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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 8-K**

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CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 8, 2016 (July 1, 2016)

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**AMERICAN CAPITAL AGENCY CORP.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

001-34057

26-1701984  
(I.R.S. Employer  
Identification No.)

(Commission File Number)

**2 Bethesda Metro Center, 12th Floor  
Bethesda, Maryland 20814**  
(Address of principal executive offices)

Registrant's telephone number, including area code:  
**(301) 968-9300**

N/A  
(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Introductory Note**

On July 1, 2016, American Capital Agency Corp., a Delaware corporation (the “Company”), completed its previously announced acquisition of American Capital Mortgage Management, LLC, a Delaware limited liability company (“ACMM”), pursuant to the Purchase and Sale Agreement (the “Purchase Agreement”), dated as of May 23, 2016, by and among the Company, American Capital, Ltd., a Delaware corporation (“ACAS”), American Capital Asset Management, LLC, a Delaware limited liability company and wholly owned portfolio company of ACAS (“Seller”), and ACMM. Pursuant to the Purchase Agreement, the Company acquired all of the issued and outstanding limited liability company interests in ACMM from Seller for a purchase price of \$562 million in cash (the “Transaction”). ACMM is the parent company of two registered investment advisers that provide investment management services to the Company and American Capital Mortgage Investment Corp. (“MTGE”), respectively.

The foregoing summary of the Purchase Agreement and the Transaction does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Purchase Agreement, which is incorporated herein by reference to Exhibit 2.1 of the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (“SEC”) on May 25, 2016.

### **Item 1.01. Entry into a Material Definitive Agreement**

In connection with the Transaction, on July 1, 2016, the Company, ACAS, Seller, and ACMM entered into a Transition Services Agreement (the “Transition Services Agreement”). Pursuant to the Transition Services Agreement, ACAS, Seller, and their affiliates (the “Service Providers”) will provide ACMM, the Company, and their affiliates (the “Service Recipients”) with transition services including, but not limited to, accounts payable and payroll support; information technology services, software and hardware; human resources and benefits support; legal support; investor relations support; internal audit services; and insurance support services. Transition services in the areas of accounts payable and payroll support, human resources and benefits support, legal support and investor relations, internal audit and insurance support services will be provided until ACAS and Seller complete the mergers contemplated by the Agreement and Plan of Merger, dated May 23, 2016, by and among ACAS, Seller, Ares Capital Corporation and certain of their affiliates (the “ACAS Merger”). ACAS and Seller are required to provide at least five (5) business days’ notice of the ACAS Merger. Information technology software, hardware and support services will be provided through various dates set forth on a schedule to the Transition Services Agreement, with the longest period of such information technology transition services concluding on June 30, 2017.

The Service Recipients will pay service fees to the Service Providers on a quarterly basis for the provision of the transition services. The service fees will generally be determined based upon (i) the percentage of time spent by the Service Providers’ employees providing the transition services multiplied by such employees’ fully-loaded compensation during such time period, (ii) the percentage of the transition services provided by third-party service providers multiplied by the Service Provider’s costs and expenses with respect to such third-party service providers, and (iii) certain other reimbursable costs.

Additionally, the Transition Services Agreement provides that the Service Recipients will provide certain “reverse services” to the Service Providers prior to the ACAS Merger in a manner consistent with the terms and conditions applicable to the transition services. The reverse service fees will generally be determined based upon the percentage of time spent by the Service Recipients’ employees providing the reverse services multiplied by such employees’ fully-loaded compensation.

The foregoing summary of the Transition Services Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Transition Services Agreement, a copy of which is attached as Exhibit 2.1 hereto and is incorporated herein by reference.

### **Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

#### ***Departure of Certain Officers***

In connection with the Transaction, on July 1, 2016, John R. Erickson resigned as Chief Financial Officer and Executive Vice President of the Company, effective immediately.

### ***Appointment of Peter J. Federico as Chief Financial Officer***

On July 1, 2016, Peter J. Federico, who previously served as the Company's Senior Vice President and Chief Risk Officer, was appointed to serve as the Company's Executive Vice President and Chief Financial Officer, effective immediately.

### ***Continuation of Certain Other Officers***

Other officers of the Company will continue in their positions with the Company following the Transaction. Gary Kain will remain as Chief Executive Officer, President and Chief Investment Officer; Bernice E. Bell will continue to serve as Senior Vice President and Chief Accounting Officer; and Christopher J. Kuehl will continue to serve as Senior Vice President, Agency Portfolio Investments.

### ***Employment Arrangements***

Existing employment arrangements (agreements and an offer letter) between ACMM and the members of the Company's senior management team listed below continue to be in effect following the Transaction. In connection with the Transaction, these employment agreements and the offer letter were amended to clarify reporting lines and titles in light of the Transaction, replace references to ACAS and the Board of Managers of ACMM with references to the Company and the Company's Board of Directors (the "Board"), and provide flexibility to substitute a cash award or equity award under any future incentive plan (so long as any such incentive plan has received required approvals, including approval by the Company's stockholders of any equity plan for the Company's capital stock) as a replacement for any equity award contemplated under the executive's pre-existing employment agreement or offer letter, as applicable. These arrangements are summarized below.

#### ***Mr. Kain's Employment Agreement***

Mr. Kain is party to an employment agreement with ACMM, dated September 22, 2014, which was amended on July 1, 2016 in connection with the Transaction, as described above. The material terms of his employment agreement remain substantially consistent with his pre-existing agreement and are, as amended, as follows:

**Title and Reporting:** Mr. Kain is the President, Chief Executive Officer and Chief Investment Officer of the Company and the President and Chief Executive Officer of ACMM. He reports to the Board.

**Term:** Mr. Kain's employment agreement continues to extend on a day-to-day basis and has a term that expires two years after delivery of a notice from either Mr. Kain or ACMM that he or it no longer wishes to extend the term; provided, however, that if ACMM delivers such notice within the eighteen months following the Transaction (or any subsequent change of control of ACMM), such notice will be treated as a termination by ACMM for other than Gross Misconduct (as such term is defined in the employment agreement) (entitling Mr. Kain to the applicable severance payments and benefits described below).

**Annual Base Salary:** Mr. Kain's annual base salary is tied to the aggregate equity value under management of the Company and MTGE (such aggregate equity value, "Equity AUM"). It ranges from 0.06% to 0.01% of certain portions of the Equity AUM depending on the level of Equity AUM, but cannot be less than \$850,000. As of January 1, 2016, Mr. Kain's annual base salary was \$4,384,744.00.

**Annual Cash Incentive Plan:** Mr. Kain is entitled to participate in an annual incentive cash payment plan of up to 200% of his annual base salary, with up to 12.5% of his total target bonus being payable after the end of each fiscal quarter. The actual amount of the cash bonus awarded to Mr. Kain quarterly and annually depends largely on performance of the Company and MTGE on a quarterly or annual basis, as applicable, versus specific metrics in relation to certain other peer companies and, to a lesser extent, subjective criteria established by the Board in its reasonable discretion. Mr. Kain's bonus will not exceed 75% of his target bonus for any quarter in which the Company's and MTGE's average price-to-book ratio (as defined in the employment agreement), determined in aggregate on each trading day in the last month of such quarter, is less than 0.98, and his annual bonus will not exceed 75% of his target bonus for any year in which his quarterly bonus is so capped for three of the four quarters of the year. The percentage of the annual target bonus paid after application of these criteria and measures is referred to as the "Annual Incentive Payment Percentage."

**Annual Equity Incentive Plan:** Mr. Kain is entitled to awards of shares of capital stock of the Company and MTGE pursuant to a performance incentive shares plan maintained by ACMM. The amount of the grant awarded to Mr. Kain will vary based on the product of his Annual Incentive Payment Percentage multiplied by an amount ranging from 0.04% to 0.10% of certain portions of the Equity AUM, depending on the amount of Equity AUM as at the end of each calendar year. Shares granted under these plans vest annually over a five year period. In connection with the

Transaction, Mr. Kain has agreed that the annual equity incentive awards may be settled in cash or with a substitute equity plan at the option of the Board having comparable value, vesting and accrual and payment of dividends (or like cash amount) to the performance incentive plan award being substituted. The annual equity award described in this paragraph is referred to as the "Annual Equity Incentive."

Termination/Severance: Upon a termination of Mr. Kain's employment under any circumstances, Mr. Kain is entitled to payment of his accrued but unpaid base salary, accrued but unused vacation and any unpaid incentive or deferred compensation earned or vested as of the termination date in accordance with the terms of ACMM plans or programs.

Upon a termination of Mr. Kain's employment by ACMM for any reason other than Disability or Gross Misconduct or a termination of employment by Mr. Kain for Good Reason (as each such term is defined in the employment agreement), Mr. Kain would be entitled to the following: (i) annual base salary continuation in an amount equal to 1.5 times his "Severance Salary" which is defined as the greater of (A) the highest annual base salary in effect during the 24 months preceding the date of the notice of termination or (B) the annual base salary that would have been in effect for the next subsequent quarter, payable in 18 monthly installments; (ii) an additional payment equal to 1.5 times the greater of (A) 200% of the Severance Salary or (B) the highest cash incentive payment actually paid for either of the two calendar years ending prior to the termination date; (iii) a target incentive payment for the calendar year in which the termination occurs in an amount equal to 200% of his annual base salary earned in such year through the termination date minus any quarterly target incentive payments paid or earned to date during such year; (iv) continued coverage by and participation in all life, accidental death and dismemberment and health insurance plans offered to senior employees of ACMM (or their equivalents) for 18 months following termination at a cost to him that is no greater than if he had remained a senior employee of ACMM; (v) the Annual Equity Incentive (determined based on Equity AUM for the calendar quarter ended immediately prior to the date of termination) prorated for the portion of the calendar year elapsed prior to the date of termination (less the value of any awards previously made with respect to such calendar year) and (vi) an additional cash or equity grant, as then applicable, equal to 1.5 times the maximum grant amount permitted as his Annual Equity Incentive (determined by based on Equity AUM for the calendar quarter ended immediately prior to the date of termination).

If Mr. Kain's employment is terminated by reason of his Disability (as such term is defined in the employment agreement), he will be entitled to receive (i) continued annual base salary for 12 months (reduced dollar-for-dollar by any "bona fide disability pay"), (ii) a target incentive payment for the calendar year in which such termination occurs in an amount equal to 200% of the annual base salary earned by him during that year through the termination date minus the quarterly target incentive payments paid or earned to date during such year; (iii) an additional severance payment in an amount equal to 200% of the Severance Salary; and (iv) continued coverage by and participation in all life, accidental death and dismemberment and health insurance plans offered to senior employees of ACMM (or their equivalents) for 12 months following termination at a cost to him that is no greater than if he had remained a senior employee of ACMM.

If Mr. Kain's employment is terminated by reason of his death, he will be entitled to receive (i) a prorated target incentive payment for the calendar year in which he dies in an amount equal to the highest target incentive payment that he could have earned in such year, prorated for the number of days that he worked in such year and (ii) the full cost of coverage for his dependents for group insurance coverage that they are entitled to obtain pursuant to COBRA for a period equal to two months multiplied by the number of full years (not to exceed nine) during which he was employed by ACMM.

Restrictive Covenants: Pursuant to his employment agreement, Mr. Kain is subject to 18-month post-employment non-compete and non-solicit covenants.

#### *Messrs. Federico's and Kuehl's Employment Agreements*

Messrs. Federico and Kuehl are parties to employment agreements with ACMM, each dated March 30, 2012 and amended on July 1, 2016 in connection with the Transaction with respect to the terms discussed earlier in the Employment Arrangements section. The material terms of their employment agreements remain substantially consistent with their prior agreements and are as follows:

Title and Reporting: Mr. Federico is the Executive Vice President and Chief Financial Officer of the Company and Executive Vice President and Treasurer of ACMM. Mr. Kuehl is a Senior Vice President, Agency Portfolio Investments of the Company and Senior Vice President of ACMM. Messrs. Federico and Kuehl both report to Mr. Kain.

