

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:

NEW CENTURY TRS HOLDINGS, INC., a
Delaware Corporation, *et al.*

Debtors.¹

Chapter 11

Case No. 07-10416 (KJC)

Hearing Date: March 7, 2013 at 10:00 a.m.

Objection Deadline: February 28, 2013 at 5:00 p.m.

**MOTION OF THE NEW CENTURY LIQUIDATING TRUST FOR AN ORDER AUTHORIZING
THE IMMEDIATE ABANDONMENT AND DESTRUCTION OF CERTAIN MORTGAGE
LOAN FILES AND NON-MORTGAGE LOAN BUSINESS FILES**

The New Century Liquidating Trust (the “Trust”), by and through Alan M. Jacobs, as its Bankruptcy Court (as defined below) appointed Liquidating Trustee (the “Trustee”), hereby files this Motion (the “Motion”) for entry of an order (the “Proposed Order”) pursuant to sections 105, 363, and 554(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the Trustee to immediately abandon and destroy certain loan files and non-mortgage loan books, records, and files that are of inconsequential value to the Debtors’ estates, are not necessary to complete the liquidation of the Debtors’ estates, and the retention of which is burdensome to the estates. In support of the Motion, the Trustee respectfully states as follows:

¹ The pre-confirmation Debtors were the following entities: New Century Financial Corporation (f/k/a New Century REIT, Inc.), a Maryland corporation; New Century TRS Holdings, Inc. (f/k/a new Century Financial Corporation), a Delaware corporation; New Century Mortgage Corporation (f/k/a JBE Mortgage) (d/b/a NCMC Mortgage Corporate, New Century Corporation, New Century Mortgage Ventures, LLC), a California corporation; NC Capital Corporation, a California corporation; Home123 Corporation (f/k/a The Anyloan Corporation, 1800anyloan.com, Anyloan.com), a California corporation; New Century Credit Corporation (f/k/a Worth Funding Incorporated), a California corporation; NC Asset Holding, L.P. (f/k/a NC Residual II Corporation), a Delaware limited partnership; NC Residual III Corporation, a Delaware corporation; NC Residual IV Corporation, a Delaware corporation; New Century R.E.O. Corp., a California corporation; New Century R.E.O. II Corp., a California corporation; New Century R.E.O. III Corp., a California corporation; New Century Mortgage Ventures, LLC (d/b/a Summit Resort Lending, Total Mortgage Resource, Select Mortgage Group, Monticello Mortgage Services, Ad Astra Mortgage, Midwest Home Mortgage, TRATS Financial Services, Elite Financial Services, Buyers Advantage Mortgage), a Delaware limited liability company; NC Deltex, LLC, a Delaware limited liability company; NCoral, L.P., a Delaware limited partnership; and New Century Warehouse Corporation, a California corporation.

JURISDICTION

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105, 363, and 554 of the Bankruptcy Code, as complimented by Bankruptcy Rule 6007.

GENERAL BACKGROUND

3. On April 2, 2007 (the "Petition Date"), the Debtors (with the exception of New Century Warehouse Corporation) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

4. On April 23, 2008, the Debtors filed the Second Amended Joint Chapter 11 Plan of the Debtors and the Official Committee of Unsecured Creditors Dated as of April 23, 2008 (the "Original Plan").

5. On July 15, 2008, the Bankruptcy Court entered the order confirming the Original Plan (the "Original Confirmation Order").

6. On August 1, 2008 (the "Original Effective Date"), the Original Plan became effective. Pursuant to the terms of the Original Plan, on the Original Effective Date, the New Century Liquidating Trust Agreement (the "Trust Agreement") was executed, thereby creating the Trust and appointing Alan M. Jacobs as Trustee of the Trust. On the Original Effective Date, among other things, all Assets² of the Debtors (excluding Access Lending Assets, but including Access Lending Interests) were distributed to the Trust, and all of the remaining members of the

² Capitalized terms not herein defined shall have the meanings ascribed to them in the Modified Plan (defined below).

Debtors' Board of Directors and Officers ceased to serve in those capacities by operation of the Original Confirmation Order.

7. On August 4, 2008, the Notice of (I) Entry of Order Confirming Second Amended Joint Chapter 11 Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Dated as of April 23, 2008, (II) Effective Date, and (III) Bar Dates for Administrative Claims, Professional Fee Claims, Subordination Statements, and Rejection Damage Claims (the "Notice of Effective Date") was filed.

