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# Representations & Warranties



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## 3 Representations & Warranties

### Overview

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<b>Description</b>	This chapter outlines the representations, warranties and covenants (reps/warranties) made by each Correspondent upon the sale of a mortgage loan to Mortgage Services III, LLC (MSI), its successors and assigns, unless expressly waived in writing. The Correspondent makes such representations, warranties and covenants in order to induce MSI to purchase the related mortgage loan.
<b>Reliance of MSI</b>	The Correspondent acknowledges that, with respect to each mortgage loan purchased by MSI, the mortgage loan was purchased in good faith and in reliance on the Correspondent's compliance with each of the representations, warranties and covenants made by the Correspondent pursuant to the MSI Seller Guide.
<b>Survival of the Reps &amp; Warranties</b>	All representations, warranties and covenants on the part of the Seller contained in this Agreement or given pursuant hereto shall survive any termination of this Agreement and the closing of the loan purchase transactions herein contemplated and shall remain in full force and effect, regardless of such termination or the closing dates of said transactions.
<b>Seller Guide</b>	By sale of the mortgage loan to MSI, the Correspondent represents and warrants that each loan meets all requirements as outlined in the MSI Correspondent Lending Seller Guide (Seller Guide), which is a Contract Document as defined by the Loan Purchase and Sale Agreement (Agreement).
<b>Defined Terms</b>	In this section, the following terms are used as noted: <ul style="list-style-type: none"><li>✓ Correspondent – interchangeable with Seller</li><li>✓ Buyer – interchangeable with Mortgage Services III, LLC (MSI)</li></ul>

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## Seller's General Representations and Warranties

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<b>Description</b>	The Correspondent (aka in this document as Seller) in connection with the sale of a loan to MSI represents and warrants the following:
<b>Qualifications</b>	<p>The Correspondent:</p> <ul style="list-style-type: none"><li>✓ Meets all of the eligibility requirements set forth in the Eligibility chapter of this Guide</li><li>✓ Is approved by MSI to sell loans to MSI</li><li>✓ Is in Good Standing with MSI</li><li>✓ Be<ul style="list-style-type: none"><li>• A financial institution or Mortgage Banker which is supervised or examined by a federal or state authority, or</li><li>• Is a Federal Housing Administration ("FHA")-approved mortgagee and/or</li><li>• An approved Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") Seller/ Servicer.</li></ul></li></ul>
<b>Organization and Good Standing</b>	<p>In accordance with the laws of the jurisdiction under which it was organized, the Correspondent:</p> <ul style="list-style-type: none"><li>✓ Is Duly organized</li><li>✓ Is Validly existing</li><li>✓ Is In Good Standing with all applicable investors, agencies and supervising entities and under the laws of the jurisdiction of its organization</li><li>✓ Is qualified to do business, and has the corporate power and authority to perform its obligations under this Agreement.</li><li>✓ Holds all applicable federal, or state or other licenses, authorizations or approvals, including, without limitation, the authorizations and approvals of FHA, Department of Veterans Affairs ("VA"), FNMA, FHLMC or Government National Mortgage Association ("GNMA"), as are reasonably necessary to perform its obligations under this Agreement in compliance with applicable law and secondary market requirements, and is not in violation of any of the requirements of any such licenses, authorizations and approvals</li></ul>

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### Seller's General Representations and Warranties, Continued

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**Authority** The execution, delivery and performance of this Agreement (including all instruments of transfer to be delivered pursuant to this Agreement) have been duly and validly authorized by all requisite action on the part of the Seller, and if the Seller is a depository institution, this Agreement will be maintained in the Seller's official records.

The consummation of the transactions contemplated by this Agreement are in the ordinary course of business of the Seller, and the transfer, assignment and conveyance of the notes and mortgages relating to the Loans by the Seller pursuant to this Agreement are not subject to bulk transfer or any similar statutory provisions in effect in any applicable jurisdiction.

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**Binding Obligation** This Agreement is the legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable liquidation, conservatorship, bankruptcy, insolvency, rearrangement, moratorium, reorganization or similar debtor relief laws affecting the rights of creditors generally.

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**Adverse Action** There is no proceeding, action, investigation, or litigation pending or, to the best of the Seller's knowledge, threatened against the Seller which, individually or in the aggregate, may have a material adverse effect on this Agreement or on any action taken or to be taken in connection with the Seller's obligations contemplated herein, or which would be likely to impair materially its ability to perform under the terms of this Agreement.

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**No Consent Required** No consent, approval, authorization or order or, registration or filing with, or notice to, any governmental authority or court is required (except with respect to the recordation of the assignment of the mortgages or deeds of trust) under federal laws, or the laws of any jurisdiction, for the execution, delivery and performance of, or compliance by the Seller with, this Agreement or the consummation of any other transaction contemplated hereby.

