government and various state and local jurisdictions. The Company is no longer subject to tax examinations by tax authorities for years prior to 2007.

#### 14. Segment Reporting

The Company manages a mortgage portfolio which operates as one reporting segment.

## 15. Capital Stock and Earnings per Share

The Company had 400,000,000 shares of common stock, par value \$0.01 per share, authorized with 9,425,442 and 9,415,094 shares issued and outstanding as of December 31, 2010 and December 31, 2009, respectively. As of December 31, 2010 and December 31, 2009, the Company had 200,000,000 shares of preferred stock, par value \$0.01 per share, authorized, including 2,000,000 shares of Series A Cumulative Convertible Redeemable Preferred Stock ("Series A Preferred Stock"). As of December 31, 2010 and December 31, 2009, the Company had issued and outstanding 0 and 1,000,000 shares, respectively, of Series A Preferred Stock. Of the common stock authorized at December 31, 2010, 1,190,000 shares were reserved for issuance under the Company's 2010 Stock Incentive Plan. The Company issued 11,177 and 99,000 shares of common stock during the years ended December 31, 2010 and 2009, respectively. In addition, 829 and 4,000 shares of common stock were forfeited during the years ended December 31, 2010 and 2009, respectively.

The following table presents cash dividends declared by the Company on its common stock with respect to each of the quarterly periods commencing January 1, 2009 and ended December 31, 2010.

| Period              | Declaration Date   | Record Date       | Payment Date     | Cash Dividend Per Share |
|---------------------|--------------------|-------------------|------------------|-------------------------|
| Fourth Quarter 2010 | December 20, 2010  | December 30, 2010 | January 25, 2011 | \$ 0.18                 |
| Third Quarter 2010  | October 4, 2010    | October 14, 2010  | October 25, 2010 | 0.18                    |
| Second Quarter 2010 | June 16, 2010      | July 6, 2010      | July 26, 2010    | 0.18                    |
| First Quarter 2010  | March 16, 2010     | April 1, 2010     | April 26, 2010   | 0.25                    |
| Fourth Quarter 2009 | December 21, 2009  | January 7, 2010   | January 26, 2010 | 0.25                    |
| Third Quarter 2009  | September 29, 2009 | October 13, 2009  | October 26, 2009 | 0.25                    |
| Second Quarter 2009 | June 15, 2009      | June 26, 2009     | July 27, 2009    | 0.23                    |
| First Quarter 2009  | March 25, 2009     | April 6, 2009     | April 27, 2009   | 0.18                    |

The following table presents cash dividends declared by the Company on its Series A Preferred Stock from January 1, 2009 through December 31, 2010.

| Period              | Declaration Date   | Record Date        | Payment Date      | Cash Dividend Per Share |
|---------------------|--------------------|--------------------|-------------------|-------------------------|
| Fourth Quarter 2010 | December 20, 2010  | December 30, 2010  | December 31, 2010 | \$ 0.50                 |
| Third Quarter 2010  | September 29, 2010 | September 30, 2010 | October 29, 2010  | 0.50                    |
| Second Quarter 2010 | June 16, 2010      | June 30, 2010      | July 30, 2010     | 0.50                    |
| First Quarter 2010  | March 16, 2010     | March 31, 2010     | April 30, 2010    | 0.63                    |
| Fourth Quarter 2009 | December 21, 2009  | December 31, 2009  | January 29, 2010  | 0.63                    |
| Third Quarter 2009  | September 29, 2009 | September 30, 2009 | October 30, 2009  | 0.63                    |
| Second Quarter 2009 | June 15, 2009      | June 30, 2009      | July 30, 2009     | 0.58                    |
| First Quarter 2009  | March 25, 2009     | March 31, 2009     | April 30, 2009    | 0.50                    |

During 2010, taxable dividends for our common stock were \$0.23 per share. For tax reporting purposes, the 2010 taxable dividends were classified as \$0.23 per share ordinary income and \$.81 per share a return of capital.

During 2009, taxable dividends for our common stock were \$0.76 per share. For tax reporting purposes, the 2009 taxable dividends were classified as ordinary income.

The Company calculates basic net income (loss) per share by dividing net income (loss) for the period by weighted-average shares of common stock outstanding for that period. Diluted net income (loss) per share takes into account the effect of dilutive instruments, such as convertible preferred stock, stock options and unvested restricted or performance stock, but uses the average share price for the period in determining the number of incremental shares that are to be added to the weighted-average number of shares outstanding.

The following table presents the computation of basic and diluted net income (loss) per share for the periods indicated (in thousands, except per share amounts):

|                                                        | <b>For the Years Ended December 31,</b> |             |
|--------------------------------------------------------|-----------------------------------------|-------------|
|                                                        | <b>2010</b>                             | <b>2009</b> |
| <b>Numerator :</b>                                     |                                         |             |
| Net income – Basic                                     | \$ 6,805                                | \$ 11,670   |
| Net income from continuing operations                  | 5,670                                   | 10,884      |
| Net income from discontinued operations (net of tax)   | 1,135                                   | 786         |
| Effect of dilutive instruments:                        |                                         |             |
| Convertible preferred debentures                       | 2,274                                   | 2,474       |
| Net income – Dilutive                                  | 9,079                                   | 14,144      |
| Net income from continuing operations                  | 7,944                                   | 13,358      |
| Net income from discontinued operations (net of tax)   | \$ 1,135                                | \$ 786      |
| <b>Denominator:</b>                                    |                                         |             |
| Weighted average basic shares outstanding              | 9,422                                   | 9,367       |
| Effect of dilutive instruments:                        |                                         |             |
| Convertible preferred debentures                       | 2,500                                   | 2,500       |
| Weighted average dilutive shares outstanding           | 11,922                                  | 11,867      |
| <b>EPS:</b>                                            |                                         |             |
| Basic EPS                                              | \$ 0.72                                 | \$ 1.25     |
| Basic EPS from continuing operations                   | 0.60                                    | 1.16        |
| Basic EPS from discontinued operations (net of tax)    | 0.12                                    | 0.09        |
| Dilutive EPS                                           | \$ 0.72                                 | \$ 1.19     |
| Dilutive EPS from continuing operations                | 0.60                                    | 1.12        |
| Dilutive EPS from discontinued operations (net of tax) | 0.12                                    | 0.07        |

#### **16. Convertible Preferred Debentures (Net)**

As of December 31, 2010, the 1.0 million shares of our Series A Preferred Stock matured, at which time we redeemed all outstanding shares at the \$20.00 per share liquidation preference plus the fourth quarter accrued dividends. We paid the aggregate liquidation preference and accrued dividends from working capital. The Company recorded the dividend as interest expense because of the mandatory redemption feature.

We issued these shares of Series A Preferred Stock to JMP Group Inc. and certain of its affiliates for an aggregate purchase price of \$20.0 million. The Series A Preferred Stock entitled the holders to receive a minimum cumulative dividend of 10% per year, subject to an increase to the extent any quarterly common stock dividends exceeded \$0.20 per share.

## 17. Stock Incentive Plans

In May 2010, the Company's stockholders approved the Company's 2010 Stock Incentive Plan (the "2010 Plan"), with such stockholder action resulting in the termination of the Company's 2005 Stock Incentive Plan (the "2005 Plan"). The terms of the 2010 Plan are substantially the same as the 2005 Plan. However, any outstanding awards under the 2005 Plan will continue in accordance with the terms of the 2005 Plan and any award agreement executed in connection with such outstanding awards. At December 31, 2010, there are 28,999 shares of restricted stock outstanding under the 2005 Plan.