8. On June 16, 2009, the United States District Court for the District of Delaware (the "District Court") issued a Memorandum Opinion and an order reversing the Original Confirmation Order (together, the "Order Reversing Confirmation").

9. On September 30, 2009, the Trustee filed the Modified Second Amended Joint Chapter 11 Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Dated as of September 30, 2009 (the "Modified Plan").

10. On November 20, 2009, the Bankruptcy Court entered an order confirming the Modified Plan (the "Modified Confirmation Order").

11. On December 1, 2009 (the "Modified Effective Date"), the Modified Plan became effective. On the Modified Effective Date, the Modified Plan, *inter alia*, (a) confirmed that all actions taken by the Trustee subsequent to the Original Effective Date were valid and binding, (b) adopted, ratified and confirmed the formation of the Trust as of the Original Effective Date, (c) adopted, ratified and confirmed the Liquidating Trust Agreement as of the Original Effective Date, and (d) adopted, ratified and confirmed the appointment of Alan M. Jacobs as Trustee as of the Original Effective Date.

12. On or around December 15, 2010, the Trustee made an interim distribution (the “Initial Distribution”) to Holders of Allowed Secured, Administrative, Priority and Unsecured Claims.

13. On or around June 15, 2011, the Trustee made a second interim distribution (the “Second Interim Distribution”) to Holders of Allowed Unsecured Claims and to Holders of Secured, Administrative and Priority Claims, which were Allowed as of the Second Interim Distribution.

14. On or around January 4, 2013, the Trustee made a third interim distribution (the “Third Interim Distribution”) to Holders of Allowed Unsecured Claims and to Holders of Secured, Administrative and Priority Claims, which were Allowed as of the Third Interim Distribution.

RELEVANT BACKGROUND

15. The Trustee has substantially completed the administration of the Debtors’ estates and intends to make a fourth and final distribution once the outstanding disputed claims and related litigations have been resolved and the balance of the Trust assets have been liquidated. Accordingly, once the outstanding matters are resolved, the Trustee is prepared to move for entry of an order closing these chapter 11 cases as soon as practicable. However, before the Trustee can move to close these chapter 11 cases, the Trustee is required to obtain this Court’s approval to abandon and destroy the documents in the Trust’s possession in accordance with the terms of the Modified Confirmation Order. As a result, in addition to the instant Motion, the Trustee will file such other motions as he deems necessary and appropriate to resolve the issues with respect to the balance of the documents in anticipation of closing the chapter 11 cases in an expeditious manner.

16. Pursuant to the terms of the Modified Confirmation Order

[f]rom and after the Original Effective Date, the Liquidating Trustee shall continue to preserve and maintain all documents and electronic data (including, but not limited to, emails and email server back-up tapes) (collectively, the “Records”) transferred to the Liquidating Trust by the Debtors as set forth in the Original Plan and the Liquidating Trust Agreement, and the Liquidating Trustee shall not destroy or otherwise abandon any such Records absent further order of the Court after a hearing upon notice to parties in interest with an opportunity to be heard. The Records the Debtors transferred to the Liquidating Trust on the Original Effective Date were to include, but not be limited to, all such documents and electronic data (i) identified for retention in connection with the investigation by the Audit Committee of NCFC’s Board of Directors and (ii) produced to the SEC, the United States Attorney’s Office, or the Examiner.

See Confirmation Order, ¶ 32.

A. The Pre-Petition Loan Files

17. Prior to the Petition Date, in the ordinary course of the Debtors’ businesses, the Debtors maintained numerous categories of documents and records, including, but not limited to, loan origination files, sold or closed loan files, and miscellaneous business records related to loan origination and loan servicing (collectively, the “Loan Files”). Upon information and belief, the Loan Files contain documentation relating to certain Mortgage Loans (the “Mortgage Loans”) originated or serviced by one or more of the Debtors prior to the Petition Date. For the most part, in the ordinary course of business, each Mortgage Loan was then made part of a portfolio of mortgage loans that was securitized and placed into a securitized trust (each, a “Securitization Trust” and collectively, the “Securitization Trusts”) or were sold or otherwise transferred to third-parties. With two (2) exceptions, to the best of the Trustee’s knowledge, the Debtors no longer own or hold any interest in any Mortgage Loans.³

³ The Trustee acknowledges that it maintains an interest in two (2) of the Mortgage Loans originated by the Debtors (the “Retained Mortgage Loans”). Documents related to the Retained Mortgage Loans are not subject to the instant Motion.