**Term:** Each of Messrs. Federico's and Kuehl's employment agreements continues to extend on a day-to-day basis and has a term that expires two years after delivery of a notice from the executive or ACMM that he or it no longer wishes to extend the term; provided, however, that if ACMM delivers such notice within the eighteen months following the Transaction (or any subsequent change of control of ACMM), such notice will be treated as a termination by ACMM for other than Gross Misconduct (as such term is defined in the employment agreement) (entitling each of Messrs. Federico and Kuehl to the applicable severance payments and benefits described below).

**Annual Base Salary:** Messrs. Federico's and Kuehl's annual base salaries are \$800,000 and \$900,000, respectively.

**Annual Cash Incentive Plan:** Each of Messrs. Federico and Kuehl is entitled to participate in an annual incentive cash payment plan of up to 150% and 200% of his annual base salary, respectively, with up to 12.5% of his total annual target bonus being payable after the end of each fiscal quarter. The actual amount of the cash bonus awarded to each of Messrs. Federico and Kuehl quarterly and annually depends largely on performance of the Company and MTGE on a quarterly or annual basis, as applicable, versus specific metrics in relation to certain other peer companies and, to a lesser extent, subjective criteria established by the Board in its reasonable discretion.

**Annual Equity Incentive Plan:** Messrs. Federico and Kuehl are each entitled to awards of shares of capital stock of the Company and MTGE pursuant to a performance incentive shares plan maintained by ACMM. The amount of the grant awarded to Messrs. Federico and Kuehl will vary based on an amount ranging from 0.01% to 0.03% of certain portions of the Equity AUM, depending on the amount of Equity AUM as at the end of each calendar year. Shares granted under these plans vest annually over a five year period. In connection with the Transaction, each of Messrs. Federico and Kuehl have agreed that the annual equity incentive awards may be settled in cash or with a substitute equity plan at the option of the Board having comparable value, vesting and accrual and payment of dividends (or like cash amount) to the performance incentive plan award being substituted.

**Termination/Severance:** Upon a termination of Mr. Kuehl's or Mr. Federico's employment under any circumstances (including death or disability), Mr. Kuehl or Mr. Federico, as applicable, is entitled to payment of his accrued but unpaid base salary, accrued but unused vacation and any unpaid incentive or deferred compensation earned or vested as of the termination date in accordance with the terms of ACMM plans or programs.

Upon a termination of their employment by ACMM for any reason other than Disability or Gross Misconduct or a termination by the applicable executive for Good Reason (as such terms are defined in each of Mr. Kuehl's and Mr. Federico's employment agreements), Mr. Kuehl or Mr. Federico, as applicable, will be entitled to the following: (i) 18 equal monthly installment payments of his current annual base salary; (ii) a prorated portion of his target incentive payment, if any, for the calendar year in which the termination occurs; (iii) an additional payment in an amount equal to 1.5 multiplied by his target cash incentive payment, if any, for the calendar year in which the termination occurs; and (iv) an additional grant of cash or equity (but only if the applicable equity incentive plan has received all required approvals (including approval by the shareholders of the Company)) in an amount that is based on the Equity AUM for the prior calendar year, as described in each of Mr. Kuehl's and Mr. Federico's employment agreements.

**Restrictive Covenants.** Pursuant to his employment agreement, Messrs. Federico and Kuehl are each subject to 18-month post-employment non-compete and non-solicit covenants.

#### *Ms. Bell's Offer Letter*

Ms. Bell is party to an offer letter with ACMM, dated December 1, 2015, and amended on July 1, 2016 in connection with the Transaction. The material terms of Ms. Bell's offer letter are as follows:

**Title and Reporting:** Ms. Bell is the Senior Vice President and Chief Accounting Officer of the Company and Senior Vice President and Chief Financial Officer of ACMM. Ms. Bell reports to Mr. Federico.

**Term:** There is no specified term.

**Annual Base Salary:** Ms. Bell is entitled to an annual base salary of \$400,000.

**Cash Bonus:** Ms. Bell will continue to be eligible to receive a targeted annual cash bonus of 50% of her annual base salary. Ms. Bell's bonus is based on overall performance of ACMM and her individual performance on a variety of measures but is subject to the complete discretion of the Board. At the discretion of the Board, Ms. Bell may be eligible to receive quarterly payments representing 12.5% of her bonus target in each of the first three calendar quarters of the year.

**Equity Incentive:** Ms. Bell is eligible to participate in ACMM's performance equity incentive plans but is not guaranteed any set amount of grants under these plans. Ms. Bell has agreed that any equity incentive awards may be settled in cash or with a substitute equity plan, at the option of the Board, having comparable value, vesting and accrual and payment of dividends (or like cash amount) to the performance incentive plan award being substituted.

**Termination/Severance:** Pursuant to her offer letter, upon a termination by ACMM without "cause" (as such term is defined in Ms. Bell's offer letter), Ms. Bell will be entitled to a severance payment in an amount equal to \$600,000.

**Restrictive Covenants:** Ms. Bell is subject to a 12-month post-employment non-solicit covenant.

In addition to the compensation under her offer letter, on July 1, 2016, Ms. Bell received a retention bonus award of \$318,750, which will vest in equal amounts on March 1, 2017 and March 1, 2018. If Ms. Bell's employment is terminated by ACMM without cause (as such term is defined in the retention bonus grant letter) prior to either vesting date, Ms. Bell would be entitled to receive the full retention bonus that had not been previously paid to her.

The foregoing summaries do not purport to be complete and are subject to, and qualified in their entirety by, the full text of each executive's (i) employment agreements or offer letter (including the amendments thereto), as applicable, and (ii) retention bonus grant letter, as applicable, copies of which are attached as Exhibits 10.1 through 10.5 hereto and are incorporated by reference herein.

#### **Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

<b><u>Exhibit No</u></b>	<b><u>Description</u></b>
2.1*	Transition Services Agreement, dated July 1, 2016, by and among American Capital Agency Corp., American Capital, Ltd., American Capital Asset Management, LLC, and American Capital Mortgage Management, LLC.
10.1	Employment Agreement, dated as of September 22, 2014, as Amended on July 1, 2016, by and between American Capital Mortgage Management, LLC and Gary Kain.
10.2	Employment Agreement, dated as of March 30, 2012, as Amended on July 1, 2016, by and between American Capital Mortgage Management, LLC and Peter J. Federico.
10.3	Employment Agreement, dated as of March 30, 2012, as Amended on July 1, 2016, by and between American Capital Mortgage Management, LLC and Christopher J. Kuehl.
10.4	Letter Agreement, dated as of December 1, 2015, as Amended on July 1, 2016, by and between American Capital Mortgage Management, LLC and Bernice E. Bell.
10.5	Retention Bonus Grant Letter, dated July 1, 2016, by and between American Capital Mortgage Management, LLC and Bernice E. Bell.

\* Certain schedules have been omitted, and the Company agrees to furnish supplementally to the Securities and Exchange Commission a copy of any omitted schedules upon request.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**AMERICAN CAPITAL AGENCY CORP.**

Dated: July 8, 2016

By: /s/ Kenneth L. Pollack

Kenneth L. Pollack

Senior Vice President, Chief Compliance Officer, General Counsel, and Secretary

## TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT (this "Agreement") is made as of July 1, 2016, between American Capital, Ltd., a Delaware corporation ("Parent"), American Capital Asset Management, LLC, a Delaware limited liability company ("Seller"), American Capital Mortgage Management, LLC, a Delaware limited liability company ("Company"), and American Capital Agency Corp., a Delaware corporation ("Buyer"). Capitalized terms used but not defined herein (including Section 15) will have the meanings given to them in the Purchase and Sale Agreement, dated as of May 23, 2016, by and among Seller, the Company, Parent and Buyer (the "PSA").

WHEREAS, pursuant to the PSA, Seller will sell to Buyer the Interests, and Buyer, the Company, Parent and Seller desire to undertake the other Transactions upon the terms and subject to the conditions set forth in the PSA, pursuant to the terms and conditions set forth in the PSA; and

WHEREAS, the Company uses certain services provided by Parent, Seller and their respective Affiliates, or by third parties under contract to Parent, Seller or such Affiliates, and Buyer desires to obtain the use of these services for the purpose of enabling them to manage an orderly transition in their operation of the Business;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### 1. TERM AND PROVISION OF SERVICES

1.1 Unless otherwise terminated pursuant to Section 9, the term of this Agreement will be for the Transition Period. Subject to Section 9, each Service will be provided for the period of time following the Closing that is indicated on the Schedules for such Service and each Omitted Service or Migration Service, if any, will be provided for the period of time as specified in a written agreement mutually agreed upon by the Parties setting forth the terms of such Omitted Service or Migration Service (any such period of time with respect to a Service, an Omitted Service or a Migration Service, including any extension period agreed to by the Parties pursuant to Section 1.7, a "Term"); provided that in no event will any Term extend beyond the End Date.

1.2 During the Transition Period, but subject to Section 9, the applicable Term and the provisions set forth in this Agreement, Service Provider will provide to Service Recipient (or cause to be provided by its Affiliates or third parties to Service Recipient) each Service set forth on Schedule I hereto. Service Provider will assign sufficient resources and qualified personnel as are reasonably required to perform the Services in accordance with the standards set forth in this Agreement, provided that Service Provider shall not be obligated to (i) hire any additional employees, (ii) maintain the employment of any one or more specific employees, or (iii) purchase, lease or license any additional equipment, software (including additional seats or instances under existing software license agreements) or other resources. Notwithstanding the



preceding sentence, and except for any employees of Service Provider retained by Service Recipient or its Affiliates, Service Provider will use commercially reasonable efforts to maintain sufficient resources to provide information technology-related Services under this Agreement with the same quality and standard of care as historically provided.

1.3 Except as otherwise expressly provided in this Agreement or the Schedules, each Service will be provided to Service Recipient in substantially the same manner and at substantially the same level of quality as such Service was provided, or caused to be provided, by Service Provider or any of its Affiliates to the Business, during the twelve-month period ending on the Closing Date, if applicable; provided that for the purposes of determining the manner and quality of any Service during the twelve-month period prior to Closing, appropriate modifications in manner of delivery may be made for security, confidentiality and data integrity, or other modifications in the process for providing Services reasonably resulting from or necessitated by the separation of Service Recipient's business pursuant to the Transactions, so long as such modifications would not reasonably be expected to adversely affect the manner or quality of the Services delivered hereunder in any material respect.

1.4 Service Provider and Service Recipient will, and will cause their respective Affiliates to, comply with (i) Applicable Laws, including applicable privacy and data security laws, in the provision or receipt of Services, and (ii) all reasonable information security policies and procedures of the other Party in connection with their access to the others information technology systems in connection with the provision, receipt and use of Services. Service Provider and Service Recipient shall have no obligation (pursuant to this Agreement, as part of or in connection with the Services, as a result of storing or maintaining any data or otherwise) to prepare or deliver any notification or report to any Governmental Authority or other Person on behalf of, in the case of Service Provider, Service Recipient or any of its Affiliates and in the case of Service Recipient, Service Provider or any of its Affiliates.

1.5 If any services that were previously provided, or caused to be provided, by Service Provider to the Business during the twelve-month period ending on the Closing Date and are reasonably necessary for the continued operation of the Business, have been inadvertently omitted from Schedule I hereto ("Omitted Services"), and such services cannot reasonably and promptly be provided or sourced from a third party by Service Recipient, then at the request of Service Recipient, Service Provider will use commercially reasonable efforts to provide such services, or cause such services to be provided, as promptly as reasonably practicable, subject to mutual written agreement by Service Provider and Service Recipient with respect to the terms applicable to the provision thereof, which terms the parties will negotiate in good faith. Any Omitted Service that is provided or caused to be provided by Service Provider pursuant to this Section 1.5 will be a "Transition Service," for purposes of this Agreement.