Pursuant to the 2010 Plan, eligible employees, officers and directors of the Company are offered the opportunity to acquire the Company's common stock through the award of restricted stock and other equity awards under the 2010 Plan. The maximum number of shares that may be issued under the 2010 Plan is 1,190,000. The Company's directors have been issued 7,177 shares in lieu of cash compensation under the 2010 Plan as of December 31, 2010.

During the years ended December 31, 2010 and 2009, the Company recognized non-cash compensation expense of \$0.2 million and \$0.3 million, respectively. Dividends are paid on all restricted stock issued, whether those shares have vested or not. In general, non-vested restricted stock is forfeited upon the recipient's termination of employment.

A summary of the activity of the Company's non-vested restricted stock for the years ended December 31, 2010 and 2009 are presented below:

|                                                                              | 2010                                            |                                                                             | 2009                                            |                                                                             |
|------------------------------------------------------------------------------|-------------------------------------------------|-----------------------------------------------------------------------------|-------------------------------------------------|-----------------------------------------------------------------------------|
|                                                                              | Number of<br>Non-vested<br>Restricted<br>Shares | Weighted<br>Average Per<br>Share<br>Grant Date<br>Fair Value <sup>(1)</sup> | Number of<br>Non-vested<br>Restricted<br>Shares | Weighted<br>Average Per<br>Share<br>Grant Date<br>Fair Value <sup>(1)</sup> |
| Non-vested shares at January 1                                               | 60,665                                          | \$ 5.28                                                                     | —                                               | \$ —                                                                        |
| Granted                                                                      | 4,000                                           | 7.50                                                                        | 99,000                                          | 5.28                                                                        |
| Forfeited                                                                    | (829)                                           | 5.28                                                                        | (4,000)                                         | —                                                                           |
| Vested                                                                       | (34,837)                                        | 5.41                                                                        | (34,335)                                        | 5.28                                                                        |
| Non-vested shares as of December 31                                          | 28,999                                          | \$ 5.43                                                                     | 60,665                                          | \$ 5.28                                                                     |
| Weighted-average fair value of restricted<br>stock granted during the period | 4,000                                           | \$ 7.50                                                                     | 99,000                                          | \$ 5.28                                                                     |

- (1) The grant date fair value of restricted stock awards is based on the closing market price of the Company's common stock at the grant date.

At December 31, 2010 and 2009, the Company had unrecognized compensation expense of \$0.1 million and \$0.2 million, respectively, related to the non-vested shares of restricted common stock. The unrecognized compensation expense at December 31, 2010 is expected to be recognized over a weighted average period of 0.6 years. The total fair value of restricted shares vested during the years ended December 31, 2010 and 2009 was \$0.2 million and \$0.2 million, respectively.

# 18. Quarterly Financial Data (unaudited)

The following table is a comparative breakdown of our unaudited quarterly results for the immediately preceding eight quarters (dollar amounts in thousands, except per share data):

|                                                           | Three Months Ended |                  |                  |                  |
|-----------------------------------------------------------|--------------------|------------------|------------------|------------------|
|                                                           | Mar. 31,<br>2010   | Jun. 30,<br>2010 | Sep. 30,<br>2010 | Dec. 31,<br>2010 |
| Interest income                                           | \$ 6,221           | \$ 5,185         | \$ 4,536         | \$ 3,957         |
| Interest expense                                          | 2,813              | 2,495            | 2,311            | 1,992            |
| Net interest income                                       | 3,408              | 2,690            | 2,225            | 1,965            |
| Other Income (Expense):                                   |                    |                  |                  |                  |
| Provision for loan losses                                 | (2)                | (600)            | (734)            | (894)            |
| Income from investment in limited partnership             | —                  | —                | 150              | 346              |
| Realized gain on investment securities and related hedges | 807                | 1,291            | 1,860            | 1,404            |
| Impairment loss on investment securities                  | —                  | —                | —                | (296)            |
| Total other income (expense)                              | 805                | 691              | 1,276            | 560              |
| General, administrative and other expenses                | 1,856              | 2,107            | 2,222            | 1,765            |
| Income from continuing operations                         | 2,357              | 1,274            | 1,279            | 760              |
| Income from discontinued operation - net of tax           | 311                | 268              | 298              | 258              |
| Net income                                                | \$ 2,668           | \$ 1,542         | \$ 1,577         | \$ 1,018         |
| Per share basic income                                    | \$ 0.28            | \$ 0.16          | \$ 0.17          | \$ 0.11          |
| Per share diluted income                                  | \$ 0.28            | \$ 0.16          | \$ 0.17          | \$ 0.11          |
| Dividends declared per common share                       | \$ 0.25            | \$ 0.18          | \$ —             | \$ 0.36          |
| Weighted average shares outstanding-basic                 | 9,418              | 9,419            | 9,425            | 9,425            |
| Weighted average shares outstanding-diluted               | 11,918             | 11,919           | 9,425            | 9,425            |

|                                                           | Three Months Ended |                  |                  |                  |
|-----------------------------------------------------------|--------------------|------------------|------------------|------------------|
|                                                           | Mar. 31,<br>2009   | Jun. 30,<br>2009 | Sep. 30,<br>2009 | Dec. 31,<br>2009 |
| Interest income                                           | \$ 8,585           | \$ 7,621         | \$ 7,994         | \$ 6,895         |
| Interest expense                                          | 4,491              | 3,463            | 3,311            | 2,970            |
| Net interest income                                       | 4,094              | 4,158            | 4,683            | 3,925            |
| Other Income (Expense):                                   |                    |                  |                  |                  |
| Provision for loan losses                                 | (629)              | (259)            | (526)            | (848)            |
| Realized gain on investment securities and related hedges | 123                | 141              | 359              | 2,659            |
| Impairment loss on investment securities                  | (119)              | —                | —                | —                |
| Total other income (expense)                              | (625)              | (118)            | (167)            | 1,811            |
| General, administrative and other expenses                | 1,570              | 1,602            | 1,875            | 1,830            |
| Income from continuing operations                         | 1,899              | 2,438            | 2,641            | 3,906            |
| Income from discontinued operation - net of tax           | 155                | 109              | 236              | 286              |
| Net income                                                | \$ 2,054           | \$ 2,547         | \$ 2,877         | \$ 4,192         |
| Per share basic income                                    | \$ 0.22            | \$ 0.27          | \$ 0.31          | \$ 0.45          |
| Per share diluted income                                  | \$ 0.22            | \$ 0.27          | \$ 0.30          | \$ 0.40          |
| Dividends declared per common share                       | \$ 0.18            | \$ 0.23          | \$ 0.25          | \$ 0.25          |
| Weighted average shares outstanding-basic                 | 9,320              | 9,320            | 9,406            | 9,419            |
| Weighted average shares outstanding-diluted               | 11,820             | 11,820           | 11,906           | 11,919           |

## 19. Related Party Transactions

### *Advisory Agreements*

On January 18, 2008, the Company entered into an advisory agreement (the “Prior Advisory Agreement”) with Harvest Capital Strategies LLC (“HCS”) (formerly known as JMP Asset Management LLC), pursuant to which HCS was responsible for implementing and managing the Company’s investments in certain real estate-related and financial assets. The Company entered into the Prior Advisory Agreement concurrent and in connection with its private placement of Series A Preferred Stock to JMP Group Inc. and certain of its affiliates. HCS is a wholly-owned subsidiary of JMP Group Inc. Pursuant to SEC filings as of December 31, 2010, HCS and JMP Group Inc. collectively beneficially owned approximately 15.3% of the Company’s common stock. In addition, until its redemption on December 31, 2010, HCS and JMP Group Inc. collectively beneficially owned 100% of the Company’s Series A Preferred Stock. The Company’s Series A Preferred Stock matured on December 31, 2010, at which time we redeemed all the outstanding shares at the \$20.00 per share liquidation preference plus accrued dividends of \$0.5 million. The Prior Advisory Agreement was terminated effective July 26, 2010 upon execution and effectiveness of an amended and restated advisory agreement among the Company, HC, NYMF and HCS (the “HCS Advisory Agreement”).