18. Upon information and belief, the Loan Files in the Trust's possession are not original files. The majority of the hard copy Loan Files are located at three (3) storage facilities: Bekins Storage Facility ("Bekins") in California and two (2) Iron Mountain ("Iron Mountain") facilities located in Texas and California (the "Iron Mountain Facilities"; together with Bekins, the "Storage Facilities"). The Loan Files maintained at the Storage Facilities are branch copies of Loan Files, the original copies of which have been delivered to the Securitization Trusts, other third party purchasers, or servicers of the Mortgage Loans, or are duplicate copies of imaged Loan Files, which the Trustee has maintained since the Original Effective Date pursuant to the terms of the Modified Confirmation Order.

a. The Pre-2004 Loan Files

19. Prior to the latter part of 2004, in the ordinary course of the Debtors' business, the Debtors maintained hard copy Loan Files for each Mortgage Loan funded or serviced by the Debtors. Of the hard copies of Loan Files maintained by the Trust, the Trustee has determined that there are approximately 1,025 boxes of Loan Files stored at Iron Mountain that are copies of Loan Files related to the Debtors' servicing of certain Mortgage Loans that pre-date April 2000 and have not been the subject of any discovery requests or subpoenas from third parties since the inception of the Trust. By this Motion, the Trustee seeks authority to destroy only those hard copies of Loan Files that pre-date April 2000 (the "Pre-2000 Loan Files"). At this time, the Trustee is not seeking to destroy any hard copies of Loan Files relating to Mortgage Loans originated after 2000 and for which the Trust does not also maintain an imaged copy of such Loan File.

b. The Post-2004 Loan Files

20. From and after the latter part of 2004, it was the Debtors' regular practice to make imaged copies of each funded sub-prime Loan File in a loan database and management system

(the “Loan Database”) maintained by a third party vendor, Affiliated Computer Services, Inc. (“ACS”).⁴ Through the Loan Database, the Debtors maintained access to the information related to each sub-prime Loan File in digital form for all sub-prime Mortgage Loans originated from and after the latter part of 2004. In addition, in some instances, the Debtors maintained hard copies of Loan Files which were imaged onto the Loan Database in the ordinary course. By this Motion, the Trustee seeks authority to destroy the hard copies of any and all sub-prime Loan Files originated or serviced after 2004 (the “Post-2004 Duplicate Loan Files”), but only to the extent such Post-2004 Duplicate Loan Files have been imaged onto the Loan Database and continue to be maintained by the Trust in electronic form.

B. The Pre-Petition Non-Mortgage Loan Business Files

21. Prior to and in the process of winding down the Debtors’ operations, in addition to the Loan Files, the Debtors also collected and packed certain non-mortgage loan business records maintained by the Debtors, which are unrelated to the Mortgage Loans (the “Non-Mortgage Loan Business Files”), and shipped such files to the Storage Facilities. The Non-Mortgage Loan Business Files are files that were maintained by the Debtors in the ordinary course of the operation of their businesses and include, but are not limited to, accounting records, marketing and sales files, human resources files, personnel files, closed/settled litigation files, unfunded/rejected loan applications, and other general office and business records. Currently, there are approximately 4,491 boxes of Non-Mortgage Loan Business Files located at the Storage Facilities or are otherwise in the Trust’s possession. To the best of the Trustee’s knowledge, the Non-Mortgage Loan Business Files do not contain any records relating to any Mortgage Loans originated or serviced by the Debtors and currently owned or serviced by any

⁴ Beginning after the Petition Date, ACS maintained the Loan Database utilizing off-site secure servers to which the Trustee was provided access by ACS, until the Trustee transferred the Loan Database (and all imaged Loan Files) to secure servers maintained by the Trust’s consultants.

third party nor relate to any currently pending litigation matters or litigation holds. The Trustee believes that the Non-Mortgage Loan Business Files are no longer necessary in the administration of these chapter 11 cases and are of no value to the Trust.