1.6 Service Provider may use third parties to provide some or all of the Services; provided, that (a) Service Provider uses the same degree of care in selecting any such third party as it would if such third party was being retained to provide similar services to Service Provider, (b) Service Provider will in all cases remain primarily responsible for all of its obligations under this Agreement and (c) to the extent that a Service was historically provided directly by Service

Provider, Service Provider must obtain Service Recipient's prior written consent to the use of a third party to provide for such Service, and such consent will not be unreasonably withheld, delayed or conditioned. Service Provider will retain responsibility for the provision of any Services regardless of which Person is performing such Services.

1.7 In the event that any Service is required beyond its Term, Service Recipient will provide Service Provider with a written notice of extension by the later of forty five (45) days prior to the expiration of the Term of such Service and the date that is five (5) days after the date hereof. Such notice will indicate the period during which Service Recipient wishes to receive such Service after the date of expiration of the Term for such Service; provided that such period will not (i) extend beyond September 30, 2016 with respect to Services set forth in Schedule I Parts A, C, D, E, and F or (ii) extend beyond the End Date with respect to Services set forth in Schedule I Part B. Subject to obtaining any necessary third-party consents (including with respect to any consent necessary to extend the term of an applicable third-party contract), Service Provider will provide, or cause to be provided, the Service to Service Recipient for such period at a price equal to the Service Fees payable by Service Recipient to Service Provider for such Service. Service Recipient will reimburse Service Provider for any incremental fees charged by third-party service providers in connection with extending the Service, prorated for the Term of the Service to the extent such extension was not obtained solely for the benefit of Service Recipient. In addition, Service Recipient agrees that if Service Provider is required to extend the term of any third-party contract in order to continue to provide any Service after the Term, then (i) Service Recipient shall be required to pay Service Provider the amount of any renewal fees or purchase commitments applicable to the relevant Service for the full renewal period specified in the applicable third-party contract, regardless of whether the Term or Service Provider's provision of the relevant Service ends prior to the end of the relevant renewal period, and (ii) Service Provider will not be required to provide any such Service to the extent it is unable to renew any applicable third-party contract (but Service Provider shall use its commercially reasonable efforts to renew such contract). Upon the reasonable request of Service Provider, the parties will discuss the steps that have been taken to transition off of the Services within the original Term for each Service set forth in this Agreement.

1.8 After the date hereof, to the extent the provision of a Service violates Applicable Law, Service Provider will provide, and the Parties will work together in connection with Service Provider's provision of, such Services through a commercially reasonable alternative arrangement that does not violate Applicable Law.

1.9 At the written request of Service Provider, Service Recipient will provide Reverse Services to Service Provider or its Affiliates in a manner consistent with the terms and conditions applicable to Services under this Agreement, mutatis mutandis; provided, that only employees of Service Provider or its Affiliates as of the date hereof who are retained by Service Recipient or its Affiliates after the date hereof will provide Reverse Services, and only to the extent such Services are consistent with their prior role as an employee of Service Provider or its Affiliates. For the avoidance of doubt, the provision of any Reverse Services by Service Recipient to Service Provider is subject to the applicable Term, and in no event will any Term extend beyond the End Date. The Reverse Services currently identified, and the specific term and fees for such

Reverse Services (without limiting the applicability of other provisions applicable to the term and fees and costs that apply, mutatis mutandis, to the provision of Reverse Services), are set forth on Schedule II hereto.

1.10 The parties acknowledge and agree that, to the extent that the Services or the Reverse Services, respectively, consist of legal advice to Service Recipient (with respect to the Services) or to Service Provider (with respect to the Reverse Services), the attorney-client privilege and the expectation of client confidence with respect thereto shall belong exclusively to Service Recipient (with respect to the Services) or to Service Provider (with respect to the Reverse Services), and shall not pass to the other party, and the attorney-client privilege (or any waiver thereof) shall be exclusively controlled by Service Recipient (with respect to the Services) or to Service Provider (with respect to the Reverse Services). In furtherance of the foregoing (but, for the avoidance of doubt, without limitation of Section 9.15 of the PSA), the parties agree that Service Recipient (with respect to the Reverse Services that constitute legal advice) and Service Provider (with respect to the Services that constitute legal advice) (i) shall not claim or purport to waive the attorney-client privilege with respect to such legal advice (including in any dispute between Service Provider and Service Recipient), (ii) shall maintain the confidentiality of such legal advice; provided that the parties may disclose any such legal advice to the extent required, in the opinion of legal counsel, by Applicable Law, including any such requirement (x) in connection with any Proceeding or (y) pursuant to any request from a Governmental Authority; provided, further, however, that, in the event that any such disclosure shall be so required, Service Provider or Service Recipient, as applicable, shall notify the other of such requirement or request and afford the other the reasonable opportunity to assert the attorney-client privilege and/or seek a protective order with respect to such legal advice to prevent such disclosure, and the notifying party shall cooperate with the other in connection therewith, and (iii) shall, promptly upon becoming aware that it remains in possession of any privileged documents in respect of such legal advice, notify the other thereof and cause such privileged documents to be removed from its possession and transferred to the other without retaining copies of any such privileged documents. Service Provider and Service Recipient acknowledge and agree that any failure to cause any such privileged documents to be removed from its possession and transferred to the other shall not constitute a waiver of or otherwise prejudice any claim of attorney-client privilege.

## **2. PRICING, BILLING AND PAYMENT**

2.1 Except as expressly set forth in this Agreement (including the Schedules hereto), the Service Recipient shall pay the Service Provider a quarterly fee for the Services (including Migration Services) as set forth on Schedule I for such Services (collectively, the "Service Fees"), and in addition, Service Recipient will pay Service Provider all reasonable third-party costs and fees (to the extent such costs and fees are not expressly included in the Service Fees in the applicable schedule) and incidental out-of-pocket costs and expenses reasonably incurred by Service Provider and its Affiliates in providing the Services, including air fare (coach class), lodging, meals, mileage, parking and ground transportation, in each case in accordance with Service Provider's standard policies with respect to such incidental out-of-pocket costs and expenses and for which reasonably detailed supporting documentation has been provided (such

costs, fees and expenses “Reimbursable Costs”). Notwithstanding the foregoing, the incremental cost to obtain any Required Licenses (defined below) shall be borne by the Service Provider (excluding, for clarity, the underlying fees and Reimbursable Costs in connection with such Services, which shall be borne by Service Recipient as provided for herein). Service Provider shall be solely responsible for the payment and provision of all wages, bonuses and commissions, employee benefits, including severance and worker’s compensation, and the withholding and payment of applicable Taxes relating to employees of Service Provider. Unless otherwise provided in the particular Schedule I with respect to a Service, the Service Fees for any partial quarter of the Term for such Service will be prorated based on the number of days that the Service was actually provided or made available during such quarter. For clarity, to the extent that Service Recipient has historically been billed directly in connection with any third party costs related to such Services, Service Recipient shall continue to be so billed and shall continue to bear such costs.

2.2 In the event that any Service is terminated by Service Recipient in accordance with Section 9.3, the Service Fees will automatically be adjusted downward (by the associated fee for such Service set forth on the respective Schedule from and after the first day of the quarter following termination of such Service), subject to Section 9.3.

2.3 Not later than fifteen (15) days after the last day of each quarter, Service Provider will provide to Service Recipient an itemized invoice for the preceding quarter’s Service Fees and Reimbursable Costs. The undisputed amount stated in such invoice will be paid by Service Recipient in full within thirty (30) days of receipt of the invoice through payment by wire transfer of immediately available funds to an account designated by Service Provider. Service Recipient may object to any amounts invoiced hereunder at any time by providing written notice in reasonable detail of such objection within thirty (30) days of receipt of the applicable invoice. If Service Recipient objects in good faith to any amounts being due, Service Recipient will not be required to pay such disputed amounts unless and until the dispute is resolved. Upon the resolution of such dispute, the Parties agree to pay or reimburse any amounts due to the other Party within thirty (30) days of the resolution of the dispute.

2.4 Service Recipient will have the right to audit the amount of such Service Fees and Reimbursable Costs, which audit will be conducted by an independent third party designated by Service Recipient and reasonably acceptable to Service Provider. If any such audit reveals any overpayment by Service Recipient, Service Provider will refund the amount of such overpayment to Service Recipient within thirty (30) days of Service Provider’s receipt of notice of such overpayment, unless Service Provider objects in good faith to such determination (in which case Section 11.3 shall apply). If overpayment is more than 10% of the aggregate Service Fees paid by Service Recipient, Service Provider will reimburse Service Recipient for all costs reasonably incurred by Service Recipient in performing the audit uncovering such overpayment.

2.5 All payments due to Service Provider pursuant to the terms of this Agreement will be exclusive of any sales or use tax, which will be payable by Service Recipient. Late payments to Service Provider shall bear interest at the lesser of 8% per annum or the maximum rate allowed by law.

2.6 Without limiting Service Provider's obligations with respect to payment of incremental costs of obtaining Required Licenses under Section 2.1, Service Provider will use commercially reasonable efforts to obtain any consents or licenses required in connection with the provision of, or in order for Service Provider to provide, the Services hereunder (collectively, the "Required Licenses"). Service Recipient hereby agrees to provide reasonable cooperation in obtaining all Required Licenses. If Service Provider is unable to secure a Required License using its commercially reasonable efforts, then, Service Provider will provide, and the Parties will work together in connection with Service Provider's provision of, such Services through a commercially reasonable alternative arrangement with respect thereto.

2.7 With respect to any Service Fees that accrue or are incurred by Service Provider or its Affiliates during the Transition Period but that are not billed by Service Provider in a quarterly invoice, or of which Service Provider does not become aware until after the Transition Period, Service Provider will set forth such fees in an invoice or invoices submitted to Service Recipient following the end of the Transition Period (each, a "Post-Term Invoice"), provided such invoice is submitted no later than forty-five (45) days following the end of the Transition Period. Service Recipient will remit payment under any such Post-Term Invoice to Service Provider within thirty (30) days after its receipt of such invoice.

### **3. ACCESS**

The Service Provider and Service Recipient will, and will cause their respective Affiliates to, provide to each other and their respective representatives and vendors reasonable access (during normal business hours, subject to the reasonable policies and procedures of the Party providing access, upon reasonable notice and supervised by the appropriate personnel of the Parties and conducted in a manner that does not unreasonably interfere with the operations of Service Provider, Service Recipient or their respective Affiliates (as applicable) or as otherwise agreed by the Parties) to the information, personnel, and systems necessary for the efficient and accurate administration of each of the Services and to avoid the duplication of any expenses or benefits thereunder; provided that all such information will be shared subject to the confidentiality obligations set forth in the PSA, and any Party or third-party vendor receiving such information will agree to be bound by such obligations prior to the provision of any such information. For the avoidance of doubt, Service Provider will, and will cause their respective Affiliates, to provide Service Recipient with reasonable access to Parent's systems and personnel during the term of this Agreement to perform Sarbanes-Oxley testing, subject to the security, confidentiality and data integrity policies and procedures of Service Provider. All Services provided will be based upon timely, accurate and complete information from Service Recipient, and Service Provider will be released from its obligations to provide or cause to be provided timely, accurate and complete Services to the extent Service Recipient fails to provide timely, accurate and complete information to Service Provider reasonably necessary for the provision of such Services.

### **4. TRANSITION**

4.1 The Parties acknowledge and agree that the Services to be provided hereunder are transitional in nature and are intended to provide Service Recipient with reasonable time to

develop the internal resources and capacities (or to arrange for third-party providers) to provide such Services as promptly as reasonably practicable. Within thirty (30) days after the Closing Date, the Parties will consult for the purpose of agreeing upon a plan for the Migration of all Services (the Parties acknowledging that such plan may be completed in whole or in part prior to the Closing under or in connection with the PSA). Service Recipient will have the primary responsibility for planning and carrying out the Migration of Services prior to the expiration of the Transition Period. Subject to Section 4.2 and the other terms of this Agreement, Service Provider will provide reasonable cooperation and assistance as reasonably requested to support the Service Recipient's Migration efforts, at fees determined in accordance with Section 2.1.