Pursuant to the Prior Advisory Agreement, HCS managed investments made by HC and NYMF (other than certain RMBS that are held in these entities for regulatory compliance purposes) as well as any additional subsidiaries that were acquired or formed to hold investments made on the Company’s behalf by HCS. The Company sometimes refers to these subsidiaries in its periodic reports filed with the Securities and Exchange Commission as the “Managed Subsidiaries.” The Prior Advisory Agreement provided for the payment to HCS of a base advisory fee that was equal to 1.50% per annum of the “equity capital” (as defined in the advisory agreement) of the Managed Subsidiaries; and an incentive fee upon the Managed Subsidiaries achieving certain investment hurdles. HCS was also eligible to earn an incentive fee on the managed assets. The Prior Advisory Agreement incentive fee was equal to 25% of the GAAP net income of the Managed Subsidiaries attributable to the investments that are managed by HCS that exceed a hurdle rate equal to the greater of (a) 8.00% and (b) 2.00% plus the ten year treasury rate for such fiscal year payable by us to HCS in cash, quarterly in arrears; *provided, however*, that a portion of the incentive compensation may be paid in shares of our common stock.



Pursuant to the HCS Advisory Agreement, HCS provides investment advisory services to the Company and manages on the Company's behalf "new program assets" acquired after the date of the HCS Advisory Agreement. The terms for new program assets, including the compensation payable thereunder to HCS by the Company, will be negotiated on a transaction-by-transaction basis. For those new program assets identified as "Managed Assets", HCS will be (A) entitled to receive a quarterly base advisory fee (payable in arrears) in an amount equal to the product of (i)  $\frac{1}{4}$  of the amortized cost of the Managed Assets as of the end of the quarter, and (ii) 2%, and (B) eligible to earn incentive compensation on the Managed Assets for each fiscal year during the term of the Agreement in an amount (not less than zero) equal to 35% of the GAAP net income attributable to the Managed Assets for the full fiscal year (including paid interest and realized gains), after giving effect to all direct expenses related to the Managed Assets, including but not limited to, the annual consulting fee (described below) and base advisory fees, that exceeds a hurdle rate of 13% based on the average equity of the Company invested in Managed Assets during that particular year. For those new program assets identified as Scheduled Assets, HCS will receive the compensation, which may include base advisory and incentive compensation, agreed upon between the Company and HCS and set forth in a term sheet or other documentation related to the transaction. HCS will continue to be eligible to earn incentive compensation on those assets held by the Company as of the effective date of the HCS Advisory Agreement that are deemed to be managed assets under the Prior Advisory Agreement. Incentive compensation for these "legacy assets" will be calculated in the manner prescribed in the Prior Advisory Agreement. Lastly, during the term of the HCS Advisory Agreement, the Company will pay HCS an annual consulting fee equal to \$1 million, subject to reduction under certain circumstances, payable on a quarterly basis in arrears, for consulting and support services related to finance, capital markets, investment and other strategic activities of the Company.

For the years ended December 31, 2010 and 2009, HCS earned aggregate base advisory and consulting fees of approximately \$0.9 million and \$0.8 million, respectively, and an incentive fee of approximately \$2.0 million and \$0.5 million, respectively. As of December 31, 2010, HCS was managing approximately \$48.2 million of assets on the Company's behalf. As of December 31, 2010 and 2009, the Company had a management fee payable totaling \$0.7 million and \$0.3 million, respectively, included in accrued expenses and other liabilities.

The HCS Advisory Agreement has an initial term that expires on June 30, 2012, subject to automatic annual one-year renewals thereafter. The Company may terminate the Agreement or elect not to renew the Agreement, subject to certain conditions and subject to paying a termination fee equal to the product of (A) 1.5 and (B) the sum of (i) the average annual base advisory fee earned by HCS during the 24-month period preceding the effective termination date, and (ii) the annual consulting fee. The HCS Advisory Agreement replaces the Prior Advisory Agreement.

JMP and its affiliates have, at times, co-invested with the Company and/or made debt or equity investments in investees they introduced to the Company. James J. Fowler, the Company's Chairman and the Chief Investment Officer of HC and NYMF, is a portfolio manager for HCS and a managing director of JMP Group Inc.

#### *Accounting Outsourcing Agreement*

The Company entered into an outsourcing agreement with Real Estate Systems Implementation Group, LLC ("RESIG") effective May 1, 2010, pursuant to which RESIG, among other things, (a) performs day-to-day accounting services for the Company and (b) effective October 4, 2010, provided a Chief Financial Officer to the Company. During 2010, RESIG earned \$0.2 million in fees.

**Exhibits.** The exhibits required by Item 601 of Regulation S-K are listed below. Management contracts or compensatory plans are filed as Exhibits 10.3, 10.7, 10.8, 10.10, 10.11 and 10.12.

| <b>Exhibit</b> | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1            | Articles of Amendment and Restatement of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).                                                                                                                    |
| 3.1(b)         | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on October 4, 2007).                                                                                                                                                                                                                                               |
| 3.1(c)         | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on October 4, 2007).                                                                                                                                                                                                                                               |
| 3.1(d)         | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1(d) to the Company's Current Report on Form 8-K filed on May 16, 2008.)                                                                                                                                                                                                                                               |
| 3.1(e)         | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1(e) to the Company's Current Report on Form 8-K filed on May 16, 2008.)                                                                                                                                                                                                                                               |
| 3.1(f)         | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1(f) to the Company's Current Report on Form 8-K filed on June 15, 2009.)                                                                                                                                                                                                                                              |
| 3.2            | Bylaws of New York Mortgage Trust, Inc., as amended*                                                                                                                                                                                                                                                                                                                                                   |
| 4.1            | Form of Common Stock Certificate. (Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).                                                                                                                                                         |
| 4.2(a)         | Junior Subordinated Indenture between The New York Mortgage Company, LLC and JPMorgan Chase Bank, National Association, as trustee, dated December 1, 2005. (Incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on December 6, 2005).                                                                           |
| 4.2(b)         | Amended and Restated Trust Agreement among The New York Mortgage Company, LLC, JPMorgan Chase Bank, National Association, Chase Bank USA, National Association and the Administrative Trustees named therein, dated December 1, 2005. (Incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on December 6, 2005). |
| 4.3(a)         | Articles Supplementary Establishing and Fixing the Rights and Preferences of Series A Cumulative Redeemable Convertible Preferred Stock of the Company (Incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on January 25, 2008).                                                                                                                               |
| 4.3(b)         | Form of Series A Cumulative Redeemable Convertible Preferred Stock Certificate (Incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on January 25, 2008).                                                                                                                                                                                                       |
| 10.1           | Parent Guarantee Agreement between New York Mortgage Trust, Inc. and JPMorgan Chase Bank, National Association, as guarantee trustee, dated December 1, 2005. (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on December 6, 2005).                                                                        |
| 10.2           | Purchase Agreement among The New York Mortgage Company, LLC, New York Mortgage Trust, Inc., NYM Preferred Trust II and Taberna Preferred Funding II, Ltd., dated December 1, 2005. (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on December 6, 2005).                                                   |