C. Post-Petition Files

22. Prior to the Petition Date, in February 2007, the Securities and Exchange Commission (the “SEC”) instituted a class action securities litigation against the Debtors and, in connection therewith, required the Debtors to immediately cease and desist destruction of any documents in their possession. In accordance with the SEC’s directive, from and after February 2007, the Debtors packed and stored all documents in their possession and, in the process of winding up their affairs, shipped them to the various Storage Facilities. To the extent any such documents constitute Non-Mortgage Loan Business Files, the Trustee seeks authority to abandon and destroy such documents.

23. From and after the Petition Date, the Debtors maintained separate files of all post-petition documents and records, including, but not limited to, correspondence, bankruptcy pleadings, pleadings related to litigation in which a Debtor is named nominally to clear title, and general business records (the “Post-Petition Files”; together with the Pre-2000 Loan Files, the Post-2004 Duplicate Loan Files, and the Non-Mortgage Loan Business Files, the “Unnecessary Files”). Out of an abundance of caution, to ensure compliance with all requisite directives, including the provision of the Modified Confirmation Order enjoining the destruction of any files, the Trustee has maintained all Post-Petition Files received on or around the Original Effective Date in the same condition in which such files were turned over to the Trustee by the Debtors. Currently, there are the equivalent of approximately 100 boxes of Post-Petition Files stored at Bekins. The Post-Petition Files maintained by the Debtors prior to the Original Effective Date and by the Trust after the Original Effective Date in compliance with the terms of

the Original Confirmation Order and the Modified Confirmation Order remain in the Trust's possession. However, such Post-Petition Files are not necessary to the continued administration of the Trust, and, as a result, the continued retention of such Post-Petition Files constitutes a burden on the Trust.

24. For the avoidance of doubt, the Trustee seeks authority to destroy the Post-Petition Files as set forth herein. For purposes of this Motion, the Trustee will not abandon and destroy and will maintain (i) copies of documents and records which were produced to the SEC by the Debtors and were turned over to the Trustee on the Original Effective Date, (ii) copies of documents and records which were produced to various states' attorneys' general or the United States Attorney by the Trust, and (iii) any and all documents and records turned over to the Trust by the Examiner.

25. The Trustee believes that the abandonment and destruction of the Unnecessary Files is in the best interest of the Trust and its beneficiaries and will avoid unnecessary costs associated with storing such documents and will enable the Trustee to move expeditiously to close these chapter 11 cases once the remaining borrower claims and litigations have been resolved and the remaining Assets have been liquidated. The Unnecessary Files (i) are not the subject of any pending litigations or claims disputed, and (ii) are not the subject of an outstanding, duly issued subpoena. Further, the Trustee submits that the destruction of the Unnecessary Files will not lead to any spoliation claims in any pending litigations.

RELIEF REQUESTED

26. By this Motion, the Trustee requests entry of an order pursuant to sections 105, 363, and 554 of the Bankruptcy Code authorizing the Trustee to immediately abandon and destroy or otherwise dispose of the Unnecessary Files.⁵

BASIS FOR RELIEF REQUESTED

27. Section 554 of the Bankruptcy Code provides, in relevant part, that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). Further, section 363 of the Bankruptcy Code permits a trustee to “use, sell, or lease other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Additionally, section 105 of the Bankruptcy Code provides, in relevant part, that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of section 105(a) of the Bankruptcy Code is “to assure the bankruptcy court’s power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy ¶ 105.01 (Alan N. Resnick & Henry J. Sommers eds., 16th ed.).

28. The destruction or other disposal of the Unnecessary Files is also governed by Bankruptcy Rule 6007, which provides, in pertinent part, as follows:

Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 15 days of the mailing of the notice, or within the

⁵ As noted above, given that the Trustee has substantially completed the administration of these chapter 11 cases, in addition to the relief requested in this Motion, the Trustee reserves the right to seek additional relief as the Trustee deems necessary and appropriate to resolve the issues related to the remaining documents in the Trust’s possession to ensure that the Trust has obtained the requisite authority to abandon and destroy its documents in advance of the Trustee’s request to close these chapter 11 cases.

time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to the other entities as the court may direct.

Fed. R. Bankr. P. 6007.