4.2 To the extent that Service Recipient reasonably requires services from Service Provider relating to Migration ("Migration Services"), such Migration Services will be provided, or caused to be provided, by Service Provider in the same manner as a Transition Service and at a cost set forth on the Schedules.

4.3 It is the intent of the Parties that Service Recipient will be able to perform for itself the Services following the discontinuance of such Services by Service Provider. In furtherance of the foregoing, Service Recipient shall use commercially reasonable efforts to transition and migrate from the Services as promptly as reasonably practicable and, as part of the Migration Services, Service Provider agrees to reasonably cooperate with and assist Service Recipient, at no additional cost, with training of its personnel, including making its personnel and facilities reasonably available to train an agreed number of Service Recipient's personnel in connection with the Migration to permit Service Recipient to provide the Services for itself after the Transition Period. In addition, at the specific request of Service Recipient therefor, Service Provider will provide Service Recipient an electronic copy of all formal policies and procedures used by Service Provider to provide the Services hereunder, including such documentation relating to accounting and human resources.

## **5. LIMITATION OF LIABILITY**

5.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, EXEMPLARY, PUNITIVE, SPECULATIVE OR REMOTE DAMAGES HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, ARISING FROM THE PERFORMANCE OF, OR RELATING TO, THIS AGREEMENT REGARDLESS OF WHETHER SUCH PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OF, OR THE FORESEEABILITY OF, SUCH DAMAGES. FOR GREATER CERTAINTY, THE FOREGOING WAIVER WILL NOT AFFECT IN ANY MANNER, SERVICE RECIPIENT'S RIGHTS AND REMEDIES IN RESPECT OF SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST PROFITS. EXCEPT TO THE EXTENT RESULTING FROM SERVICE PROVIDER'S WILLFUL MISCONDUCT, IN NO EVENT SHALL SERVICE PROVIDER'S LIABILITY IN THE AGGREGATE FOR DAMAGES HEREUNDER EXCEED \$25,000,000.

**6. DISCLAIMER OF WARRANTY**

**WITHOUT AFFECTING SERVICE PROVIDER'S COVENANTS AND AGREEMENTS HEREUNDER, EXCEPT AS SET FORTH IN THE PSA, THE SERVICE PROVIDER DOES NOT MAKE ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE FOR SUCH SERVICES. ANY REPRESENTATION OR WARRANTY IN RESPECT OF ANY SUCH SERVICE WILL BE INCLUDED IN THE WRITTEN AGREEMENT SETTING FORTH THE TERMS OF SUCH SERVICE.**

**7. FORCE MAJEURE**

7.1 Service Provider will not be responsible for failure or delay in delivery of any Service that it has responsibility for providing hereunder, if caused by an act of God or public enemy, war, terrorism, government acts, regulations or orders, fire, earthquake, flood, embargo, quarantine, epidemic, labor stoppages or other disruptions, accident, unusually severe weather, failure or default of public utilities or common carriers, destruction of facilities or systems or other similar cause beyond the control of Service Provider. Service Provider will, promptly after knowledge of the beginning of any excusable delay, notify Service Recipient of such delay, the reason therefor, and the estimated probable duration and consequence thereof.

7.2 In the event that Service Provider is excused from supplying a Service pursuant to Section 7.1, Service Recipient will be free to acquire replacement services from a third-party at Service Recipient's expense, and without liability to Service Provider, for the period and to the extent reasonably necessitated by such non-performance.

**8. INSURANCE**

Service Provider will maintain its existing or substantially similar insurance policies relating to bodily injury liability, property damage liability, worker's compensation insurance, employer's liability insurance, automobile liability insurance, and other such applicable insurance policies throughout the term of this Agreement. Upon the request of Service Recipient, Service Provider will furnish evidence of such coverage.

**9. TERMINATION**

9.1 This is a master agreement and will be construed as a separate and independent agreement for each and every Service provided under this Agreement. Except as set forth in this Section 9, any termination of this Agreement with respect to any Service will not terminate this Agreement with respect to any other Service then being provided pursuant to this Agreement.

9.2 Upon thirty (30) days' written notice, Service Provider may terminate this Agreement with respect to any or all Services it provides hereunder or, at its option, suspend performance of its obligations with respect thereto, in either case in the event of the failure of

Service Recipient to pay any invoice within thirty (30) days of the receipt of such invoice or upon any other material breach by Service Recipient of this Agreement with respect to any Service, unless, with respect to failure to pay an invoice, Service Recipient is disputing the invoice in good faith or Service Recipient will have paid the invoice or cured such breach within the thirty (30) day notice period.

9.3 At any time and from time to time during the Term, upon no less than thirty (30) days' written notice to Service Provider, Service Recipient may terminate any or all of the Services, whether by individual Service or as a whole Schedule I, without penalty or premium (the Parties acknowledge and agree that the actual termination of certain Services pursuant to this Section 9.3 may occur after the transition of the underlying functions performed as part of such Services if additional support is required by the Service Recipient to ensure a fully successful transition of the given Services); provided that upon prior written notice to Service Recipient from Service Provider in advance of such termination, (i) Service Recipient shall pay to Service Provider any third-party costs incurred by Service Provider to the extent such third-party costs are incurred in connection with such early termination or are incurred with respect to third-party contracts or services that cannot be terminated early, and (ii) to the extent any other Services are dependent on the provision of such terminated Service, then Service Provider shall promptly notify Service Recipient thereof, and Service Provider shall not have an obligation hereunder to provide such other Service following such termination (unless Service Recipient within fifteen (15) days of such notice from Service Provider notifies Service Provider that the Service designated by Service Recipient for early termination shall not be terminated). Upon receipt by Service Provider of a notice terminating a Service on Schedule I, this Agreement will be deemed amended as necessary to remove such Service or Schedule I and the Service Fees applicable thereto as of the termination date (which is at least thirty (30) days after the date of the notice) set forth in the applicable termination notice. For the avoidance of doubt, neither (a) termination of a particular Schedule I hereunder nor (b) termination of any portion of any Services provided under a Schedule I, but not the other parts of the Schedule I, will be a termination of this Agreement.

9.4 Service Recipient may terminate this Agreement:

(a) effective immediately upon delivery of written notice to Service Provider if any Service Provider makes an assignment for the benefit of creditors, or becomes bankrupt or insolvent, or is petitioned into bankruptcy, or takes advantage of any state, federal or foreign bankruptcy or insolvency act, or if a receiver or receiver/manager is appointed for all or any substantial part of its property and business and such receiver or receiver/manager is not discharged within thirty (30) days of the occurrence thereof;

(b) effective immediately upon delivery of written notice to Service Provider, if any Service Provider (including any third-party vendor thereof) materially breaches this Agreement and such breach is not remedied to Service Recipient's reasonable satisfaction within thirty (30) days after Service Provider's receipt of written notice from Service Recipient informing Service Provider of such breach; or



(c) effective immediately upon delivery of written notice to Service Provider, if any Service Provider refuses to perform any Services as required hereunder, and Service Provider fails to cure such refusal within ten (10) Business Days after Service Provider's receipt of written notice from Service Recipient specifying such refusal or repudiation.

9.5 This Agreement may be terminated in whole or in part by mutual written agreement of the Parties.

9.6 Effect of Termination. Upon termination of this Agreement, the Service Provider shall have no further obligation to provide any Services hereunder, and all obligations of both Parties shall cease, except for (a) provisions expressly stated herein to survive and (b) obligations related to any damages claims for any pre-termination breach.

9.7 Following the termination of this Agreement or any Service(s), all Service Providers and all Service Recipients will reasonably cooperate with the other Parties as reasonably necessary to avoid disruption of the ordinary course of the other's business.

## **10. RELATIONSHIP OF PARTIES**

In providing the Services, Service Provider is acting as and will be considered an independent contractor. This Agreement is not intended to create and will not be construed as creating between Service Provider and Service Recipient any relationship other than as an independent contractor and purchaser of contract services, it being specifically acknowledged that there is no relationship between the Parties of affiliate, principal and agent, joint venture, partnership or similar relationship, or any other relationship, that imposes or implies any fiduciary duty, including any duty of care or duty of loyalty. All Service Provider's (or such third-party vendor's) personnel providing Services under this Agreement are and will be deemed to be employees or representatives solely of the applicable Service Provider (or third-party vendor) for purposes of all compensation and employee benefits and not to be employees or representatives of any Service Recipient. Except as expressly set forth herein, no Party has the authority to, and each Party agrees that it will not, directly or indirectly contract any obligations of any kind in the name of or chargeable against the other Party without such other Party's prior written consent.

## **11. PROJECT MANAGERS**

11.1 Service Provider and Service Recipient will each assign one person to act as that Party's project manager (the "Project Manager") for each category of Services set forth on Schedule I (and other categories, as may be agreed by the Parties). The Parties will cause their respective Project Managers to (a) represent and act for their respective Party for matters related to the applicable Service, and (b) meet and/or confer on a regular basis (at mutually agreed times and locations) to review the activities under this Agreement and to discuss the status and progress of such activities.

11.2 Service Provider and Service Recipient will promptly notify the other Party of any reassignments or change in contact information of the Project Manager or other key personnel identified in Schedule I hereto.

11.3 The Parties agree to use good faith efforts to resolve any controversy or claim arising out of this Agreement, the interpretation of any of the provisions hereof, or the actions of the Parties hereunder. In the event of a breach of this Agreement, or a dispute as to the meaning of this Agreement or any of its terms which the Parties cannot resolve by themselves amicably, the following provisions will apply:

(a) Any issue, dispute or controversy arising pursuant to this Agreement (a “Dispute”) will be settled in the following manner. Upon written request of either Party, the representatives of the Parties will promptly confer and exert their commercially reasonable efforts without the necessity of any formal proceeding related thereto to reach a reasonable and equitable resolution of such Dispute. If such representatives are unable to resolve such Dispute within 15 calendar days, the Dispute will be referred to the responsible senior management of each Party for resolution. Neither Party will seek any other means of resolving any Dispute arising in connection with this Agreement until both Parties’ responsible senior management have had at least 15 calendar days to resolve the Dispute following its referral to them. All reasonable requests for information made by one Party to the other in connection with a Dispute will be honored. All negotiations pursuant to this Section 11 are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) If the Dispute cannot be resolved by senior management, as outlined in Section 11.3(a), either Party may bring a suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement in accordance with Section 18 with respect to governing law and jurisdiction.

(c) All deadlines specified in this Section 11 may be extended by mutual agreement.

(d) The procedures specified in this section will be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this Agreement. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Section 11. All applicable statutes of limitation will be tolled while the procedures specified in this Section 11 are pending. The Parties will take such action, if any, required to effectuate such tolling.

(e) Except as otherwise expressly set forth herein, the existence of any Dispute or controversy under this Agreement or the pendency of the dispute settlement or resolution procedures set forth herein will not in and of themselves relieve or excuse a Party from its ongoing duties and obligations under this Agreement.

(f) Nothing in this Section 11 precludes, or will be construed to preclude, the resort by a Party to a court of competent jurisdiction solely for the purposes of securing an injunction (or other equitable relief) as incorporated by reference in Section 18 or otherwise.

## 12. RECORDS

12.1 Each Party agrees to retain originals or copies of all books, records, files, databases or computer software or hardware (including current and archived copies of computer files) (the “Materials”) with respect to matters relating to the Services provided to Service Recipient hereunder in accordance with its record retention policies as in effect from time to time. As promptly as practicable following the expiration of the applicable duration (or earlier termination) of each Service, Service Provider will use commercially reasonable efforts to furnish to Service Recipient, and assist in the transition of, the Materials belonging to Service Recipient and relating to such Service (or copies thereof) that are reasonably requested by Service Recipient, at Service Recipient's expense.

12.2 The Service Recipient Data will be and will remain the property of Service Recipient and, to the extent reasonably practicable, Service Provider will use commercially reasonable efforts to promptly provide such data to Service Recipient upon Service Recipient's request and at Service Recipient's expense. The Service Provider will use Service Recipient Data solely to provide the Services to Service Recipient as set forth herein and for no other purpose whatsoever.