- 10.3 New York Mortgage Trust, Inc. 2005 Stock Incentive Plan. (Incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-3/A (File No. 333-127400) as filed with the Securities and Exchange Commission on December 9, 2005).
- 10.4 Stock Purchase Agreement, by and among New York Mortgage Trust, Inc. and the Investors listed on Schedule I thereto, dated as of November 30, 2007 (Incorporated by reference to Exhibit 10.1(a) to the Company's Current Report on Form 8-K filed on January 25, 2008).
- 10.5 Registration Rights Agreement, by and among New York Mortgage Trust, Inc. and the Investors listed on Schedule I to the Stock Purchase Agreement, dated as of January 18, 2008 (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on January 25, 2008).
- 10.6 Advisory Agreement, by and among New York Mortgage Trust, Inc., Hypotheca Capital, LLC, New York Mortgage Funding, LLC and JMP Asset Management LLC, dated as of January 18, 2008 (Incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on January 25, 2008).
- 10.7 Separation Agreement and General Release, by and between New York Mortgage Trust, Inc. and David A. Akre, dated as of February 3, 2009 (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 4, 2009).
- 10.8 Amended and Restated Employment Agreement, by and between New York Mortgage Trust, Inc. and Steven R. Mumma, dated as of February 11, 2009 (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on February 12, 2009).
- 10.9 Form of Registration Rights Agreement, by and among New York Mortgage Trust, Inc. and the Investors listed on Schedule A thereto, dated as of February 14, 2008 (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on February 19, 2008).
- 10.10 Form of Restricted Stock Award Agreement for Officers (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on July 14, 2009.)
- 10.11 Form of Restricted Stock Award Agreement for Officers (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on July 14, 2009.)
- 10.12 New York Mortgage Trust, Inc. 2010 Stock Incentive Plan (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on May 17, 2010).
- 10.13 Amended and Restated Advisory Agreement by and among New York Mortgage Trust, Inc., Hypotheca Capital, LLC, New York Mortgage Funding, LLC and Harvest Capital Strategies, LLC, dated as of July 26, 2010 (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on July 28, 2010).
- 21.1 List of Subsidiaries of the Registrant.\*
- 23.1 Consent of Independent Registered Public Accounting Firm (Grant Thornton LLP).\*
- 31.1 Section 302 Certification of Chief Executive Officer.\*
- 31.2 Section 302 Certification of Chief Financial Officer.\*
- 32.1 Section 906 Certification of Chief Executive Officer and Chief Financial Officer.\*

\* Filed herewith.

**Amendment No. 1  
to Bylaws of  
New York Mortgage Trust, Inc.**

Section 2 of Article II of the Bylaws of New York Mortgage Trust, Inc. is hereby deleted in its entirety and replaced with the following:

Section 2. ANNUAL MEETING. An annual meeting of the stockholders for the election of directors and the transaction of any business within the powers of the Corporation shall be held by the end of June each year on a date and at a time set by the Board of Directors.

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**NEW YORK MORTGAGE TRUST, INC.**

**BYLAWS**

**ARTICLE I**

**OFFICES**

Section 1. **PRINCIPAL OFFICE**. The principal office of New York Mortgage Trust, Inc. (the "Corporation") in the State of Maryland shall be located at such place as the Board of Directors may designate.

Section 2. **ADDITIONAL OFFICES**. The Corporation may have additional offices, including a principal executive office, at such places as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II**

**MEETINGS OF STOCKHOLDERS**

Section 1. **PLACE**. All meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place as shall be set by the Board of Directors and stated in the notice of the meeting.

Section 2. **ANNUAL MEETING**. An annual meeting of the stockholders for the election of Directors and the transaction of any business within the powers of the Corporation shall be held on a date and at the time set by the Board of Directors during the month of May of each year, beginning in 2005.

Section 3. **SPECIAL MEETINGS**.

(a) **General**. The chairman of the Board of Directors, the president, a chief executive officer or the Board of Directors may call a special meeting of the stockholders. Subject to subsection (b) of this Section 3, a special meeting of stockholders shall also be called by the secretary of the Corporation upon the written request of the stockholders entitled to cast not less than a majority of all the votes entitled to be cast at such meeting.

(b) **Stockholder Requested Special Meetings**. (1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the secretary of the Corporation (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information relating to each such stockholder that must be disclosed in solicitations of proxies for election of Directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which the Record Date Request Notice is received by the secretary.

(2) In order for any stockholder to request a special meeting, one or more written requests for a special meeting signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than a majority (the “Special Meeting Percentage”) of all of the votes entitled to be cast at such meeting (the “Special Meeting Request”) shall be delivered to the secretary. In addition, the Special Meeting Request (a) shall set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the secretary), (b) shall bear the date of signature of each such stockholder (or such agent) signing the Special Meeting Request, (c) shall set forth the name and address, as they appear in the Corporation’s books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), the class, series and number of all shares of stock of the Corporation which are owned by each such stockholder, and the nominee holder for, and number of, shares owned by such stockholder beneficially but not of record, (d) shall be sent to the secretary by registered mail, return receipt requested, and (e) shall be received by the secretary within sixty (60) days after the Request Record Date. Any requesting stockholder (or agent duly authorized in a writing accompanying the revocation or Special Meeting Request) may revoke his, her or its request for a special meeting at any time by written revocation delivered to the secretary.

(3) The secretary shall inform the requesting stockholders of the reasonably estimated cost of preparing and mailing the notice of meeting (including the Corporation’s proxy materials). The secretary shall not be required to call a special meeting upon stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 3(b), the secretary receives payment of such reasonably estimated cost prior to the preparation and mailing of any notice of the meeting.

(4) Except as provided in the next sentence, any special meeting shall be held at such place, date and time as may be designated by the president, chief executive officer or Board of Directors, whoever has called the meeting. In the case of any special meeting called by the secretary upon the request of stockholders (a “Stockholder Requested Meeting”), such meeting shall be held at such place, date and time as may be designated by the Board of Directors; provided, however, that the date of any Stockholder Requested Meeting shall be not more than ninety (90) days after the record date for such meeting (the “Meeting Record Date”); and provided further that if the Board of Directors fails to designate, within ten (10) days after the date that a valid Special Meeting Request is actually received by the secretary (the “Delivery Date”), a date and time for a Stockholder Requested Meeting, then such meeting shall be held at 2:00 p.m. local time on the ninetieth (90th) day after the Meeting Record Date or, if such ninetieth (90th) day is not a Business Day (as defined below), on the first preceding Business Day; and provided further that in the event that the Board of Directors fails to designate a place for a Stockholder Requested Meeting within ten (10) days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for any special meeting, the president, chief executive officer or Board of Directors may consider such factors as he, she or it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. In the case of any Stockholder Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within thirty (30) days after the Delivery Date, then the close of business on the thirtieth (30th) day after the Delivery Date shall be the Meeting Record Date. The Board of Directors may revoke the notice for any Stockholder Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of paragraph (3) of this Section 3(b).

(5) If written revocations of requests for the special meeting have been delivered to the secretary and the result is that stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting to the secretary, the secretary shall: (i) if the notice of meeting has not already been mailed refrain from mailing the notice of the meeting and send to all requesting stockholders who have not revoked such requests written notice of any revocation of a request for the special meeting, or (ii) if the notice of meeting has been mailed and if the secretary first sends to all requesting stockholders who have not revoked requests for a special meeting written notice of any revocation of a request for the special meeting and written notice of the secretary's intention to revoke the notice of the meeting revoke the notice of the meeting at any time before ten days before the commencement of the meeting. Any request for a special meeting received after a revocation by the secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The chairman of the Board of Directors, a chief executive officer, president or Board of Directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the secretary. For the purpose of permitting the inspectors to perform such review, no such purported request shall be deemed to have been delivered to the secretary until the earlier of (i) ten (10) Business Days after receipt by the secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the secretary represent at least a majority of the issued and outstanding shares of stock that would be entitled to vote at such meeting. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any request, whether during or after such ten (10) Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) For purposes of these Bylaws, “Business Day” shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in New York are authorized or obligated by law or executive order to close.