29. “The abandonment power embodied in Section 554 enables the trustee to rid the estate of burdensome or worthless assets, and so speeds the administration of the estate ... and also protects the estate from diminution. In such manner, abandonment serves the creditors’ interest in expeditiously obtaining a fair amount on settlement of their claims.” In re Quanta Resources Corp., 739 F.2d 912, 916 (3d Cir. 1984).

30. A trustee’s decision to abandon property of the estate is discretionary. See In re Slack, 290 B.R. 282, 284 (Bankr. D.N.J. 2003). As is the case with a trustee’s decision to reject an executory contract,⁶ the business judgment standard applies to a trustee’s decision to abandon property that is either of inconsequential value or burdensome to the estate. Id. (“The trustee’s power to abandon property is discretionary The Court only needs to find the trustee made: 1) a business judgment; 2) in good faith; 3) upon some reasonable basis; and 4) within the trustee’s scope of authority.”) (internal citations omitted); Mele v. First Colony Ins. Co., 127 B.R. 82, 85 (D.D.C. 1991) (“[A]bandonment provisions are designed to allow the trustee to relinquish assets that would be a financial drain on the estate, or relieve the trustee of the financial burden of administering inconsequential assets that would cost more than they are worth to the estate.”).

31. In this case, the Trustee’s abandonment of certain of the Pre-2000 Loan Files and the Post-2004 Duplicate Loan Files is warranted under section 554(a) of the Bankruptcy Code. As noted above, the Trust does not believe that any Loan Files in its possession or control are

⁶ The decision to reject an executory contract is subject to the court’s finding that such decision is a product of the debtor in possession’s sound business judgment. See Sharon Steel Corp. v. Nat’l Fuel Gas Distr. Corp., 872 F.2d 36, 39 (3d Cir. 1989); see also In re Fleming Companies, Inc., 308 B.R. 689, 691 (Bankr. D. Del. 2004).

original copies of any documents related to the Mortgage Loans originated or serviced by the Debtors prior to the Petition Date. Accordingly, the Trust's Loan Files are merely copies of original documents. Moreover, the Pre-2000 Loan Files and the Post-2004 Duplicate Loan Files are a very narrow category of Loan Files, which, in the Trustee's business judgment, are no longer necessary because (i) they have not been utilized by the Trust for its own benefit, nor have they been requested by any third party (other than as set forth below), and (ii) with respect to the Post-2004 Duplicate Loan Files, the Trust will continue to maintain imaged copies of such files through the use of its Loan Database.

32. With respect to the Pre-2000 Loan Files, the documentation relating to such Mortgage Loans is obsolete, as the Mortgage Loans related to the Pre-2000 Loan Files are at least twelve (12) years old. In addition, to the best of the Trustee's knowledge and belief, after consultation with the Trustee's consultants and professionals, no third party has requested documentation relating to Mortgage Loans originated or serviced before April 2000, including copies of the Pre-2000 Loan Files. Accordingly, the Trust has never had occasion to utilize for its own purposes or otherwise provide access to any third party to the Pre-2000 Loan Files. As the Pre-2000 Loan Files are obsolete, unlikely to be needed or requested by third parties (as they have not been requested by any third party to date), and unnecessary to complete the administration of the Trust, the Trustee believes it is in the best interests of the Trust and its beneficiaries to abandon and destroy such hard copy Pre-2000 Loan Files.

33. With respect to the Post-2004 Duplicate Loan Files, the Trust submits that it is both prudent and necessary to abandon and destroy copies of the Post-2004 Duplicate Loan Files because the Trust, for the time being, will continue to maintain online digital copies of such files in its electronic database, the Loan Database. To the best of the Trustee's knowledge and belief, after consultation with the Trust's consultants, all Loan Files related to Mortgage Loans