12.3 Notwithstanding anything herein to the contrary, Service Provider may retain copies of the Materials and Service Recipient Data in accordance with policies and procedures implemented by Service Provider in order to comply with applicable law, regulation, professional standards or reasonable business practice, including document retention policies as in effect from time to time.

## 13. INTELLECTUAL PROPERTY

Unless otherwise specifically provided herein, this Agreement will not transfer ownership of any Intellectual Property rights from either Party to the other Party or to any third party.

## 14. ASSIGNMENT AND DELEGATION

This Agreement and all of the provisions hereof will be binding upon and will inure to the benefit of the Parties hereto and their respective successors (including any successor of Parent in connection with the transactions contemplated by the Parent Merger Agreement) and permitted assigns. Except as set forth in Section 1.6, neither this Agreement nor any of the rights, interests or obligations hereunder will be assigned or delegated, directly or indirectly, in whole or in part, including by operation of law, by any party hereto without the prior written consent of the other Parties hereto; provided, however, that (a) either Party may assign this Agreement to any of its Affiliates without the consent of the other Party or delegate its rights or obligations hereunder, in whole or in part, to any of its Affiliates and (b) Parent may assign this Agreement by operation of law as a result of the consummation of the Parent merger transaction contemplated by the Parent Merger Agreement; provided, that such Party shall remain liable for its obligations hereunder. Except as specified in this Agreement, no provision of this Agreement is intended or will be construed to confer upon any Person other than the parties and their respective successors and

permitted assigns any right, remedy or claim under or by reason of this Agreement or any part hereof.

## 15. DEFINITIONS; INTERPRETATION

15.1 Definitions. The following terms will have the respective meanings set out below and grammatical variations of such terms will have corresponding meanings:

“End Date” means June 30, 2017, which may be extended by two (2) months upon the mutual written agreement of the Parties.

“Migration” means the transition or migration from the provision of a particular Service by Service Provider to Service Recipient under this Agreement to performance of such Service by Service Recipient or a third-party designated by Service Recipient.

“Parent Merger Date” shall mean the date to be specified in a written notice delivered by Seller to Buyer stating that the conditions to the obligations of the parties to the Parent Merger Agreement to consummate the Mergers (as defined in the Parent Merger Agreement) have been or are expected to be satisfied or waived by such parties, and that the Effective Time (as defined in the Parent Merger Agreement) is expected to occur at the date so specified in such notice, such date to be no fewer than five Business Days after the date of such notice.

“Party” means either Buyer, Parent or Seller, as the context requires, and “Parties” means Buyer, Parent, the Company and Seller, as the context requires.

“Reverse Services” means the services provided to Service Provider or its Affiliates (excluding the Company) solely through and by employees of Service Provider or its Affiliates as of the date hereof that have been retained by Service Recipient or its Affiliates after the date hereof; provided that in no event will the Term of any Reverse Services extend beyond the End Date.

“Service Provider” means Parent, Seller and any of their Affiliates providing Transition Services hereunder.

“Service Recipient” means the Company, Buyer and any of its Affiliates receiving Transition Services hereunder.

“Service Recipient Data” means all the data owned and provided solely by Service Recipient or created by Service Provider solely on behalf of Service Recipient that is used by Service Provider solely in relation to the provision of the Services hereunder, including employee information, customer information, product details and pricing information.

“Transition Period” means the period from the Closing Date until all of the Terms for the Services have expired or otherwise terminated in accordance with Section 9, and no further Services are being provided in connection with the Migration; provided that in no event will the Transition Period extend beyond the End Date.

“Transition Service” or “Service” means each service specified in Schedule I hereto, including Reverse Services.

15.2 Interpretation. When a reference is made in this Agreement to Articles, Sections, Schedules or Exhibits, such reference shall be to an Article of, Section of, Schedule to or Exhibit to this Agreement unless otherwise indicated. Words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. Unless the context requires otherwise, references to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” All pronouns and any variations thereof refer to the masculine, feminine or neuter, single or plural, as the context may require. All capitalized terms defined in this Agreement shall be equally applicable to the singular and plural forms thereof. All references to any period of days shall be deemed to be to the relevant number of calendar days unless otherwise specified. All references to “dollars” or “\$” shall be to U.S. dollars. The parties hereto have participated collectively in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted collectively by all parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. References to any Person include the successors and permitted assigns of that Person.

## 16. NOTICES

The procedures specified in Section 10.6 (Notices) of the PSA will apply with respect to all notices, requests, claims, demands and other communications under this Agreement.

## 17. SURVIVAL

The Parties’ rights and obligations under Sections 2 (Pricing, Billing and Payment), 5 (Limitation of Liability), 6 (Disclaimer of Warranty), and 11 (Project Managers), 12 (Records), 13 (Intellectual Property), 14 (Assignment and Delegation), 16 (Notices), 17 (Survival) and 18 (General Provisions) will survive expiration or termination of this Agreement.

## 18. GENERAL PROVISIONS

Sections 9.4 (Entire Agreement), 9.7 (Severability), 9.10 (Specific Performance), 9.11 (Counterparts), 9.12 (Governing Law) 9.13 (Consent to Jurisdiction) and 9.14 (Waiver of Jury Trial) of the PSA will apply to this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives as of the date first above written.

**AMERICAN CAPITAL ASSET MANAGEMENT, LLC**

By: /s/ Samuel Flax  
Name: Samuel Flax  
Title: Executive Vice President and Secretary

**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**

By: /s/ Peter Federico  
Name: Peter Federico  
Title: Senior Vice President and Chief Risk Officer

**AMERICAN CAPITAL, LTD.**

By: /s/ Samuel Flax  
Name: Samuel Flax  
Title: Executive Vice President, General Counsel and Secretary

[SIGNATURE PAGE TO TRANSITION SERVICES AGREEMENT]

**AMERICAN CAPITAL AGENCY CORP.**

By: /s/ Peter Federico

Name: Peter J. Federico

Title: Senior Vice President and Chief Risk Officer

[SIGNATURE PAGE TO TRANSITION SERVICES AGREEMENT]

[EXHIBITS REDACTED]



July 1, 2016

**PERSONAL AND CONFIDENTIAL**

Gary Kain  
American Capital Mortgage Management, LLC  
Two Bethesda Metro Center, 14th Floor  
Bethesda, MD 20814

Dear Gary:

In connection with the transactions contemplated by the Purchase and Sale Agreement, dated as of May 23, 2016, by and among American Capital Asset Management, LLC, American Capital Mortgage Management, LLC (the "Company"), American Capital, Ltd. ("ACAS") and American Capital Agency Corp. ("AGNC") (such agreement, the "Purchase Agreement"), you and the Company hereby agree to the following changes to the Second Amended and Restated Employment Agreement, entered into as of September 22, 2014, by and between the Company and you (the "Employment Agreement").

1. Notwithstanding anything contained in your Employment Agreement to the contrary, as of the date hereof, your titles shall be Chief Executive Officer, President and Chief Investment Officer of AGNC and Chief Executive Officer and President of the Company, and you shall report to the Board of Directors of AGNC (the "Board").
2. Each reference to the "Board of Managers" in your Employment Agreement shall be deemed to be a reference to the "Board of Directors of American Capital Agency Corp. or its designee".
3. Each reference to "American Capital, Ltd." or "ACAS" in your Employment Agreement shall be deemed to be a reference to "American Capital Agency Corp."
4. With respect to any award that the Company is obligated to provide to you (whether by your Employment Agreement or otherwise) pursuant to the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC, the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE or any other similar plan (whether payable in shares of stock of ACAS, AGNC, American Capital Mortgage Investment Corp. or otherwise), the Company may (in the discretion of the Board or its designee), in lieu thereof, provide (a) a substitute cash award, which shall be granted solely pursuant to the terms and conditions of a comparable cash incentive plan, or (b) a substitute equity award, which shall be granted solely pursuant to the terms and conditions of an equity incentive plan (but only if such a plan has received all required corporate approvals, including, if required, approval by the stockholders of AGNC). Any such substitute cash award or substitute equity award shall (i) have the same cash value as the corresponding replaced award, (ii) have the same or shorter vesting schedule as the corresponding replaced award, and (iii) provide for the accrual and payment of dividends (or a cash award of like value)

in a manner comparable to the accrual and payment of dividends under the corresponding replaced award.

5. You acknowledge and agree that the consummation of the transactions contemplated by the Purchase Agreement shall not constitute grounds for you to terminate your employment for “Good Reason.”

Very truly yours,  
**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**

By:       /s/ Peter Federico        
Name: Peter Federico  
Title: Executive Vice President and Chief  
      Financial Officer

Accepted and Agreed:

By:       /s/ Gary Kain        
Gary Kain

**SECOND AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT**

THIS SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of September 22, 2014 (the "Effective Date"), by and between AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC (f/k/a American Capital Agency Management, LLC), a Delaware limited liability company (the "Company"), and Gary Kain (the "Executive").

**W I T N E S S E T H:**

WHEREAS, the Company is currently engaged through its subsidiaries in the business of, among other things, managing mortgage real estate investment trusts ("REITs"), which invest in (a) agency securities for which the principal and interest payments are guaranteed by U.S. Government agencies and U.S. Government-sponsored entities, (b) non-agency securities, and/or (c) other mortgage related investments; and

WHEREAS, the Executive is President and Chief Investment Officer of the Company, and in such role, the Executive has received and will continue to receive specific trade secrets and confidential information, training and the benefit of established customer relationships relating to the businesses of the Company, which trade secrets and confidential information, training and access to established customer relationships are necessary to enable the Executive to perform the Executive's duties and to receive future compensation, and the Executive has played and will continue to play a significant role in the development and management of the businesses of the Company; and

WHEREAS, it is in the interests of the Company that the Executive's services continue to be available to the Company; and

WHEREAS, the Company and the Executive entered into an Employment Agreement entered into as of January 3, 2011, retroactive to May 1, 2010 (such agreement being the "Original Agreement" and such latter date being the "Original Effective Date"); and

WHEREAS, the Company and the Executive entered into an Amended and Restated Agreement as of March 30, 2012 (the "First Amended and Restated Agreement") pursuant to which the Original Agreement was amended and restated in its entirety; and

WHEREAS, the parties wish to amend and restate the First Amended and Restated Agreement in its entirety to reflect that as of the date hereof the Company has repurchased the remaining Units in the Company previously issued to the Executive and the Executive does not currently hold any equity interests in the Company.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree that the First Amended and Restated Agreement is amended and restated in its entirety as follows:

## ARTICLE 1

### DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following respective meanings:

“ACAS” shall mean American Capital, Ltd., a Delaware corporation.

“AGNC” shall mean American Capital Agency Corp., and its successors and assigns.

“Base Salary” shall have the meaning specified in Section 3.1.

“Board of Managers” shall mean the Board of Managers of the Company.

“Change of Control” shall mean the occurrence of any of the following events: (i) any person or group of persons (as defined in Section 13(d) and 14(d) of the Exchange Act) together with its affiliates, excluding the Executive and employee benefit plans of the Company, becomes, directly or indirectly, the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of securities of the Company representing 25% or more of the combined voting power of the Company’s then outstanding securities; (ii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation or entity regardless of which entity is the survivor, other than a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) at least 51% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (iii) the stockholders of the Company approve a plan of complete liquidation or winding-up of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company’s assets.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Company Managed Fund” shall mean any entity for which the Company or a subsidiary of the Company serves as investment manager or in a substantially similar capacity pursuant to a written agreement. For avoidance of doubt, as of the Effective Date, the Company Managed Funds are AGNC and MTGE.

“Confidential Information” shall have the meaning specified in Section 5.1(a).