(8) Unless requested by the stockholders entitled to cast a majority of all the votes entitled to be cast at such meeting, no Stockholder Requested Meeting shall be called to consider any matter which is substantially the same as a matter voted on at any meeting of stockholders held during the preceding twelve (12) months.

Section 4. NOTICE. Not less than ten (10) nor more than ninety (90) days before each meeting of stockholders, the secretary shall give to each stockholder entitled to vote at such meeting and to each stockholder not entitled to vote who is entitled to notice of the meeting written or printed notice stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called, either by mail, by presenting it to such stockholder personally, by leaving it at the stockholder’s residence or usual place of business or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder’s address as it appears on the records of the Corporation, with postage thereon prepaid.

Subject to Section 11(a) of this Article II, any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except such business as is required by any statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice.

Section 5. ORGANIZATION AND CONDUCT. Every meeting of stockholders shall be conducted by an individual appointed by the Board of Directors to be chairman of the meeting or, in the absence of such appointment, by the chairman of the Board of Directors or, in the case of a vacancy in the office or absence of the chairman of the Board of Directors, by one of the following officers present at the meeting: the vice chairman of the Board of Directors, if there be one, the president, the vice presidents in their order of rank and seniority, or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy. The secretary, or, in the secretary’s absence, an assistant secretary, or in the absence of both the secretary and assistant secretaries, an individual appointed by the Board of Directors or, in the absence of such appointment, an individual appointed by the chairman of the meeting shall act as secretary. In the event that the secretary presides at a meeting of the stockholders, an assistant secretary, or in the absence of an assistant secretary, an individual appointed by the Board of Directors or the Chairman of the meeting, shall record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of such chairman, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to stockholders of record of the Corporation, their duly authorized proxies or other such individuals as the chairman of the meeting may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies and other such individuals as the chairman of the meeting may determine; (d) limiting the time allotted to questions or comments by participants; (e) determining when the polls should be opened and closed, (f) maintaining order and security at the meeting; (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; and (h) concluding the meeting or recessing or adjourning the meeting to a later date and time and place announced at the meeting. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.



Section 6. QUORUM. At any meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of all the votes entitled to be cast at such meeting on any matter shall constitute a quorum; but this section shall not affect any requirement under any statute or the charter of the Corporation (the “Charter”) for the vote necessary for the adoption of any measure. If, however, such quorum shall not be present at any meeting of the stockholders, the chairman of the meeting shall have the power to adjourn the meeting from time to time to a date not more than one hundred twenty (120) days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

The stockholders present either in person or by proxy, at a meeting which has been duly called and convened, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 7. VOTING. A plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a director. Each share may be voted for as many individuals as there are Directors to be elected and for whose election the share is entitled to be voted. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute or by the Charter. Unless otherwise provided by statute or by the Charter, each outstanding share of stock, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders.

Section 8. PROXIES. A stockholder may cast the votes entitled to be cast by the shares of stock owned of record by the stockholder in person or by proxy executed by the stockholder or by the stockholder’s duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the secretary of the Corporation before or at the meeting. No proxy shall be valid more than eleven months after its date, unless otherwise provided in the proxy.

Section 9. VOTING OF SHARES BY CERTAIN HOLDERS. Shares of stock of the Corporation registered in the name of a corporation, partnership, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, a general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such shares pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such shares. Any director or fiduciary may vote shares of stock registered in his or her name as such fiduciary, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the stockholder of record of the specified shares of stock in place of the stockholder who makes the certification.

Section 10. INSPECTORS. The Board of Directors, in advance of any meeting, may, but need not, appoint one or more individual inspectors or one or more entities that designate individuals as inspectors to act at the meeting or any adjournment thereof. If an inspector or inspectors are not appointed, the individual presiding at the meeting may, but need not, appoint one or more inspectors. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Board of Directors in advance of the meeting or at the meeting by the chairman of the meeting. The inspectors, if any, shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. Each such report shall be in writing and signed by him or her or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 11. ADVANCE NOTICE OF STOCKHOLDER NOMINEES FOR DIRECTOR AND OTHER PROPOSALS BY STOCKHOLDERS.

(a) Annual Meetings of Stockholders. (1) Nominations of individuals for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record both at the time of giving of notice by the stockholder provided for in this Section 11(a) and at the time of the annual meeting, who is entitled to vote at the meeting and who has complied with this Section 11(a).

(2) For nominations for election to the Board of Directors or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 11, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation and such other business must otherwise be a proper matter for action by the stockholders. To be timely, a stockholder's notice shall set forth all information required under this Section 11 and shall be delivered to the secretary at the principal executive office of the Corporation not earlier than the one-hundred twentieth (120<sup>th</sup>) day nor later than 5 p.m., Eastern Time, on the ninetieth (90<sup>th</sup>) day prior to the first (1st) anniversary of the date of mailing of the notice for the preceding year's annual meeting; provided, however, that in the event that the date of the mailing of the notice for the annual meeting is advanced or delayed by more than thirty (30) days from the first (1st) anniversary of the date of the mailing of the notice for the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the one hundred twentieth (120th) day prior to the date of mailing of the notice for such annual meeting and not later than the later of the ninetieth (90th) day prior to the first anniversary of the date of mailing of the notice for such annual meeting or the tenth (10th) day following the day on which public announcement of the date of mailing of the notice for such meeting is first made. The public announcement of a postponement or adjournment of an annual meeting shall not commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth (i) as to each individual whom the stockholder proposes to nominate for election or reelection as a director (A) the name, age, business address and residence address of such individual, (B) the class, series and number of any shares of stock of the Corporation that are beneficially owned by such individual, (C) the date such shares were acquired and the investment intent of such acquisition and (D) all other information relating to such individual that is required to be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act of 1934 and the rules and regulations promulgated thereunder (the "Exchange Act") (including such individual's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a description of such business, the reasons for proposing such business at the meeting and any material interest in such business of such stockholder and any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder and the Stockholder Associated Person therefrom, (iii) as to the stockholder giving the notice and Stockholder Associated Person, the class, series and number of all shares of stock of the Corporation which are owned by such stockholder and by such Stockholder Associated Person, if any, and the nominee holder for, and number of, shares owned beneficially but not of record by such stockholder and by any such Stockholder Associated Person; (iv) as to the stockholder giving the notice and any Stockholder Associated Person covered by clauses (ii) or (iii) of this paragraph (2) of this Section 11(a), the name and address of such stockholder, as they appear on the Corporation's stock ledger and current name and address, if different, and of such Stockholder Associated Person; and (v) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the nominee for election or reelection as a director or the proposal of other business on the date of such stockholder's notice.