originated from and after the latter part 2004 were copied and imaged onto the Loan Database. As a result, the Trustee believes that all hard copies of the Post-2004 Duplicate Loan Files have a back-up electronic image stored on the Loan Database, which has become the primary resource for the Trust in responding to various requests for information. Indeed, on the many occasions that third parties have requested (and continue to request regularly) loan level information concerning Mortgage Loans originated or serviced post-2004, the Trust relies almost exclusively on its access to the digital copies of the Post-2004 Duplicate Loan Files maintained on the Loan Database and rarely, if ever, requires access to or use of the hard copies of the Post-2004 Duplicate Loan Files. For example, the Trust regularly receives multiple subpoenas each month requesting information in the Trust's possession, including, among other things, access to various Loan Files for Mortgage Loans originated or serviced by the Debtors, typically from 2005 through the Petition Date. In order to comply with its non-bankruptcy law obligations, the Trust has responded to such subpoenas and, in many instances, has provided access to the Loan Files requested by providing access through electronic means. The Trust has not had occasion to utilize or otherwise provide access to the physical hard copies of any Loan Files for which it also maintains an imaged copy, as the imaged copies of such Loan Files have proven sufficient to any parties requesting copies of Loan Files. Accordingly, the Post-2004 Duplicate Loan Files are both redundant and unnecessary, as the Trust will continue to maintain imaged copies of the Post-2004 Duplicate Loan Files relating to Mortgage Loans originated or serviced prior to 2004. As a result, the Trustee believes that the continued maintenance of the Post-2004 Duplicate Loan Files is unnecessary, and therefore should be abandoned and destroyed.

34. The Trustee's abandonment of the Non-Mortgage Loan Business Files and the Post-Petition Files is also warranted under section 554(a) of the Bankruptcy Code. The Trust has no reason to maintain the Non-Mortgage Loan Business Files or the Post-Petition Files, which

are no longer necessary in the administration of these chapter 11 cases and which constitute a burden on the Trust. With respect to the Non-Mortgage Loan Business Files, prior to and immediately after the Petition Date, in response to an SEC request, the Debtors collected and packed all items from each employee's desk in every location and shipped them to the various Storage Facilities, where the Trust has maintained such Non-Mortgage Loan Business Files since the Original Effective Date. The Non-Mortgage Loan Business Files include, but are not limited to, legal department files, human resources files, personnel records, accounting records, marketing and sales files, unfunded or rejected loan application, and other general business files. However, the Non-Mortgage Loan Business Files are not necessary to the administration of the Trust, as there are no outstanding matters which would require use of any of the Non-Mortgage Loan Business Files. Moreover, to the best of the Trustee's knowledge and belief, after consultation with the Trustee's consultants and professionals, the overwhelming majority of Non-Mortgage Loan Business Files have not been requested by any third party, by subpoena or otherwise. To the extent documents or categories of documents may constitute Non-Mortgage Loan Business Files or have been requested by any party since the Original Effective Date, the Trustee will continue to maintain copies of such documents in electronic form.⁷ The overwhelming majority of the Non-Mortgage Loan Business Files, however, have not been requested by any third parties and are not necessary to complete the administration of the Trust. As such, the Trustee believes that the continued maintenance and costs associated therewith are unjustifiable, given the fact that the Non-Mortgage Loan Business Files are of no value to the Trust. Consequently, there is no longer any reason to maintain the Non-Mortgage Loan Business

⁷ The Trustee acknowledges that the Trust has been served with subpoenas requesting copies of certain Non-Mortgage Loan Business Files, such as underwriting and appraisal guidelines, and underwriting matrices, among other categories of documents. The Trustee will maintain copies in electronic form of any documents which have been produced to third parties pursuant to a duly issued subpoena and which may be characterized as Non-Mortgage Loan Business Files.

Files, and, therefore, the Trustee requests authority to abandon and destroy such Non-Mortgage Loan Business Files.

35. Further, with respect to the Post-Petition Files, the Trust has maintained hard copies of each and every document that has been sent or received during the pendency of these chapter 11 cases. These documents include, but are not limited to, correspondence with creditors, bankruptcy pleadings and notices, pleadings served upon the Debtors or the Trust relating to litigation in which the Debtors were named as a nominal party, and various other business files. As noted above, the Trustee will not consider the documents produced to the SEC, various state attorneys general or the United States Attorney, or the Examiner to be Post-Petition Files, and therefore, the Trustee is not seeking authority to abandon and destroy such documents at this time. The Post-Petition Files, however, have no value to the Trust or its beneficiaries and are not necessary to complete the administration of the Trust. Accordingly, the Trustee believes that the Post-Petition Files should be abandoned and destroyed.