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# Representations & Warranties



## Seller's General Representations and Warranties, Continued

### **True and Correct Information**

All information and documentation given the Buyer by the Seller or its agents, both in connection with the approval of the Seller to enter into this Agreement and thereafter, was or will be true and correct as of the date it was or is given and the Seller will promptly inform the Buyer of any material change involving any previously submitted information or documentation.

No representation, warranty or written statement made by or on behalf of the Seller in this Agreement, or in any schedule, exhibit, report, written statement, certificate or other document furnished by the Seller in connection with the transactions contemplated herein contains or will contain any untrue statement of a material fact or omits to state a material fact to make the statements contained herein or therein not misleading.

### **Indemnification**

The Seller hereby agrees to indemnify and hold the Buyer and its officers, directors, employees and representatives harmless against any and all claims, losses, expenses, costs, obligations and liabilities, including reasonable attorney's fees and expenses, which result or arise from the breach of any representation or warranty of the Seller, or default in the performance of any covenant of the Seller, contained in the Agreement.

The Seller further agrees to indemnify and hold the Buyer and its officers, directors, employees and representatives harmless against any and all claims, losses, expenses, costs, obligations and liabilities, including reasonable attorney's fees and expenses, resulting from:

- (i) any Loan that fails to conform with the applicable requirements established by the Buyer,
- (ii) the Seller's failure to deliver the Loan File within the time period required by the Contract Documents,
- (iii) a Loan that is not eligible for sale or pooling by the Buyer, the default by any Approved Dealer on a mandatory delivery commitment assigned by the Seller to the Buyer, or the origination or servicing (prior to transfer of servicing to the Buyer) of the Loan, including, but not limited to, losses incurred from the withdrawal or reduction of insurance by the FHA, VA or any mortgage insurance company on any Loan, losses resulting from the violation of any local, state or federal law, losses caused by errors in servicing, and losses resulting from missing or incorrect loan documentation.

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### Seller's General Representations and Warranties, Continued

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#### Indemnification, Continued

The Buyer hereby agrees to indemnify and hold the Seller and its officers, directors, employees and representatives harmless against any material breach by the Buyer of this Agreement, or any gross negligence or willful misconduct in connection with the Buyer's servicing of the Loan.

Promptly upon receipt of notice of any claim, demand or assessment from a third party or the commencement of any suit, action or proceeding by a third party in respect of which indemnity may be sought on account of an indemnity agreement contained in Section 9 of the Agreement, the party seeking indemnification (the "Indemnitee") will give written notice thereof, within sufficient time to respond to such claim or answer or otherwise plead in such action, and in any event within thirty (30) days after receipt of such notice, to the party from whom indemnification is sought (the Indemnitor"). Except to the extent that the Indemnitor is prejudiced thereby, the omission of such Indemnitee so to notify promptly the Indemnitor of any such claim or action shall not relieve such Indemnitor from any liability which it may have to such Indemnitee in connection therewith on account of the indemnity agreement contained in this Section 9. In case any claim, demand or assessment shall be asserted or suit, action or proceeding commenced against an Indemnitee, it shall promptly notify the Indemnitor of the commencement thereof, the Indemnitor will be entitled to participate therein, and, to the extent that it may wish, to assume the defense, conduct or settlement thereof, with counsel approved by the Indemnitee (which approval will not unreasonably be withheld). After notice from the Indemnitor to the Indemnitee of its election so to assume the defense, conduct or settlement thereof and provided the Indemnitor proceeds diligently and fulfills its obligations to defend and pay the cost thereof and keeps Indemnitee informed of the progress thereof, the Indemnitor will not be liable to the Indemnitee for any legal or other expenses subsequently incurred by the Indemnitee in connection with the defense, conduct or settlement thereof.

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# Representations & Warranties



## Seller's General Representations and Warranties, Continued

### Indemnification, Continued

With respect to claims for indemnity hereunder by the Buyer or the Seller not related to claims by third parties, no party shall have any liability hereunder for any breach of warranty or for misrepresentation, except to the extent written notice thereof shall be given to the Indemnitor within a reasonable period of time after the party seeking indemnity has actual knowledge thereof. The Indemnitor shall respond to any such claim in writing within ten (10) business days, or as soon thereafter as practicable, which response shall set forth

- (i) the extent to which such claim is conceded,
- (ii) the extent to which such claim is disputed, both as to subject matter and amount, and
- (iii) the basis for disputing any such claim.