(3) Notwithstanding anything in this subsection (a) of this Section 11 to the contrary, in the event the Board of Directors increases or decreases the maximum or minimum number of directors in accordance with Article III, Section 2 of these Bylaws, and there is no public announcement of such action at least one hundred (100) days prior to the first (1st) anniversary of the date of mailing of the notice of the preceding year's annual meeting, a stockholder's notice required by this Section 11(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if the notice is delivered to the secretary at the principal executive office of the Corporation not later than the 5:00 p.m., Eastern Time, on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(4) For purposes of this Section 11, "Stockholder Associated Person" of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder and (iii) any person controlling, controlled by or under common control with such Stockholder Associated Person.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of individuals for election to the Board of Directors may be made at a special meeting of stockholders at which Directors are to be elected (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) provided that the Board of Directors has determined that Directors shall be elected at such special meeting, by any stockholder of the Corporation who is a stockholder of record both at the time of giving of notice provided for in this Section 11 and at the time of the special meeting, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 11. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board of Directors, any such stockholder may nominate an individual or individuals (as the case may be) for election as a Director as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (2) of this Section 11(a) shall be delivered to the secretary at the principal executive office of the Corporation not earlier than 5:00 p.m., Eastern Time, on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The public announcement of a postponement or adjournment of a special meeting shall not commence a new time period for the giving of a stockholder's notice as described above.

(c) General. (1) Upon written request by the secretary or the Board of Directors or any committee thereof, any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders shall provide, within five (5) Business Days of delivery of such request (or such other period as may be specified in such request), written verification, satisfactory, in the discretion of the Board of Directors or any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 11. If a stockholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this Section 11.

(2) Only such individuals who are nominated in accordance with this Section 11 shall be eligible for election by stockholders as Directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 11. The chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 11.

(3) For purposes of this Section 11, (a) the “date of mailing of the notice” shall mean the date of the proxy statement for the solicitation of proxies for election of Directors and (b) “public announcement” shall mean disclosure (i) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or comparable news service or (ii) in a document publicly filed by the Corporation with the United States Securities and Exchange Commission pursuant to the Exchange Act.

(4) Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 11. Nothing in this Section 11 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, nor the right of the Corporation to omit a proposal from, the Corporation’s proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act.

Section 12. VOTING BY BALLOT. Voting on any question or in any election may be viva voce unless the presiding officer shall order or any stockholder shall demand that voting be by ballot.

Section 13. CONTROL SHARE ACQUISITION ACT. Notwithstanding any other provision of the Charter or these Bylaws, Title 3, Subtitle 7 of the Maryland General Corporation Law (the “MGCL”) (or any successor statute) shall not apply to any acquisition by any person of shares of stock of the Corporation. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any subsequent control share acquisition.

### **ARTICLE III**

#### **DIRECTORS**

Section 1. GENERAL POWERS. The business and affairs of the Corporation shall be managed under the direction of its Board of Directors.

Section 2. NUMBER, TENURE AND QUALIFICATIONS. At any regular meeting or at any special meeting called for that purpose, a majority of the entire Board of Directors may establish, increase or decrease the number of directors, provided that the number thereof shall never be less than the minimum number required by the MGCL, nor more than fifteen (15), and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors.

Section 3. ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board of Directors shall be held immediately after and at the same place as the annual meeting of stockholders, no notice other than this Bylaw being necessary. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors. The Board of Directors may provide, by resolution, the time and place for the holding of regular meetings of the Board of Directors without other notice than such resolution.

Section 4. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the chairman of the Board of Directors, the chief executive officer, the president or by a majority of the Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix any place as the place for holding any special meeting of the Board of Directors called by them. The Board of Directors may provide, by resolution, the time and place for the holding of special meetings of the Board of Directors without other notice than such resolution.

Section 5. NOTICE. Notice of any special meeting of the Board of Directors shall be delivered personally or by telephone, electronic mail, facsimile transmission, United States mail or courier to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least twenty four (24) hours prior to the meeting. Notice by United States mail shall be given at least three (3) days prior to the meeting. Notice by courier shall be given at least two (2) days prior to the meeting. Telephone notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 6. QUORUM. A majority of the Directors shall constitute a quorum for transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of such Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to applicable law, the Charter or these Bylaws, the vote of a majority of a particular group of Directors is required for action, a quorum must also include a majority of such group.

The Directors present at a meeting which has been duly called and convened may continue to transact business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum.

Section 7. VOTING. The action of the majority of the Directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or these Bylaws. If enough Directors have withdrawn from a meeting to leave less than a quorum but the meeting is not adjourned, the action of the majority of that number of Directors necessary to constitute a quorum at such meeting shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or these Bylaws.

Section 8. ORGANIZATION. At each meeting of the Board of Directors, the chairman of the Board of Directors or, in the absence of the chairman, the vice chairman of the Board of Directors, if any, shall act as chairman of the meeting. In the absence of both the chairman and vice chairman of the Board of Directors, the chief executive officer or in the absence of the chief executive officer, the president or in the absence of the president, a director chosen by a majority of the Directors present, shall act as chairman of the meeting. The secretary or, in his or her absence, an assistant secretary of the Corporation, or in the absence of the secretary and all assistant secretaries, a person appointed by the Chairman, shall act as secretary of the meeting.

Section 9. TELEPHONE MEETINGS. Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 10. CONSENT BY DIRECTORS WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each director and is filed with the minutes of proceedings of the Board of Directors.

Section 11. VACANCIES. If for any reason any or all the Directors cease to be Directors, such event shall not terminate the Corporation or affect these Bylaws or the powers of the remaining Directors hereunder (even if fewer than three Directors remain). Except as may be provided by the Board of Directors in setting the terms of any class or series of preferred stock, any vacancy on the Board of Directors may be filled only by a majority of the remaining Directors, even if the remaining Directors do not constitute a quorum. Any director elected to fill a vacancy shall serve for the remainder of the full term of the class in which the vacancy occurred and until a successor is elected and qualifies.

Section 12. COMPENSATION. Directors shall not receive any stated salary for their services as Directors but, by resolution of the Directors, may receive compensation per year and/or per meeting and/or per visit to real property or other facilities owned, leased or to be acquired by the Corporation and for any service or activity they performed or engaged in as Directors. Directors may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Directors or of any committee thereof and for their expenses, if any, in connection with each property visit and any other service or activity they performed or engaged in as Directors; but nothing herein contained shall be construed to preclude any Directors from serving the Corporation in any other capacity and receiving compensation therefor.

Section 13. LOSS OF DEPOSITS. No director shall be liable for any loss which may occur by reason of the failure of the bank, trust company, savings and loan association, or other institution with whom moneys or shares of stock have been deposited.

Section 14. SURETY BONDS. Unless required by law, no director shall be obligated to give any bond or surety or other security for the performance of any of his or her duties.

Section 15. RELIANCE. Each director, officer, employee and agent of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be fully justified and protected with regard to any act or failure to act in reliance in good faith upon the books of account or other records of the Corporation, upon an opinion of counsel or upon reports made to the Corporation by any of its officers or employees or by the adviser, accountants, appraisers or other experts or consultants selected by the Board of Directors or officers of the Corporation, regardless of whether such counsel or expert may also be a director.

Section 16. CERTAIN RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS. The Directors shall have no responsibility to devote their full time to the affairs of the Corporation. Any director or officer, employee or agent of the Corporation, in his or her personal capacity or in a capacity as an affiliate, employee, or agent of any other person, or otherwise, may have business interests and engage in business activities similar to or in addition to or in competition with those of or relating to the Corporation.

## **ARTICLE IV**

### **COMMITTEES**

Section 1. NUMBER, TENURE AND QUALIFICATIONS. The Board of Directors may appoint from among its members an Executive Committee, an Audit Committee, a Compensation Committee, a Nominating and Corporate Governance Committee and such other committees as the Board of Director may deem appropriate, composed of one or more Directors, to serve at the pleasure of the Board of Directors.

Section 2. POWERS. The Board of Directors may delegate to committees appointed under Section 1 of this Article any of the powers of the Board of Directors, except as prohibited by law.

Section 3. MEETINGS. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Directors.