“Disability” shall mean a physical or mental condition of the Executive that, in the good faith judgment of not less than a majority of the Board of Managers, prevents the Executive from being able to perform the services required under this Agreement and that results in the Executive becoming eligible for long-term disability benefits (if such benefits are provided by the Company). If any dispute arises as to whether a Disability has occurred, or whether a Disability has ceased and the Executive is able to resume duties, then such dispute shall be

referred to a licensed physician appointed by the president of the Medical Society or similar organization in Washington, D.C., at the request of either party. The Executive shall submit to such examinations and provide information as such physician may request and the determination of such physician as to the Executive's physical or mental condition shall be binding and conclusive on the parties. The Company shall pay the cost of any such physician and examination.

"Dispute" shall have the meaning specified in Article 6.

"Equity Value under Management" for any period shall mean the aggregate book value of each Company Managed Fund as of the last day of the relevant period.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Expiration Date" shall have the meaning specified in Section 2.2.

"Good Reason" shall mean the Executive's reassignment by the Company to a position that is not comparable to the position of President and Chief Investment Officer of the Company and Chief Investment Officer of AGNC and MTGE. A job position will be considered "comparable" if it (i) requires similar professional training, skill, knowledge, experience, and scope of responsibility; (ii) provides the Executive annualized compensation opportunities comparable to the Executive's position contemplated hereby (that includes both guaranteed compensation and upside potential); (iii) does not require the Executive to relocate from the Washington, D.C. area; or (iv) the Executive and the Company mutually agree that the position is comparable.

The Executive must provide written notice to the Company within 90 days of the initial existence of a condition that constitutes Good Reason as defined herein and the Company shall have 30 days after receipt of any such notice to remedy the condition. If the Company timely remedies such condition, such condition shall not constitute Good Reason. The Executive may not terminate the Executive's employment hereunder for Good Reason more than six months after the initial existence of one (or more) of the conditions that constitutes Good Reason.

"Gross Misconduct" shall mean one or more of the following:

(i) the willful and continued failure by the Executive to perform substantially the Executive's duties described in Section 2.3 (other than any such failure resulting from the Executive's incapacity due to physical or mental illness) after two (2) written notices of such failure have been given to the Executive by the Company and the Executive has had a reasonable period (not to exceed 15 days from the second notice) to correct such failure;

(ii) the commission by the Executive of acts that are willfully dishonest and demonstrably injurious to the Company or any Company Managed Fund (monetarily or otherwise) in any material respect; or

(iii) the commission by Executive of an act of fraud, embezzlement, or intentional sexual harassment in connection with Executive's duties for the Company; or

(iv) the conviction of, or plea of *nolo contendere*, by Executive with respect to an act of criminal misconduct involving any financial crime or an act of moral turpitude.

For purposes of this definition, no act or failure to act on the Executive's part shall be considered "Gross Misconduct" if done or omitted to be done by the Executive in good faith and in the reasonable belief that such act or failure to act was in the best interest of the Company or any Company Managed Fund in furtherance of the Executive's duties and responsibilities described in Section 2.3.

"MTGE" shall mean American Capital Mortgage Investment Corp., and its successors and assigns.

"Notice of Termination" shall mean a notice purporting to terminate the Executive's employment in accordance with Section 4.1 or 4.2. Such notice shall specify the effective date of such termination, which date shall not be less than 30 days (one (1) day in the case of a termination by the Company for Gross Misconduct) or more than 60 days after the date such notice is given. If such termination is by the Company for Disability or Gross Misconduct or by the Executive for Good Reason, such notice shall set forth in reasonable detail the reason for such termination and the facts and circumstances claimed to provide a basis therefor.

"Person" shall mean and include an individual, a partnership, a joint venture, a corporation, a trust and an unincorporated organization.

"Target Incentive Payment Plan" shall have the meaning specified in Section 3.2.

"Term" shall have the meaning specified in Section 2.2.

"Termination Date" shall mean the effective date of the Executive's termination of employment and shall be the date specified in a Notice of Termination delivered in accordance with this Agreement. If earlier, the date of the Executive's death shall be the Termination Date.

## 1.2 Interpretations

(a) In this Agreement, unless a clear contrary intention appears, (i) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision, (ii) reference to any Article or Section, means such Article or Section hereof, (iii) the words "including" (and with correlative meaning "include") means including, without limiting the generality of any description preceding such term, and (iv) where any provision of this Agreement refers to action to be taken by either party, or which such party is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such party.

(b) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

(c) References herein to a termination of employment shall be interpreted to mean a “separation from service” within the meaning of Section 409A of the Code.

**ARTICLE 2**  
**EMPLOYMENT: TERM, POSITIONS AND DUTIES, ETC.**

**2.1 Employment**

The Company agrees to employ the Executive and the Executive agrees to accept employment with the Company, in each case on the terms and conditions set forth in this Agreement.

**2.2 Term of Employment**

Unless sooner terminated pursuant to Article IV, the term of the Executive’s employment under this Agreement (the “Term”) shall commence on the Original Effective Date and shall continue until the second anniversary of the Original Effective Date (the “Expiration Date”); provided, however, that on each date during the Term, the Expiration Date shall be reset to the date two years after the date thereof, except that either party may terminate this Agreement by giving written notice that such daily extensions of the Term shall be discontinued in which case the Expiration Date shall be the date two years after the delivery of such notice.

**2.3 Positions and Duties**

(a) While employed hereunder, the Executive shall serve as President and Chief Investment Officer of the Company. As such, the Executive shall have the responsibilities and authorities customary for persons holding such positions and such other duties as may be reasonably designated to him by the Chief Executive Officer (“CEO”) or Board of Managers of the Company.

(b) While employed hereunder, the Executive shall (i) report directly to the CEO of the Company or such other person designated by the Board of Managers having similar stature to the CEO of an entity, (ii) have his principal place of employment in the Washington, D.C. metropolitan area, and (iii) observe and comply with all lawful policies, directions and instructions of the CEO or other person so designated that are consistent with the foregoing provisions of this paragraph 2.3.

(c) While employed hereunder, the Executive shall (i) devote substantially all of the Executive’s business time, attention, skill and efforts to the faithful and efficient performance of the Executive’s duties hereunder and (ii) not accept employment with any Person other than with the Company. Notwithstanding the foregoing, the Executive may engage in the following activities so long as they do not interfere in any material respect with the performance of the Executive’s duties and responsibilities hereunder: (i) serve on corporate, civic, religious,

educational or charitable boards or committees and (ii) manage the Executive's personal investments.

(d) While employed hereunder, the Executive shall not knowingly prejudice, in any material respect, the reputation of the Company or its affiliates in the fields of business in which they are engaged or with the investment community or the public at large.

### **ARTICLE 3 COMPENSATION AND BENEFITS**

#### **3.1 Base Salary**

For services rendered by the Executive under this Agreement, the Company shall pay to the Executive an annual base salary ("Base Salary") evenly paid twice a month or on such other schedule as salaried employees of the Company are generally and regularly compensated. The initial Base Salary shall be at an annual rate of \$3,368,242, and on the first day of each calendar year during the Term, the Base Salary shall be adjusted to an annual rate equal to the sum of (i) the product of (A) 0.06%, and (B) the Equity Value under Management for the immediately preceding calendar year, up to \$4 billion, (ii) the product of (A) 0.04%, and (B) the Equity Value under Management for the immediately preceding calendar year in excess of \$4 billion, if any, up to \$10 billion, (iii) the product of (A) 0.03%, and (B) the Equity Value under Management for the immediately preceding calendar year in excess of \$10 billion, if any, up to \$20 billion, (iv) the product of (A) 0.02%, and (B) the Equity Value under Management for the immediately preceding calendar year in excess of \$20 billion, if any, up to \$30 billion, and (v) the product of (A) 0.01%, and (B) the Equity Value under Management for the immediately preceding calendar year in excess of \$30 billion, if any; provided that in no event shall the Base Salary be less than \$850,000.

#### **3.2 Target Incentive Payment Plan**

During the Term, the Company shall maintain and the Executive shall be entitled to participate in an annual incentive payment plan described in greater detail in Exhibit A hereto (the "Target Incentive Payment Plan"), which will provide for the payment of lump sum cash incentive payments to be made on the schedule set forth in Exhibit A. Under the Target Incentive Payment Plan, the Executive will be eligible to earn target incentive payments (each, a "Target Incentive Payment") each year totaling not less than 200% of the Base Salary paid to the Executive during the calendar year to which the Target Incentive Payment relates (the "Target Incentive Payment Amount"). With regard to each calendar quarter, the Executive will be eligible to earn a Target Incentive Payment of not less than 100% of the Base Salary paid to the Executive during such calendar quarter (the "Quarterly Target Incentive Payment Amount").

#### **3.3 Performance Incentive Plan**



With respect to each completed calendar year during the Term, the Company shall make awards to the Executive under the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC (the “AGNC PIP”), the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE (the “MTGE PIP”) and any similar plans maintained by the Company relating to any other Company Managed Funds (collectively, the “PIPs”), as described in greater detail in Exhibit A hereto.

3.4 Vacation

While employed hereunder, the Executive shall be entitled to vacation benefits in accordance with the vacation policy adopted by the Company from time to time for senior employees. Unless changed by the CEO or the Board of Managers in a manner generally applicable to senior employees of the Company, the Executive shall be entitled to accrue vacation at a rate of three weeks per year until January 1, 2011 and four weeks per year thereafter. The Executive shall not be entitled to accumulate and carry over unused vacation time from year to year.

3.5 Other Benefits

The Executive shall be entitled to receive all employee benefits, fringe benefits and other perquisites that may be offered by the Company to its senior employees as a group, including, without limitation, participation by the Executive and, where applicable, the Executive’s dependents, in the various employee benefit plans or programs (including, without limitation, pension plans, profit sharing plans, stock plans, health plans, life insurance, parking and disability insurance) generally provided to senior employees of the Company, subject to meeting the eligibility requirements with respect to each of such benefit plans or programs. However, nothing in this Section 3.5 shall be deemed to prohibit the Company from making any changes in any of the plans, programs or benefits described herein, provided such changes apply to all similarly situated senior employees.

3.6 Future Modifications to Applicable Retirement Provisions

To the fullest extent permitted by applicable law, the terms and conditions of the Executive’s participation in any and all benefit plans in which the Executive participates shall, with the Executive’s written consent, be modified in a manner consistent with any changes made after the Effective Date to terms and conditions relating to retirement under benefits plans maintained by ACAS to the extent such changes to ACAS plans are applicable to senior executives of ACAS.

**ARTICLE 4  
TERMINATION OF EMPLOYMENT**

4.1 Termination by the Executive

The Executive may, at any time prior to the Expiration Date, terminate the Executive's employment hereunder for any reason by delivering a Notice of Termination to the CEO. Unless such termination is for Good Reason, upon such termination, the Executive shall be entitled only to those rights and payments payable under Section 4.3.

#### 4.2 Termination by the Company

The CEO or the Board of Managers may, at any time prior to the Expiration Date, terminate the Executive's employment hereunder for any reason by delivering a Notice of Termination to the Executive.

#### 4.3 Payment of Accrued Base Salary, Vacation Pay, etc.

(a) Promptly upon the Executive's Termination Date in the event of the termination of the Executive's employment for any reason (including death and Disability), and in no event later than 60 days following the Executive's Termination Date, as applicable, the Company shall pay to the Executive (or the Executive's estate) a lump sum amount equal to the sum of all (i) unpaid Base Salary earned hereunder prior to the Termination Date and (ii) unused vacation time accrued by the Executive as of the Termination Date in accordance with Section 3.4. All unpaid benefits earned or vested, as the case may be, by the Executive as of the Termination Date under any and all incentive or deferred compensation plans or programs of the Company shall be paid to the Executive in accordance with the terms of such plans or programs.

(b) A termination of the Executive's employment in accordance with this Agreement shall not alter or impair any of the Executive's accrued rights or benefits as of the Termination Date under any employee benefit plan or program maintained by the Company, in each case except as provided therein or in any written agreement entered into between the Company and the Executive pursuant thereto.

#### 4.4 Additional Rights in Connection With Disability

In the event that the Company terminates the Executive by reason of Disability by delivering a Notice of Termination to the Executive, the Executive shall be entitled to the benefits and payments set forth in this Section 4.4.