### Compensation Arrangements REV (4/01/11)

- ✓ Seller's payments to its loan originators comply with all applicable laws, including, but not limited to, 12 C.F.R. §2226.36 as amended from time to time.
- ✓ Seller has not requested compensation from MSI that is based on the terms or conditions of any loan delivered or expected to be delivered by the Seller, and the reasons stated by the Seller for any requested change in compensation are true and correct.
- ✓ In any transaction in which Seller has received compensation from the consumer, neither Seller nor any of its loan originators has received, nor are any of them expected to receive, compensation from any other source.
- ✓ Seller has not delivered any loan to MSI based on the fact that Seller expects to receive greater compensation from MSI than in other transactions that Seller offered or could have offered to the consumer; and has subjected any loan delivered to MSI to any test that provides a legal "safe harbor" or similar protections against such a claim.
- ✓ Upon request of MSI, Seller will provide to MSI within five (5) business days documentation evidencing Seller's compliance with 12 C.F.R. §2226.36, as amended from time to time.

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## Seller's General Representations and Warranties, Continued

**Confidentiality  
of Borrower  
Information**

**Confidentiality and Security of Borrower Information**

All Sellers are required to insure that the borrower's personal (social security number, etc.) and loan information is confidential and secure. Borrower information must be delivered and received in a secure manner acceptable to MSI.

- ✓ MSI provides a Secure Email System to ensure the confidentiality of the borrower's information.
- ✓ Please see the Web Site Tutorial entitled, "Secure Mail Tutorial" for full details on using MSI's Secure Email System.

**Confidential  
Business  
Information**  
CLAR (4/26/12)

**Definition:**

Each party (as "Recipient") may have access to and each party (as "Owner") may provide to the other party, information that the Owner regards as confidential or proprietary. Confidential Information includes information of a commercial, proprietary or technical nature and includes (but is not limited to) the following, whether now in existence or hereafter created:

- ✓ Any information about customers of any nature whatsoever, and specifically including the fact that someone is a current or prospective customer of the Owner. All lists of customers, applicants, prospective customers and all personal or financial information relating to and identified with such persons.
- ✓ All information marked "confidential" or similarly marked, or information that the Recipient should, in the exercise of reasonable business judgment, recognize as confidential.
- ✓ All notes, memoranda, analyses, compilations, studies, techniques, processes, approaches and other documents or information in various forms whether prepared by the Owner, the Recipient or others which contain or otherwise reflect Confidential Information used to conduct business.

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## Seller's General Representations and Warranties, Continued

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### Confidential Business Information, Continued

**Essential Obligation of the Parties:**

- ✓ Confidential Information must be held in confidence and disclosed only to those employees or agents whose duties reasonably require access to such information.
  - ✓ Recipient must protect the Owner's Confidential Information using at least the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure or duplication (except as required for backup systems) of such Confidential Information as Recipient uses to protect its own confidential information of a similar nature.
  - ✓ Recipient shall establish and maintain data safeguards against the destruction, loss, alteration of or unauthorized access to Owner's Confidential Information in the possession of Recipient.
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### Miscellaneous Covenants

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**Overview** MSI and the Correspondent shall comply with the following Miscellaneous Covenants.

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**Capitalized Terms** Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Contract Documents. Section heading names are for convenience only.

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**Notices** All demands, notices and communications to the Correspondent shall be in writing and be deemed to have been given if electronically mailed (Emailed), posted on the MSI Web site ([www.msicorr.com](http://www.msicorr.com)), or mailed or delivered to the applicable party at the address shown in the Contract Documents, or such other address as may hereafter be furnished to the other parties by like notice.

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**Agreement to Supersede** This Agreement shall supersede and replace any prior written or oral agreement between the parties concerning the purchase of Loans by the Buyer, although any such Loans purchased by the buyer from the Seller prior to the date of this Agreement shall continue to be governed by the terms of any prior agreement pertaining thereto. No term or provision of this Agreement may be waived or modified unless in writing and agreed to by all parties hereto.

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**Assignment of Interest** The Seller shall not assign its interest in this Agreement without the prior written Consent of the Buyer.

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**Governing Law** This Agreement shall be construed with and governed by the laws of the State of Illinois applicable to contracts made and to be performed therein without regard to the principles of conflict of laws. The parties agree that venue for any dispute arising hereunder shall be state or federal court in McLean County, Illinois.

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# Representations & Warranties



## Miscellaneous Covenants, Continued

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**Limitations** Nothing herein contained shall be deemed or construed to create a partnership or joint venture between the parties hereto, and the Seller shall not represent that it is the Buyer's agent for any purpose.

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**Rights of MSI** The Seller shall, from time to time hereafter, upon request of the Buyer and without further consideration, do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, documents, instruments, transfers and assurances as the Buyer may reasonably request to confirm and perfect the Buyer's right, title, and interest in and to, and possession of, the Loans and the Loan Files.