A majority of the members of any committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee. The Board of Directors may designate a chairman of any committee, and such chairman or, in the absence of such chairman, any two members of any committee (if there are at least two members of the committee) may fix the time and place of its meeting unless the Board shall otherwise provide. In the absence of any member of any such committee, the members thereof present at any meeting, whether or not they constitute a quorum, may appoint another Director to act in the place of such absent member.



Each committee shall keep minutes of its proceedings.

Section 4. TELEPHONE MEETINGS. Members of a committee of the Board of Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 5. CONSENT BY COMMITTEES WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each member of the committee and is filed with the minutes of proceedings of such committee.

Section 6. VACANCIES. Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to fill all vacancies, to designate alternate members to replace any absent or disqualified member or to dissolve any such committee.

## **ARTICLE V**

### **OFFICERS**

Section 1. GENERAL PROVISIONS. The officers of the Corporation shall include a president, a secretary and a treasurer and may include a chairman of the Board of Directors, a vice chairman of the Board of Directors, a chief executive officer, one or more vice presidents, a chief operating officer, a chief financial officer, one or more assistant secretaries and one or more assistant treasurers. In addition, the Board of Directors may from time to time elect such other officers with such powers and duties as it shall deem necessary or desirable. The officers of the Corporation shall be elected annually by the Board of Directors, except that the chief executive officer or president may from time to time appoint one or more vice presidents, assistant secretaries and assistant treasurers or other officers. Each officer shall hold office until his or her successor is elected and qualifies or until his or her death, or his or her resignation or removal in the manner hereinafter provided. Any two or more offices except president and vice president may be held by the same person. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent.

Section 2. REMOVAL AND RESIGNATION. Any officer or agent of the Corporation may be removed, with or without cause, by the Board of Directors if in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by giving written notice of his or her resignation to the Board of Directors, the chairman of the Board of Directors, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the notice of resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 3. VACANCIES. A vacancy in any office may be filled by the Board of Directors for the balance of the term.

Section 4. CHIEF EXECUTIVE OFFICER. The Board of Directors may designate one or more chief executive officers. In the event that the Board of Directors designates more than one chief executive officer, such chief executive officers shall be designated as co-chief executive officers. In the absence of such designation, the chairman of the Board of Directors shall be the chief executive officer of the Corporation. The chief executive officer(s) shall have general responsibility for implementation of the policies of the Corporation, as determined by the Board of Directors, and for the management of the business and affairs of the Corporation. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of chief executive officer and such other duties as may be prescribed by the Board of Directors from time to time.

Section 5. CHIEF OPERATING OFFICER. The Board of Directors may designate a chief operating officer. The chief operating officer shall have the responsibilities and duties as set forth by the Board of Directors or the chief executive officer.

Section 6. CHIEF INVESTMENT OFFICER. The Board of Directors may designate a chief investment officer. The chief investment officer shall have the responsibilities and duties as set forth by the Board of Directors or the chief executive officer.

Section 7. CHIEF FINANCIAL OFFICER. The Board of Directors may designate a chief financial officer. The chief financial officer shall have the responsibilities and duties as set forth by the Board of Directors or the chief executive officer.

Section 8. CHAIRMAN OF THE BOARD. The Board of Directors shall designate a chairman of the Board of Directors. The chairman of the Board of Directors shall preside over the meetings of the Board of Directors and of the stockholders at which he shall be present. The chairman of the Board of Directors shall perform such other duties as may be assigned to him or her by the Board of Directors.

Section 9. PRESIDENT. In the absence of a chief executive officer, the president shall in general supervise and control all of the business and affairs of the Corporation. In the absence of a designation of a chief operating officer by the Board of Directors, the president shall be the chief operating officer.

Section 10. VICE PRESIDENTS . In the absence of the president or in the event of a vacancy in such office, the vice president (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other duties as from time to time may be assigned to such vice president by the president or by the Board of Directors. The Board of Directors may designate one or more vice presidents as executive vice president, senior vice president or as vice president for particular areas of responsibility.

Section 11. SECRETARY . The secretary shall (a) keep the minutes of the proceedings of the stockholders, the Board of Directors and committees of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation, if any; (d) keep a register of the post office address of each stockholder which shall be furnished to the secretary by such stockholder; (e) have general charge of the stock transfer books of the Corporation; and (f) in general perform such other duties as from time to time may be assigned to him by the chief executive officer, the president or by the Board of Directors.

Section 12. TREASURER . The treasurer shall have the custody of the funds and securities of the Corporation and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. In the absence of a designation of a chief financial officer by the Board of Directors, the treasurer shall be the chief financial officer of the Corporation.

The treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the president and Board of Directors, at the regular meetings of the Board of Directors or whenever it may so require, an account of all his or her transactions as treasurer and of the financial condition of the Corporation.

If required by the Board of Directors, the treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, moneys and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

Section 13. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS . The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the president or the Board of Directors. The assistant treasurers shall, if required by the Board of Directors, give bonds for the faithful performance of their duties in such sums and with such surety or sureties as shall be satisfactory to the Board of Directors.

Section 14. SALARIES . The salaries and other compensation of the officers shall be fixed from time to time by the Board of Directors or a committee thereof and no officer shall be prevented from receiving such salary or other compensation by reason of the fact that he is also a director.

## ARTICLE VI

### CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. CONTRACTS. The Board of Directors, the Executive Committee or another committee of the Board of Directors within the scope of its delegated authority, may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when duly authorized or ratified by action of the Board of Directors, or the Executive Committee or such other committee and executed by an authorized person.

Section 2. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or agent of the Corporation in such manner as shall from time to time be determined by the Board of Directors.

Section 3. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may designate.

## ARTICLE VII

### STOCK

Section 1. CERTIFICATES. Except as otherwise provided in these Bylaws, this Section shall not be interpreted to limit the authority of the Board of Directors to issue some or all of the shares of any or all of the Corporation's classes or series without certificates. Each stockholder, upon written request to the secretary of the Corporation, shall be entitled to a certificate or certificates which shall represent and certify the number of shares of each class of stock held by him in the Corporation. Each certificate shall be signed by the chairman of the board, the president or a vice president and countersigned by the secretary or an assistant secretary or the treasurer or an assistant treasurer and may be sealed with the seal, if any, of the Corporation. The signatures may be either manual or facsimile. Certificates shall be consecutively numbered; and if the Corporation shall, from time to time, issue several classes of stock, each class may have its own number series. A certificate is valid and may be issued whether or not an officer who signed it is still an officer when it is issued. Each certificate representing shares which are restricted as to their transferability or voting powers, which are preferred or limited as to their dividends or as to their allocable portion of the assets upon liquidation or which are redeemable at the option of the Corporation, shall have a statement of such restriction, limitation, preference or redemption provision, or a summary thereof, plainly stated on the certificate. If the Corporation has authority to issue stock of more than one class, the certificate shall contain on the face or back a full statement or summary of the designations and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of each class of stock and, if the Corporation is authorized to issue any preferred or special class in series, the differences in the relative rights and preferences between the shares of each series to the extent they have been set and the authority of the Board of Directors to set the relative rights and preferences of subsequent series. In lieu of such statement or summary, the certificate may state that the Corporation will furnish a full statement of such information to any stockholder upon request and without charge. If any class of stock is restricted by the Corporation as to transferability, the certificate shall contain a full statement of the restriction or state that the Corporation will furnish information about the restrictions to the stockholder on request and without charge.

Section 2.           TRANSFERS. Upon surrender to the Corporation or the transfer agent of the Corporation of a stock certificate duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the Corporation shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

The Corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class of stock will be subject in all respects to the Charter and all of the terms and conditions contained therein.