##### (a) Base Salary and Target Incentive Payment

(i) The Company shall pay to the Executive an amount equal to 12 months of Base Salary, at the rate in effect as of the Termination Date, in 12 substantially equal monthly installment payments beginning with the first calendar month which begins at least 60 days after the Termination Date. Such amount shall be reduced dollar for dollar by any "bona fide disability pay" (within the meaning of Treas. Reg. § 1.409A-1(a)(5)) payable to the Executive under any disability plan maintained by the Company to the extent permitted by Section 409A of the Code. Each monthly installment shall be treated as a separate payment for purposes of Section 409A of the Code.

(ii) The Executive shall be entitled to receive a Target Incentive Payment under the Target Incentive Payment Plan for the calendar year in which the Executive's Termination Date occurs in an amount equal to 200% of the Base Salary earned by the Executive that year through the Termination Date *minus* the Quarterly Target Incentive Payments paid or earned to date during such year. This Target Incentive Payment shall be paid in a single lump sum no later than March 15 of the calendar year following the calendar year in which the Termination Date occurs.

(iii) The Executive shall be entitled to receive an additional severance payment in an amount equal to 200% of the "Severance Salary" as defined herein. This additional severance payment shall be paid in a single lump sum between January 1 and March 15 of the year following the calendar year in which the Termination Date occurs.

(b) Insurance Benefits, etc. The Company shall at all times during the 12 month period following the Termination Date (the "Benefits Continuation Period") cause the Executive and the Executive's eligible dependents to be covered by and to participate in all life, accidental death and dismemberment and health insurance plans that are offered to the senior employees of the Company (or to be covered by and participate in alternative arrangements that are substantially similar to such plans), to the fullest extent allowable under the terms thereof, and to the extent coverage under such plans does not violate Section 409A of the Code, so that the Executive will receive, at all times during the Benefits Continuation Period, substantially identical benefits under such plans or arrangements as the Executive would have been entitled to receive had the Executive remained a senior employee of the Company and the Executive's costs for coverage under such plans or arrangements shall be not greater than if the Executive had remained a senior employee of the Company. For purposes of this Section 4.4(b): (i) the Company shall provide the required health insurance coverage through one or more third party insurance policies or shall pay or reimburse the Executive for the cost of individual health insurance coverage for the Executive and his eligible dependents, provided that such coverage shall in all events qualify as an "accident or health plan" under Sections 105 or 106 of the Code, and (ii) the life insurance coverage provided during one year shall not affect the life insurance coverage provided in any other year. In no event shall the Executive's continuation period for purposes of Part 6 of Title I of the Executive Retirement Income Security Act of 1974, as amended ("COBRA"), begin prior to the end of the Executive's receipt of the Continued Benefits (as defined herein). The Executive shall cooperate with the Company with respect to obtaining any individual coverage. The benefits provided by this Section 4.4(b) and 4.4(c) are herein referred to as the "Continued Benefits."

(c) In the event that any life insurance coverage provided pursuant to Section 4.4(b) is required to be delayed pursuant to Section 4.7 hereof, the Executive shall be required to pay the full cost of such coverage during the six-month period immediately following the Executive's Termination Date. In such case, on the first day of the seventh month following the Executive's Termination Date, the Company shall pay to the Executive a lump sum cash payment equal to the amount paid by the Executive pursuant this paragraph 4.4(c). Beginning on the first day of the seventh month, for the remainder of the Benefits Continuation Period, and for any additional period set forth in Section 4.5 hereof, the Company shall resume paying the employer paid

portion of the premium for the life insurance coverage so that the Executive's costs for such life insurance coverage are not greater than if the Executive had remained a senior employee of the Company.

(d) Should the Executive's Disability end during the pendency of the Benefits Continuation Period, the Company may discontinue the payments contemplated by this Section 4.4 if it offers to reemploy the Executive under the terms of this Agreement.

4.5 Additional Rights in Connection With Termination by the Executive with Good Reason or by the Company for Other than Gross Misconduct or Disability.

In the event that the Executive terminates the Executive's employment with the Company pursuant to Section 4.1 for Good Reason or the Company terminates the Executive's employment with the Company pursuant to Section 4.2 for other than Gross Misconduct or Disability, the Executive shall be entitled to the payments and benefits set forth in this Section 4.5.

(a) Severance Payment and Target Incentive Payment.

(i) (A) The Company shall pay to the Executive an amount equal to 12 months of Base Salary at the greater of (the aggregate amount of such payments being the "Severance Salary") (1) the highest rate in effect during the 24 months preceding the date of the Notice of Termination (the "Severance Computation Period") or (2) the salary that would have been in effect for the next subsequent quarter given any completed capital raises in 12 substantially equal monthly installment payments beginning with the first calendar month which begins at least 60 days after the Termination Date. (B) In addition, the Executive shall be entitled to an additional payment in an amount equal to six (6) times the amount of a single installment payment under (A), which payment shall be paid in six (6) equal monthly installment payments beginning with the first month after the last installment payment in (A) is payable. Each monthly installment shall be treated as a separate payment for purposes of Section 409A of the Code.

(ii) The Executive shall be entitled to receive a Target Incentive Payment under the Target Incentive Payment Plan for the calendar year in which the Executive's Termination Date occurs in an amount equal to the 200% of the Base Salary earned by the Executive that year through the Termination Date *minus* the Quarterly Target Incentive Payments paid or earned to date during such year. This Target Incentive Payment shall be paid in a single lump sum no later than March 15 of the calendar year following the calendar year in which the Termination Date occurs.

(iii) The Executive shall be entitled to receive an additional severance payment in an amount equal to 1.5 multiplied by the greater of: (A) 200% of the Severance Salary, or (B) the highest Target Incentive Payment actually paid to the Executive for either of the two calendar years ending prior to the Termination Date. This additional severance payment shall be paid in a single lump sum between January 1 and March 15 of the year following the calendar year in which the Termination Date occurs.

(b)

Insurance Benefits, etc.

(i) (A) The Executive shall receive the Continued Benefits for the Benefits Continuation Period. (B) In addition, the Executive shall receive the Continued Benefits for an additional six (6) months beginning immediately after the Continued Benefits provided under (A) end.

(ii) In the event that the Executive does not satisfy the irrevocable release requirement of Section 4.5(d) hereof prior to the 60<sup>th</sup> day following the Executive's Termination Date, the benefits continuation provided for by this Section 4.5 shall immediately terminate (with the exception of the Executive's rights to elect COBRA continuation coverage, as required by law) as of immediately prior to such 60<sup>th</sup> day.

(c) Accelerated Vesting of Prior PIP Awards. To the extent any awards under the AGNC PIP and/or the MTGE PIP granted prior to March 30, 2012 are unvested, such awards shall immediately be vested as of the Termination Date, and distributions in respect of such awards shall be made as soon as practicable (and in all events within 60 days) after the Termination Date.

(d) Prior Year PIP Awards. On or as soon as practicable (and in all events within 60 days) after the Termination Date, the Executive will be granted awards under the AGNC PIP, MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds equal to the amount that would have been granted under Section 2 of Exhibit A relating to the calendar year immediate prior the calendar year in which the Termination Date occurs; provided that such amount shall be reduced by the value of any awards made under the AGNC PIP, MTGE PIP and any such similar plans with respect to such prior calendar year (the "Prior Year Termination PIP Awards"). The amount of Prior Year Termination PIP Awards granted under each of the AGNC PIP, MTGE PIP and any such similar plans will (after taking into account any other awards with respect to such prior calendar year) be proportional to the year-end net asset value of each such Company Managed Fund; provided that the amount granted under the MTGE PIP shall not be less than 10% of the total amount granted under the AGNC PIP and MTGE PIP. Any such. Subject to the Executive's continued compliance with his obligations under Article V of this Agreement, twenty percent (20%) of the Prior Year Termination PIP Awards will vest and be paid out on the one-year anniversary of the Termination Date, and the remainder will vest and be paid out on the eighteen (18) month anniversary of the Termination Date. Any Prior Year Termination PIP Awards will be subject to the terms and conditions of the AGNC PIP and MTGE PIP and forms of agreement attached hereto as Exhibits 4.5-AGNC and 4.5-MTGE or similar forms of agreement under any similar plans maintained by the Company relating to any other Company Managed Funds. At the Board of Manager's sole discretion, up to 25% of the initial value of any such Prior Year Termination PIP Awards under the plans described above shall be notionally invested in shares of common stock of ACAS and shall be subject to the same vesting schedule as other notional investments under such plans.

(e) Current Year Pro Rata PIP Awards. On or as soon as practicable (and in all events within 60 days) after the Termination Date, the Executive will be granted awards under the

AGNC PIP, MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds equal to the amount that would have been granted under Section 2 of Exhibit A for the calendar year of termination pro rated to reflect the number of days in the calendar year in which the Termination Date occurs during which the Executive was employed by the Company, and based on Equity Value under Management at the end of, and the Incentive Payment Percentage for, the calendar quarter immediately preceding the calendar quarter in which the Termination Date occurs; provided that such pro rated amount shall be reduced by the value of any awards made under the AGNC PIP, MTGE PIP and any such similar plans with respect to such calendar year of termination (the "Current Year Termination PIP Awards"). The amount of Current Year Termination PIP Awards granted under each of the AGNC PIP, MTGE PIP and any such similar plans will (after taking into account any other awards with respect to the calendar year of termination) be proportional to the net asset value of each such Company Managed Fund as of the end of the calendar quarter immediately preceding the calendar quarter in which the Termination Date occurs; provided that the amount granted under the MTGE PIP shall not be less than 10% of the total amount granted under the AGNC PIP and MTGE PIP. Subject to the Executive's continued compliance with his obligations under Article V of this Agreement, twenty percent (20%) of the Current Year Termination PIP Awards will vest and be paid out on the one-year anniversary of the Termination Date, and the remainder will vest and be paid out on the eighteen (18) month anniversary of the Termination Date. Any Current Year Termination PIP Awards will be subject to the terms and conditions of the AGNC PIP and MTGE PIP and forms of agreement attached hereto as Exhibits 4.5-AGNC and 4.5-MTGE or similar forms of agreement under any similar plans maintained by the Company relating to any other Company Managed Funds. At the Board of Manager's sole discretion, up to 25% of the initial value of any such Current Year Termination PIP Awards under the plans described above shall be notionally invested in shares of common stock of ACAS and shall be subject to the same vesting schedule as other notional investments under such plans.

(f) Severance PIP Awards. On or as soon as practicable (and in all events within 60 days) after the last day of the calendar year in which the Termination Date occurs, the Executive will be granted awards under the AGNC PIP, MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds equal to the product of (i) 1.5, and (ii) the amount that would have been granted under Section 2 of Exhibit A for the calendar year of termination if the Executive had remained employed by the Company through the entire calendar year (the "Severance PIP Awards"). The amount of Severance PIP Awards granted under each of the AGNC PIP, MTGE PIP and any such similar plans will be proportional to the net asset value of each such Company Managed Fund as of the end of the calendar quarter prior to the calendar quarter in which the Termination Date occurs; provided that the amount granted under the MTGE PIP shall not be less than 10% of the total amount granted under the AGNC PIP and MTGE PIP. Subject to the Executive's continued compliance with his obligations under Article V of this Agreement, twenty percent (20%) of the Severance PIP Awards will vest and be paid out on the one-year anniversary of the Termination Date, and the remainder will vest and be paid out on the eighteen (18) month anniversary of the Termination Date. Any Severance PIP Awards will be subject to the terms and conditions of the AGNC PIP and MTGE PIP and forms of agreement attached hereto as Exhibits 4.5-AGNC and 4.5-MTGE or similar forms of agreement under any similar plans maintained by the Company relating to any other Company Managed

Funds. At the Board of Manager's sole discretion, up to 25% of the initial value of any such Severance PIP Awards under the plans described above shall be notionally invested in shares of common stock of ACAS and shall be subject to the same vesting schedule as other notional investments under such plans.