With respect to any Government Loan, upon request, the Seller shall provide the Buyer with copies of the case binder submitted to the FHA or the insuring package submitted to the VA, as the case may be.

In the event Seller fails to deliver timely to Buyer documents necessary for Buyer to have custody of complete Loan Files, or if Buyer otherwise deems itself insecure with the prospect of obtaining such follow-up documents (e.g., assignments, registered deeds, insurance application packages, mortgage insurance certificates) timely from Seller, Buyer has the right hereunder to present itself during business hours, upon reasonable notice, at the offices of Seller and retrieve into Buyer's custody such documents.

Upon reasonable notice and during regular business hours, the Seller hereby agrees to allow the Buyer to review all of the books and records of the Seller relating to Loans purchased under the Agreement.

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**Annual Audited Financials** The Seller will provide the Buyer with annual audited financial statements within 90 days after the Seller's fiscal year-end prepared by independent certified public accountants in accordance with generally accepted accounting principles, and with such other financial information as is reasonable requested by the buyer in connection with the purchase of Loans from the Seller pursuant to this Agreement.

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## Representations & Warranties

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### Miscellaneous Covenants, Continued

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**Quality Control System**

The Seller will maintain a quality control system acceptable to the Buyer, in its sole discretion, and will promptly provide to the Buyer upon request copies of all internal and external reports relating to Loans purchased by the Buyer pursuant to this Agreement.

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**Insurance Requirements**

The Seller will maintain in full force, as described in the Contract Documents, errors and omissions and fidelity bond insurance coverage in such amount as the buyer shall reasonably require to indemnify the Buyer from any loss or damage incurred in connection with the transactions contemplated by this Agreement and shall provide evidence of such coverages to the Buyer annually.

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**Several Obligations**

Notwithstanding any provision in the Agreement or the Contract Documents to the contrary, the rights, remedies, benefits, duties and obligations of Buyer and any of its affiliates hereunder are several and not joint and several. Buyer does not assume any obligations or duties of any of its affiliates with respect to any Loans purchased by any such affiliate from the Seller either prior to or after the date of the Agreement.

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# Representations & Warranties



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## Correspondent's Loan Representations and Warranties

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**Overview**  
(12/10/09) The Seller hereby further represents and warrants as follows, with respect to each Loan sold to the Buyer by it, as of the date of the purchase of the loan.

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**Origination** The Loan was originated by the Seller or by a subsidiary of the Seller or by a HUD loan correspondent sponsored by the Seller, unless otherwise permitted in the Contract Documents.

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**Full Compliance with Law** The Loan was originated, closed and transferred to the Buyer in full compliance with all federal, state and local laws and regulations, including, without limitation, the Real Estate Settlement Procedures Act, Truth-in-Lending Act, Equal Credit Opportunity Act, Housing Act, Home Mortgage Disclosure Act, Soldiers' and Sailors' Relief Acts and other consumer protection and applicable disclosure requirements.

The Loan and the loan purchase transaction to be consummated in connection therewith conforms to all applicable provisions and requirements of the Contract Documents.

---

**Government Loans** Each Government Loan conforms with all applicable FHA or VA underwriting, lending, selling and servicing requirements and to all GNMA requirements for the inclusion of the Loan in a GNMA MBS pool, and the Seller will comply with all documentation requirements of the Buyer and the document custodian within the time limitations described in the Contract Documents.

If a commitment requires the Loan to be FHA-insured, the Loan is fully eligible for FHA insurance and is, or within 45 days after disbursement of the proceeds by the Seller will be, fully insured by the FHA. If a Commitment requires the Loan to be guaranteed by the VA, the Loan is fully eligible for VA guaranty, and is, or within 45 days after disbursement of the proceeds by the Seller will be, fully guaranteed by the VA.

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### Correspondent's Loan Representations and Warranties, Continued

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**Conventional Loans**

Each Conventional Loan (all Loans, including Jumbo Loans (defined below), other than Government Loans) conforms with all applicable requirements of the Agencies or applicable Investor, including, but not limited to, all requirements for the inclusion of such Conventional Loans in the FHLMC Guarantor Program and/or the FNMA Mortgage-Backed Security Loan Program, and each Conventional Loan conforms with all pooling requirements of the Agency or Investor.

The Seller will comply with all documentation requirements of the Buyer and the document custodian within the time limitations described in the Contract Documents. If a Commitment requires the Loan to be insured by a policy of private mortgage insurance, the Loan is fully eligible and qualified to be insured by such policy of private mortgage insurance, such policy is in full force and effect, and no event or condition exists which could give rise to or result in a revocation of or defense to the policy.