36. Further, the cost of storing the Unnecessary Files constitutes a substantial burden on the Trust, particularly given the advanced stage of these cases and the fact that the Trustee intends to make a final distribution and move for a final decree closing these chapter 11 cases in the near future. Current storage costs associated with storing all files, of which the Unnecessary Files constitute only a relative small percentage of files, and computer equipment at the Storage Facilities are approximately \$25,000 per month. If the Court permits the Trust to abandon and destroy the Unnecessary Files, the monthly storage costs associated with the remaining files will decrease by approximately \$2,500. Indeed, the Trustee submits that the exorbitant costs associated with the continued storage of its files, including the Unnecessary Files, are an unreasonable and costly administrative burden on the Trust, and as a result, the Trustee has determined that there is no justifiable reason to continue to maintain certain of the files

maintained at the Storage Facilities. In an effort to minimize the cost to the Debtors' estates while, at the same time, recognizing the need to maintain access to certain vital information, the Trustee has identified certain categories of documents which the Trustee believes are of no value both to the Trust and to any potential third party who may have any interest in the documents maintained by the Trust. Specifically, the Trustee has identified four (4) very narrow categories of documents (the Pre-2000 Loan Files, the Post-2004 Duplicate Loan Files, the Non-Mortgage Loan Business Files, and the Post-Petition Files) which are of no value to the Trust and are not necessary to the administration of the Trust because (i) the Debtors ceased business operations more than five (5) years ago, and (ii) the vast majority of issues in these chapter 11 cases have been resolved (with the exception of several claims and litigations relating to borrower claims). As the administration of these cases is nearly complete and the Unnecessary Files no longer have any value to the Trust, the Trustee does not believe it is reasonable or appropriate to continue incurring significant costs to store such Unnecessary Files.

37. The Trustee submits that his decision to abandon and destroy the Unnecessary Files is the product of his sound business judgment because the storage of such Unnecessary Files constitutes a substantial burden on the Trust with no corresponding benefit to the Trust or its beneficiaries. Accordingly, the Trustee respectfully requests authorization to abandon and destroy the Unnecessary Files as the Unnecessary Files are no longer necessary to the administration of the Trust and constitute a substantial burden upon the Trust and its beneficiaries.

38. The Trustee represents that he will cause any and all of the Unnecessary Files containing personally identifiable consumer information, including, but not limited to, names, social security numbers, financial information and other personal information contained in such files to be shredded or similarly destroyed in accordance with Federal Trade Commission

regulations for the destruction of documents containing consumer information. See 16 C.F.R. § 682.3(a)-(b) (requiring proper disposal of consumer information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal).

39. The Trustee represents that he will not cause the destruction of any of the hard copy Loan Files (other than the Pre-2000 Loan Files and the Post-2004 Loan Files) in the Trust's possession without seeking further order of this Court. Further, the Trustee represents that he will not cause the destruction of any documents that are (i) the subject of current litigation or a claims dispute until such issues have been resolved, or (ii) the subject of an outstanding, duly issued subpoena until the Trust has complied with its obligations to respond thereto. The Trustee further represents that none of the Unnecessary Files for which the Trustee is seeking authority to abandon and destroy will lead to any spoliation claims in any pending litigations.

NOTICE

40. Notice of the Motion has been given to (i) the United States Trustee for the District of Delaware, (ii) all parties who have indicated an interest in the Loan Files, (iii) all parties who requested notice in this case pursuant to Bankruptcy Rule 2002 prior to the Original Effective Date, and (iv) all parties who have previously requested notice pursuant to the Order Granting the Motion of the Trustee Pursuant to 11 U.S.C. §§ 102 and 105(a) and Fed. R. Bankr. P. 2002(m) and 9007 Establishing Notice and Service Procedures entered on November 18, 2008 [Docket No. 9165].

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court enter an order (i) authorizing the immediate abandonment and destruction of the Unnecessary Files; and (ii) granting such further relief that the Court deems just and proper.

Dated: February 14, 2013

BLANK ROME LLP

/s/ Alan M. Root
David W. Carickhoff (No. 3715)
Alan M. Root (No. 5427)
Blank Rome LLP
1201 Market Street, Suite 800
Wilmington, Delaware 19801
(302) 425-6400 - Telephone
(302) 425-6464 - Facsimile

- and -

HAHN & HESSEN LLP
488 Madison Avenue
New York, New York 10022
(212) 478-7200 - Telephone
(212) 478-7400 - Facsimile
Attn: Mark S. Indelicato
Janine M. Figueiredo
Christopher J. Hunker