Section 3.           REPLACEMENT CERTIFICATE. Any officer designated by the Board of Directors may direct a new certificate to be issued in place of any certificate previously issued by the Corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing the issuance of a new certificate, an officer designated by the Board of Directors may, in his or her discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or the owner's legal representative to advertise the same in such manner as he or she shall require and/or to give bond, with sufficient surety, to the Corporation to indemnify it against any loss or claim which may arise as a result of the issuance of a new certificate.

Section 4.           CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE. The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than ninety (90) days and, in the case of a meeting of stockholders, not less than ten (10) days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

In lieu of fixing a record date, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not longer than twenty (20) days. If the stock transfer books are closed for the purpose of determining stockholders entitled to notice of or to vote at a meeting of stockholders, such books shall be closed for at least ten (10) days before the date of such meeting.

If no record date is fixed and the stock transfer books are not closed for the determination of stockholders, (a) the record date for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day on which the notice of meeting is mailed or the thirtieth (30th) day before the meeting, whichever is the closer date to the meeting; and (b) the record date for the determination of stockholders entitled to receive payment of a dividend or an allotment of any other rights shall be the close of business on the day on which the resolution of the Directors, declaring the dividend or allotment of rights, is adopted.

When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof, except when (i) the determination has been made through the closing of the transfer books and the stated period of closing has expired or (ii) the meeting is adjourned to a date more than 120 days after the record date fixed for the original meeting, in either of which case a new record date shall be determined as set forth herein.

Section 5. STOCK LEDGER. The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6. FRACTIONAL STOCK; ISSUANCE OF UNITS. The Board of Directors may issue fractional stock or provide for the issuance of scrip, all on such terms and under such conditions as they may determine. Notwithstanding any other provision of the Charter or these Bylaws, the Board of Directors may issue units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the Board of Directors may provide that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

## **ARTICLE VIII**

### **ACCOUNTING YEAR**

The Board of Directors shall have the power, from time to time, to fix the fiscal year of the Corporation by a duly adopted resolution.

## **ARTICLE IX**

### **DISTRIBUTIONS**

Section 1. AUTHORIZATION. Dividends and other distributions upon the stock of the Corporation may be authorized by the Board of Directors, subject to the provisions of law and the Charter. Dividends and other distributions may be paid in cash, property or shares of stock of the Corporation, subject to the provisions of law and the Charter.

Section 2. CONTINGENCIES. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends or other distributions, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine to be in the best interest of the Corporation, and the Board of Directors may modify or abolish any such reserve.

## **ARTICLE X**

### **INVESTMENT POLICIES**

Subject to the provisions of the Charter, the Board of Directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Corporation as it shall deem appropriate in its sole discretion.

## **ARTICLE XI**

### **PROHIBITED INVESTMENTS AND ACTIVITIES**

Notwithstanding anything to the contrary in the Charter, the Corporation shall not enter into any transaction referred to in (i), (ii) or (iii) below which it does not believe is in the best interests of the Corporation, and will not, without the approval of a majority of the disinterested Directors, (i) acquire from or sell to any Director, officer or employee of the Corporation, any corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in which a Director, officer or employee of the Corporation owns more than a 5% interest or any affiliate of any of the foregoing, any of the assets or other property of the Corporation, except for the acquisition directly or indirectly of certain properties or interest therein, directly or indirectly, through entities in which it owns an interest in connection with the initial public offering of shares by the Corporation or pursuant to agreements entered into in connection with such offering, which properties shall be described in the prospectus relating to such initial public offering, (ii) make any loan to or borrow from any of the foregoing persons or (iii) engage in any other transaction with any of the foregoing persons. Each such transaction will be in all respects on such terms as are, at the time of the transaction and under the circumstances then prevailing, fair and reasonable to the Corporation. Subject to the provisions of the Charter, the Board of Directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Corporation as it shall deem appropriate in its sole discretion.

## ARTICLE XII

### SEAL

Section 1. SEAL. The Board of Directors may authorize the adoption of a seal by the Corporation. The seal shall contain the name of the Corporation and the year of its incorporation. The Board of Directors may authorize one or more duplicate seals and provide for the custody thereof.

Section 2. AFFIXING SEAL. Whenever the Corporation is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word “(SEAL)” adjacent to the signature of the person authorized to execute the document on behalf of the Corporation.

## ARTICLE XIII

### INDEMNIFICATION AND ADVANCE OF EXPENSES

To the maximum extent permitted by Maryland law in effect from time to time, the Corporation shall indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer of the Corporation and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity or (b) any individual who, while a director or officer of the Corporation and at the request of the Corporation, serves or has served as a director, officer, partner or trustee of such corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity. The Corporation may, with the approval of its Board of Directors, or a duly authorized committee thereof, provide such indemnification and advance for expenses to a person who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation. The indemnification and payment of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment of expenses may be or may become entitled under any bylaw, regulation, insurance, agreement or otherwise.

Neither the amendment nor repeal of this Article, nor the adoption or amendment of any other provision of the Bylaws or Charter inconsistent with this Article, shall apply to or affect in any respect the applicability of the preceding paragraph with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.



## **ARTICLE XIV**

### **WAIVER OF NOTICE**

Whenever any notice is required to be given pursuant to the Charter or these Bylaws or pursuant to applicable law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## **ARTICLE XV**

### **AMENDMENT OF BYLAWS**

The Board of Directors shall have the exclusive power to adopt, alter or repeal any provision of these Bylaws and to make new Bylaws.

## List of Significant Subsidiaries

| Name                                                                             | State of Incorporation | Names under which it does Business |
|----------------------------------------------------------------------------------|------------------------|------------------------------------|
| Hypotheca Capital, LLC (formerly known as<br>The New York Mortgage Company, LLC) | New York               | n/a                                |
| New York Mortgage Trust 2005-1                                                   | Delaware               | n/a                                |
| New York Mortgage Trust 2005-2                                                   | Delaware               | n/a                                |
| New York Mortgage Trust 2005-3                                                   | Delaware               | n/a                                |
| New York Mortgage Funding, LLC                                                   | Delaware               | n/a                                |

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our report dated March 3, 2011, with respect to the consolidated financial statements included in the Annual Report of New York Mortgage Trust, Inc. on Form 10-K for the year ended December 31, 2010. We hereby consent to the incorporation by reference of said report in New York Mortgage Trust Inc.'s Registration Statements (Forms S-3 No. 333-162654 effective December 11, 2009 and No. 333-150088 effective April 18, 2008) and Registration Statements (Forms S-8 No. 333-167609 effective June 17, 2010 and No. 333-137987 effective October 13, 2006).

/s/ Grant Thornton LLP

New York, New York  
March 3, 2011

**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Steven R. Mumma, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2010 of New York Mortgage Trust, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

- (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 4, 2011

/s/ Steven R. Mumma

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Steven R. Mumma  
Chief Executive Officer and President  
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Fredric S. Starker, certify that:

1. I have reviewed this annual report on Form 10-K for the year ended December 31, 2010 of New York Mortgage Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 4, 2011

/s/ Fredric S. Starker

Fredric S. Starker

Chief Financial Officer

(Principal Financial and Accounting Officer)

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of New York Mortgage Trust, Inc., (the "Company") on Form 10-K for the year ended December 31, 2010, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Date: March 4, 2011

/s/ Steven R. Mumma  
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Steven R. Mumma  
Chief Executive Officer and President  
(Principal Executive Officer)

Date: March 4, 2011

/s/ Fredric S. Starker  
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Fredric S. Starker  
Chief Financial Officer  
(Principal Financial and Accounting Officer)