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**Marketable Loans**

Immediately prior to the transfer and assignment of the Loan to the Buyer, the Seller was the sole owner of each Loan, with good and marketable title to the Loan, and had the full right, title and authority, subject to no interest or participation of, or agreement with, any other party (other than a warehouse lender whose identity has been made known to Buyer), to see, transfer and assign the Loan(s) to the Buyer, and there has been no other sale, transfer, or assignment of security interest granted by the Seller to any other party, nor are there any other restrictions limiting the transfer of the Loan.

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**Loan Payments**

The payment due date of the Loan is the first day of the month, interest on the Loan is computed in arrears with payments (which may be reset periodically) sufficient to fully amortize the Loan by the stated maturity date on the Note over an original term from commencement of amortization, the late charge on the Loan is the lesser of five (5) percent of the monthly payment or the amount permitted under state law, and the borrower is required to make monthly escrow payments for real estate taxes and insurance premiums unless restricted by law in the state where the Loan was originated.

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## Correspondent's Loan Representations and Warranties, Continued

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**Proceeds Fully Disbursed** The Proceeds of the Loan have been fully disbursed, there is no requirement for future advances thereunder, any and all requirements as to completion of any on-site or off-site improvements have been complied with, any disbursements of any escrow funds have been made, all costs, fees and expenses incurred in making or closing the Loan and recording the mortgage or deed of trust have been paid, the mortgage insurance premium or the VA Guaranty fee has been paid as applicable, and the mortgagor is not entitled to any refund of any amounts paid or due under the note or the mortgage or deed of trust.

---

**No Mortgage Default**  
(12/10/09) As of the date of purchase of the Loan File, the Loan is current and all payments have been made within the month such payments were due. To the best of the Seller's knowledge, there is no default, breach, violation or event of acceleration existing under the mortgage or deed of trust or the note and no event which, with the passage time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration under the mortgage or deed of trust or the note.

---

**No Counterclaims** As of the date of purchase of the Loan, there is no offset, defense or counterclaim to the note or mortgage or deed of trust, including the obligation of the mortgagor to pay the unpaid principal and interest on such note. As of the date of purchase of the Loan, there are no mechanics' liens or claims which affect the lien priority of the mortgage or deed of trust relating to the Loan.

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**No Delinquent Tax Liens**  
(10/23/09) As of the date of purchase of the Loan, there is no delinquent tax or assessment lien against the property securing the Loan, and the Seller has paid all property tax bills which are or will become due within 60 days of the Note Date of the loan.

**Note:** When different, this section is superseded by guidelines within the Seller Guide/Pre-Purchase chapter.

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### Correspondent's Loan Representations and Warranties, Continued

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**No Advanced Funds**

The Seller has not, and to the best of the Seller's knowledge no person has, advanced any funds for and on behalf of a mortgagor for the purpose of enabling the mortgagor to make any required payments of principal or interest on the Loan, or any tax, insurance, special assessment, sewer, utility or similar payments with respect to the property securing the Loan, and no subordinate financing was used in the mortgagor's acquisition of the property securing the Loan other than subordinate financing acceptable to FNMA, FHLMC, GNMA, HUD, VA or applicable Investor pursuant to their requirements in effect at the time of purchase of the Loan by the Buyer.

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**Original in Compliance**

The origination and collection practices used with respect to the Loan comply with the terms of the Contract Documents, and have been, in all respects, legal and proper. With respect to escrow payments, all such payments are in the possession of the Seller and there exists no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. No escrow payments or other charges or payments due the Seller have been capitalized under the mortgage or deed of trust or the note.

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**No Pending Litigation**

There is no pending litigation and, to the best of the Seller's knowledge, no threatened litigation, which may affect in any way, by attachment or otherwise, the title or interest of the Seller in and to the Loan, the property securing the Loan, or any related note or security instrument.

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**Uniform Instruments Genuine**

The note and the mortgage or deed of trust are genuine and each is the sole legal, valid and binding obligation of the maker thereof, enforceable in accordance with their respective terms. All parties to the note and the mortgage or deed of trust had the legal capacity to execute and deliver the note and the mortgage or deed of trust, and the note and the mortgage or deed of trust have been duly and properly executed by such parties. The note is not and has not been secured by any collateral except the mortgage or deed of trust.

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## Correspondent's Loan Representations and Warranties, Continued

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### Uniform Instruments Unaltered

The terms of each note and mortgage or deed of trust have not been impaired, waived, altered or modified in any respect, except by a written instrument which has been recorded, if necessary, to protect the interest of the Buyer.

- ✓ The substance of any such waiver, alteration or modification has been approved by the issuer of any related private mortgage insurance policy and the title insurer, to the extent required by the title insurance policy.
- ✓ No mortgagor has been released, in whole or in part, except in connection with an assumption agreement approved by the issuer of any related private mortgage insurance policy and the title insurer to the extent required by the policy.

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### Due on Sale

The mortgage or deed of trust contains a provision for the acceleration of the payment of the unpaid principal balance of the note in the event that the property securing the Loan is sold or transferred without the prior written consent of the mortgagee thereunder, unless otherwise permitted in accordance with the terms of the Contract Documents.

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### Uniform Instruments Valid

The mortgage or deed of trust has not been satisfied, canceled, subordinated or rescinded, in whole or in part, and the property securing the Loan has not been released from the lien of the mortgage or deed of trust, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission, except as permitted by FNMA, FHLMC, GNMA, VA, FHA or Investor applicable guidelines and except which does not materially and adversely affect the value of the property securing the Loan.

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### Deed of Trust

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

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### Correspondent's Loan Representations and Warranties, Continued

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**Valid First Lien** The Seller Represents, Warrants and Covenants the following to MSI as to each loan offered for sale or funding:

- ✓ The mortgage is a valid, existing, and enforceable first lien on the Mortgaged Property; on all buildings on the mortgaged property; on all installations and mechanical, electrical, plumbing, heating, and air conditioning systems located in or affixed to such buildings; and on all additions, alterations, and replacements made at any time with respect to the foregoing. Any mortgaged property that has any existing or simultaneous lien that takes priority over the first mortgage is not eligible for purchase. This includes but is not limited to liens that utilize the municipal tax assessment process or a utility company to ensure payment.
- ✓ The Mortgage lien is subject only to:
  - current real property taxes and assessment liens not yet due and payable;
  - covenants, conditions, restrictions, rights of way, easements, and other matters of public record which as of the date of the lien's recording are or were acceptable to mortgage lending institutions generally, are specifically referred to in the Title Policy or, as permitted by Wells Fargo and applicable state law, an attorney's opinion of title, delivered to the Loan originator, and: (a) were referred to or otherwise considered in the appraisal made for the Loan originator or (b) do not adversely affect the Mortgage Property's appraised value set forth in such appraisal; or
  - other matters to which like properties are commonly subject, which other matters do not materially interfere with the benefits of the security intended to be provided by the Mortgage, or the use, enjoyment, value, or marketability of the related Mortgaged Property.

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## Correspondent's Loan Representations and Warranties, Continued

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### Valid Title

Each mortgage or deed of trust is a valid first lien on the property securing the Loan and is insured by

- (i) an American Land Title Association ("ALTA) lenders' loan title insurance policy issued by an underwriter acceptable to the Buyer or
- (ii) the type of policy uniformly acceptable where ALTA policies are not available, which policy is subject only to the lien of current real estate taxes and assessments, and covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of such mortgage or deed of trust, such exceptions appearing of record and being acceptable to mortgage lending institutions generally or specifically reflected in the survey of the property securing the Loan.

The title insurance policy relating to the Loan is in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement.

- ✓ No claims have been made under such title insurance policy.

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### Real Property

The property securing the Loan consists of a single parcel of real property with a detached single family residence erected thereon, or a two-to-four-family dwelling, an individual condominium unit, or an individual unit in a planned unit development. Such property meets the criteria for eligible property described in the Contract Documents. No portion of the property securing the Loan is used for commercial purposes.

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### Occupancy

The property securing the Loan is occupied by the mortgagors unless otherwise authorized in the Contract Documents, and is free of damage, waste and environmental hazards; the property and its improvements are not in violation of any applicable zoning law or regulation, and there is no proceeding pending for the total or partial condemnation thereof.

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### Correspondent's Loan Representations and Warranties, Continued

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**Properly Insured**

The property securing the Loan is insured by a hazard insurance policy meeting the standards as described in the Contract Documents, is issued by an insurer acceptable to the Buyer, and names the Buyer, in the mortgagee clause.

- ✓ The mortgage or deed of trust obligates the mortgagor thereunder to maintain the hazard insurance policy at the mortgagor's cost and expense, and on the mortgagor's failure to do so authorizes the holder of the mortgage to obtain and maintain such insurance at such mortgagor's cost and expense, and to seek reimbursement therefore from the mortgagor.
- ✓ The Seller has not engaged in, and has no knowledge of the mortgagor's having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of the policy.
- ✓ If the property is located in a flood hazard area, the property is insured by a flood insurance policy, and all federal, state and local requirements with respect to both hazard and flood insurance have been complied with in all material respects.

**Fraud Defined**

For the purposes of the Agreement between MSI and the Correspondent, "Fraud" or "Misrepresentation" will be defined as broadly in MSI's favor as permitted by applicable law.

Fraudulent documents means any Loan File document which, in the reasonable judgment of MSI, is falsified, defective, misleading or inaccurate in any material respect.

**Fraud Warranty**

No action, error, omission, misrepresentation, negligence, fraud or similar occurrence with respect to the Loan has taken place on the part of any person, including, without limitation, the mortgagor, any appraiser, any builder or developer or any party involved in the origination of the Loan or in the application for any insurance relating to such Loan that might result in a denial, failure or impairment of full and timely coverage under any insurance policies required to be obtained or any pool insurance policy covering the Loan.

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## Correspondent's Loan Representations and Warranties, Continued

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### Appraiser Warranty

The appraiser for the Loan was duly licensed or certified under the applicable law where the Loan was originated and for each Government Loan was acceptable to the FHA or VA, as applicable, and for each Conventional Loan was acceptable to FNMA, FHLMC or the Investor, as applicable.

- ✓ The Seller will maintain documentation evidencing each appraiser's qualification and licensing or certification, which will promptly be provided to the Buyer upon request.

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### Appraisal (5/01/09)

The appraisal used in connection with the origination of the Loan was ordered, performed and rendered in accordance with the requirements of all laws and regulations relating to the origination of the Loan and the purchase of the Loan by the Buyer, including, but not limited to, the provisions of the Financial Institution Reform, Recovery and Enforcement Act and the Home Valuation Code of Conduct (HVCC).

**HVCC:** Conventional appraisals must be ordered, prepared and obtained in full compliance with all aspects of the HVCC as established by Fannie Mae and Freddie Mac in their respective Guides.

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### Property Improvements

Except as set forth in the Contract Documents, all improvements that were included in the determination of the appraised value of the property securing the Loan lie wholly within the boundaries and building restriction lines of the property, and no improvements on adjoining properties encroach upon the property securing the Loan.

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### Jumbo Loan Amounts

With respect to a Conventional Loan with an original principal balance in excess of the amount which would permit such Loan to be eligible for a FHLMC or FNMA program (a "Jumbo Loan"), there are no circumstances or conditions with respect to

- (i) the mortgage or deed of trust relating to such Jumbo Loan,
- (ii) the property securing such Jumbo Loan,
- (iii) the mortgagor or
- (iv) the mortgagor's credit standing, that may result in any applicable private Investor to regard such Jumbo Loan as an unacceptable investment, cause such Jumbo Loan to become delinquent, or adversely affect the value or marketability of such Jumbo Loan.

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## Representations & Warranties

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### Correspondent's Loan Representations and Warranties, Continued

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**Mortgage  
Loan as  
Described**

The information contained in all commitments, purchase advises, schedules, computer tapes or other documents or media prepared by the Correspondent or on behalf of the Correspondent or otherwise furnished to MSI relating to the mortgage loan is complete, true and correct.

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# Representations & Warranties



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## Compliance

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### Compliance with Applicable Laws

Correspondent has complied with all applicable federal, state, local and municipal laws, ordinances, rules and regulations including, without limitation, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity, fair housing and lending disclosure laws.

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### Ethical Standards and Responsible Lending

(8/04/10)

Mortgage Services III, LLC (MSI) adheres to the highest level of ethical standards to ensure that as a financial services organization we maintain the trust of our customers, employees and stockholders. MSI is committed to fair, responsible and ethical lending. By sale of loans to MSI our Sellers warrant that they manage their firms with the same commitment and focus.

By sale of a loan to MSI, the Seller warrants and represents that their company does:

- ✓ Comply with all regulatory or legal obligations.
- ✓ Adhere to MSI's Fair Lending Policy and does not discriminate against any loan applicant. See [MSI Fair Lending Policy](#).
- ✓ Fully understand the applicant's lending needs and financial circumstances and that the product and loan obligations are fully explained to all applicants.
- ✓ Deliver appropriate levels of service and product quality to customers.
- ✓ Protect the privacy of all applicants and ensure that any applicant information is appropriately protected.
- ✓ Perform in a manner that respects the lending industry, their relationship with MSI and preserves their own reputation as well as that of MSI.

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### Correspondent's Loan Representations and Warranties, Continued

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**MSI Fair Lending Policy**  
(8/04/10)

**Background**

Fair Lending Laws are designed to ensure that credit is made available with fairness and impartiality. Federal Regulators charge lenders to ensure fair lending and to prohibit discrimination in lending. Lending policies and procedures must not discriminate on the basis of race, color, religion, sex, marital status, age, national origin, familial status, handicap or receipt of income through public assistance.

Fair lending covers four separate regulations:

- ✓ The Equal Credit Opportunity Act (ECOA) – Regulation B
- ✓ The Fair Housing Act (FHA)
- ✓ The Home Mortgage Disclosure Act (HMDA)
- ✓ The Community Reinvestment Act (CRA)

The major areas covered by the fair lending laws are:

- ✓ Non discrimination in lending policies, procedures, practices and products
- ✓ Non discrimination in real estate activities
- ✓ Collection of specific information for government monitoring purposes
- ✓ Fair Lending is the law and moral obligation of every individual providing service in our industry. Mortgage Services III has adopted the accompanying Fair Lending Statement, which reflects our commitment to the equal treatment of all credit applications.

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## Correspondent's Loan Representations and Warranties, Continued

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### MSI Fair Lending Policy, Continued

#### **MSI Policy**

Mortgage Services III, LLC (MSI) policy is to promote the availability of credit on a safe and sound basis to all credit-worthy applicants. We evaluate each credit application on its merits without regard to the applicant's race, color, ethnicity, national origin, religion, gender, marital or familial status, sexual orientation, disability, and age, the fact that the applicant receives public assistance, or may have exercised rights under the Federal Consumer Credit Protection Act.

MSI policy of fair treatment and equal opportunity extends to every aspect of the credit transaction. This includes, but is not limited to:

- ✓ Advertising
- ✓ Inquiries - pre-qualifications and discussions
- ✓ Application Taking
- ✓ Pricing
- ✓ Processing
- ✓ Third party activities such as appraising properties
- ✓ Underwriting
- ✓ Purchasing
- ✓ Servicing
- ✓ Collecting on delinquent loans

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### Correspondent's Loan Representations and Warranties, Continued

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#### HMDA

MSI will report Home Mortgage Disclosure Application (HMDA) data for all loans underwritten or purchased by MSI.

In the case of loans submitted to MSI for underwriting, MSI will report those loans as originations for which MSI made the credit decision (whether or not they closed in MSI's name). HMDA data on originations must be reported by the entity that makes the credit decision and that by prior agreement acquires the loan at or after closing.

Additionally, MSI must report the HMDA data for all applications that did not result in an origination, for example, applications that MSI denied or that the applicant withdrew during the calendar year covered by the report (whether or not they would have closed in MSI's name).

The Correspondent is responsible for reporting HMDA data as required on all loans originated and on all loans for which they (or a Third Party Contract Underwriter) made the credit decision.

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#### Servicing of the Loan

Prior to the purchase date, the mortgage loan has been properly serviced in accordance with all applicable laws, the terms of the mortgage, mortgage note and related mortgage loan documents.

With respect to escrow deposits and escrow payments, all such payments are in the possession of the Correspondent and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. All escrow payments have been collected in full compliance with all applicable laws and the mortgage loan documents. An escrow of funds has been established in an amount sufficient to pay for every item which remains unpaid and which has been assessed but is not yet due and payable. No escrow deposits or escrow payments or other charges or payments due the Correspondent have been capitalized under the mortgage or the mortgage note.

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## Correspondent's Loan Representations and Warranties, Continued

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### Servicing of the Loan (continued)

All mortgage payment and mortgage interest rate adjustments and notices thereof have been made in strict compliance with all applicable laws and the terms of the related mortgage note and any applicable riders or modifications to the mortgage note.

Any interest required to be paid pursuant to all applicable laws has been properly paid and credited.

All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, leasehold payments, ground rents relating to the mortgage loan have been paid to the extent such items are required to be paid pursuant to prudent mortgage banking standards and as herein provided.

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### Acceptable Investment

The Correspondent has no knowledge of any circumstances or conditions with respect to the mortgage note, the mortgage, the mortgaged property, the mortgagor or the mortgagor's credit standing that could be expected to cause private institutional investors to

- ✓ Regard the mortgage loan as an unacceptable investment,
- ✓ Cause the mortgage loan to become delinquent, or
- ✓ Adversely affect the value or marketability of the mortgage loan

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### Compliance with the Seller Guide

The mortgage loan and all documents related thereto, comply, in all material respects, with all applicable terms, conditions and requirements set forth in this Seller Guide.

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### Correspondent's Loan Representations and Warranties, Continued

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**Prepayment Fees**

In the event that the mortgage note requires the mortgagor to pay a fee if the mortgage loan is prepaid in full or part within the time periods specified in the mortgage note, the provision in the mortgage note requiring the payment of such fee (the "Prepayment Provision") complies with all applicable local, state and federal law. All disclosures required under all applicable law in connection with the Prepayment Provision have been properly provided to the mortgagor and the enforcement of the Prepayment Provision in accordance with the terms set forth in the mortgage note will be in compliance with all applicable laws and regulations.

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**Correspondent Responsibility**

The Correspondent is solely responsible to ensure that all documents, disclosures etc. used in the origination or closing of the mortgage loan meet applicable compliance and/or legal requirements for the jurisdiction in which the subject property is located, irrespective of the source of the documents.

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# Representations & Warranties



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