(g) Release. Notwithstanding anything in this Section 4.5 to the contrary, as a condition to the receipt of any payment under this Section 4.5 (and as a condition to receiving the Continued Benefits under Section 4.5(b) hereof from and beyond the 60<sup>th</sup> day following the Executive's Termination Date and the accelerated vesting under Section 4.5(c) and (d) hereof), the Executive must first execute and deliver to the Company, within 45 days following the Executive's Termination Date, an effective release in the form set out in Exhibit 4.5(h) hereto, that becomes irrevocable prior to the 60<sup>th</sup> day following the Executive's Termination Date, releasing the Company, its officers, Board of Managers, employees and agents from any and all claims and from any and all causes of action of any kind or character that the Executive may have arising out of the Executive's employment with the Company or the termination of such employment, but excluding any claims and causes of action that the Executive may have arising under or based upon this Agreement.

#### 4.6 Additional Rights in the Event of Death

In the event that the Executive's employment is terminated as a result of the Executive's death, the Executive's estate or beneficiaries shall be entitled to the payments and benefits set forth in this Section 4.6:

(a) Target Incentive Payment. The Executive's estate shall be entitled to receive a prorated Target Incentive Payment under the Target Incentive Payment Plan for the calendar year in which the Executive's death occurs, equal to the highest Target Incentive Payment that the Executive could have earned in such year multiplied by a fraction, the numerator of which is the number of days from the first day of such calendar year through date of the Executive's death and the denominator of which is 365. This prorated Target Incentive Payment shall be paid in a single lump sum no later than March 15 of the calendar year following the calendar year in which the Termination Date occurs.

(b) Insurance Benefits, etc. The Company shall pay the cost for dependents of the Executive for group insurance coverage that they are entitled to obtain from the Company following the Executive's death pursuant to COBRA for a period equal to two months multiplied by the number of full years (not to exceed nine) during which the Executive was employed by the Company.

#### 4.7 Specified Employees

Notwithstanding anything to the contrary herein, if a payment or benefit under this Agreement is due to a "separation from service" for purposes of the rules under Treas. Reg. § 1.409A-3(i)(2) (payments to specified employees upon a separation from service) and the Executive is determined to be a "specified employee" (as determined under Treas. Reg. § 1.409A-1(i) and the related Company procedures), such payment shall, to the extent necessary to

comply with the requirements of Section 409A of the Code, be made on the later of the date specified by the foregoing provisions of this Agreement or the date that is six months after the date of the Executive's separation from service. Any installment payments that are delayed pursuant to this Section 4.7 shall be accumulated and paid in a lump sum on the first day of the seventh month following the date of the Executive's Termination Date, and the remaining installment payments shall begin on such date in accordance with the schedule provided in this Agreement.

**ARTICLE 5**  
**CONFIDENTIAL INFORMATION, NON-COMPETITION AND INTELLECTUAL PROPERTY**

**5.1 Confidential Information**

(a) The Executive recognizes that the services to be performed by the Executive hereunder are special, unique and extraordinary and that, by reason of such employment with the Company, the Executive has acquired and will continue to acquire Confidential Information concerning the operation of the Company, the use or disclosure of which would cause the Company substantial loss and damages which could not be readily calculated and for which no remedy at law would be adequate. Accordingly, the Executive agrees that the Executive will not (directly or indirectly) at any time, whether during or after the Executive's employment hereunder, (i) knowingly use for an improper personal benefit any Confidential Information that the Executive may learn or has learned by reason of the Executive's employment with the Company or (ii) disclose any such Confidential Information to any Person except (A) in the performance of the Executive's obligations to the Company hereunder, (B) as required by applicable law, (C) in connection with the enforcement of the Executive's rights under this Agreement, (D) in connection with any disagreement, dispute or litigation (pending or threatened) between the Executive and the Company or (E) with the prior written consent of the Board of Managers. As used herein, "Confidential Information" includes information with respect to the operation and performance of the Company, ACAS and the Company Managed Funds, their investments, portfolio companies, products, services, facilities, product methods, research and development, trade secrets and other intellectual property, systems, patents and patent applications, procedures, manuals, confidential reports, product price lists, customer lists, financial information, business plans, prospects or opportunities (including, as applicable, all of the foregoing information regarding the Company's, ACAS's and/or the Company Managed Funds' past, current and prospective portfolio companies); provided, however, that such term shall not include any information that (x) is or becomes generally known or available other than as a result of a disclosure by the Executive or (y) is or becomes known or available to the Executive on a nonconfidential basis from a source (other than the Company) that, to the Executive's knowledge, is not prohibited from disclosing such information to the Executive by a legal, contractual, fiduciary or other obligation to the Company.

(b) The Executive confirms that all Confidential Information is the exclusive property of the Company. All business records, papers and documents kept or made by the Executive while employed by the Company relating to the business of the Company shall be and remain the



property of the Company at all times. Upon the request of the Company at any time, the Executive shall promptly deliver to the Company, and shall retain no copies of, any written materials, records and documents made by the Executive or coming into the Executive's possession while employed by the Company concerning the business or affairs of the Company other than personal materials, records and documents (including notes and correspondence) of the Executive not containing proprietary information relating to such business or affairs. Notwithstanding the foregoing, the Executive shall be permitted to retain copies of, or have access to, all such materials, records and documents relating to any disagreement, dispute or litigation (pending or threatened) between the Executive and the Company.

## 5.2 Non-Competition; Non-Solicitation.

(a) The Executive agrees that during the term of his employment with the Company and for a period of eighteen (18) months beginning on the date of termination of his employment for any reason (the "Non-Competition Period"), the Executive shall not, directly or indirectly, engage or participate in, prepare or set up, assist or have any interest in any person, partnership, corporation, firm, association, or other business organization, entity or enterprise, whether as an officer, employee, director, partner, stockholder, consultant or otherwise, that would be the same or competitive with any business activity engaged in by the Company or any Company Managed Fund (a "Restricted Business"). Notwithstanding the foregoing, the Executive shall not be precluded from purchasing or owning, directly or beneficially, as a passive investment, two percent (2%) or less of any class of publicly traded securities if he does not actively participate in or control, directly or indirectly, any investment or other decisions with respect to such entity.

(b) During the Non-Competition Period, the Executive shall not, directly or indirectly:

(i) hire, offer to hire, divert, entice away, solicit or in any other manner persuade, or attempt to do any of the foregoing (each, a "Solicitation"), any person who is an officer, employee, consultant or board member of the Company or any Company Managed Fund to accept employment or an engagement with a third party or engage in a Solicitation with respect to any person or entity who is, or was, at any time within six months prior to the Solicitation, an officer, employee, agent or consultant of the Company or any Company Managed Fund to work for a third party engaged in a Restricted Business or to engage in any of the activities hereby prohibited with respect to the Executive under Sections 5.2(b)(ii) or (iii) below; or

(ii) solicit, divert, entice away or in any other manner persuade, or attempt to do any of the foregoing, on (A) any actual or prospective customer of or investor in the Company or any Company Managed Fund to become a customer of or investor in any third party engaged in a Restricted Business or (B) any customer or investor to cease doing business with the Company or any Company Managed Fund; or

(iii) make any statements or perform any acts intended to advance the interest of any person engaged in or proposing to engage in a Restricted Business in any way that is intended to injure the interests of the Company or any Company Managed Fund.

### 5.3 Intellectual Property.

The Executive agrees that during the term of the Executive's employment with the Company, any and all inventions, discoveries, innovations, writings, domain names, improvements, trade secrets, designs, drawings, business processes, secret processes and know-how, whether or not patentable or a copyright or trademark, which the Executive may create, conceive, develop or make, either alone or in conjunction with others and related or in any way connected with the Company, its strategic plans, products, processes, apparatus or business now or hereafter carried on by the Company (collectively, "Inventions"), shall be fully and promptly disclosed to the Company and shall be the sole and exclusive property of the Company (as it shall determine) as against the Executive or any of the Executive's assignees. Regardless of the status of the Executive's employment by the Company, the Executive and the Executive's heirs, assigns and representatives hereby assigns, or shall promptly assign, to the Company any and all right, title and interest in and to such Inventions made during the term of the Executive's employment by the Company. Except as set forth on Schedule 1 to this Agreement, there are no Inventions with respect to the Company conceived of, developed or made by the Executive before the date of this Agreement which have not been disclosed to and assigned to the Company.

### 5.4 Early Resolution Conference.

This Agreement is understood to be clear and is intended to be enforceable as written and is executed by both parties on that basis. However, should the Executive determine to later challenge any provision as unclear, unenforceable or inapplicable to an activity that the Executive intends to engage in, the Executive will first notify the Company in writing and meet with a representative of the Company and a neutral mediator (if the Company elects to retain one at its expense) to discuss resolution of any dispute between the parties with respect to such challenge. The Executive will provide this notification at least fourteen (14) days before the Executive engages in any activity on behalf of a Restricted Business or engages in other activity that could foreseeably fall within a questioned restriction. The failure to comply with this requirement shall waive the Executive's right to challenge the reasonable scope, clarity, applicability or enforceability of this Agreement and its restrictions at a later time. All rights of the parties will be preserved if the early resolution conference requirement is complied with even if no agreement is reached in the conference.

### 5.5 Remedies

(a) The Executive acknowledges that a breach of any of the covenants contained in this Article V may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach, any payments or benefits remaining under the terms of this Agreement shall cease and the Company shall be entitled to obtain a temporary restraining order or a preliminary or permanent injunction from any court restraining the Executive from engaging in activities prohibited by this Article V or such other relief as may be required to specifically enforce any of the covenants contained in this Article V. The Executive

agrees to and hereby does submit to *in personam* jurisdiction before each and every such court for that purpose.

(b) The period of time during which the restrictions set forth in Article V hereof will be in effect will be extended by the length of time during which the Executive is in breach of the terms of those provisions as determined by any court of competent jurisdiction on the Company's application for injunctive relief.

## **ARTICLE 6 DISPUTE RESOLUTION**

In the event a dispute, other than a dispute arising under Article 6, shall arise between the parties as to whether the provisions of this Agreement have been complied with (a "Dispute"), the parties agree to resolve such Dispute in accordance with the following procedure:

(a) A meeting shall be held promptly between the parties, attended (in the case of the Company) by one or more individuals with decision-making authority regarding the Dispute, to attempt in good faith to negotiate a resolution of the Dispute.

(b) If, within 10 days after such meeting, the parties have not succeeded in negotiating a resolution of the Dispute, the parties agree to submit the Dispute to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association except that Disputes with regard to the existence of a Disability shall be resolved in accordance with the definition of the term "Disability" above.

(c) The parties will jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the American Arbitration Association if they have been unable to agree upon such appointment within 10 days following the 10-day period referred to in clause (b) above.

(d) Upon appointment of the mediator, the parties agree to participate in good faith in the mediation and negotiations relating thereto for 15 days.

(e) If the parties are not successful in resolving the Dispute through mediation within such 15-day period, the parties agree that the Dispute shall be settled by arbitration in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association ("AAA").

(f) The fees and expenses of the mediator/arbitrator and of the AAA shall be borne solely by the non-prevailing party or, in the event there is no clear prevailing party, as the mediator/arbitrator deems appropriate.

(g) Except as provided above, each party shall pay its own costs and expenses (including, without limitation, attorneys' fees) relating to any mediation/arbitration proceeding conducted under this Article 6.

(h) All mediation/arbitration conferences and hearings will be held in the greater Washington, D.C. area.

(i) In the event there is any disputed question of law involved in any arbitration proceeding, such as the proper legal interpretation of any provision of this Agreement, the arbitrators shall make separate and distinct written findings of all facts material to the disputed question of law to be decided and, on the basis of the facts so found, express their conclusion of the question of law. The facts so found shall be conclusive and binding on the parties, but any legal conclusion reached by the arbitrators from such facts may be submitted by either party to a court of law for final determination by initiation of a civil action in the manner provided by law. Such action, to be valid, must be commenced within 30 days after receipt of the arbitrators' written decision. If no such civil action is commenced within such 30-day period, the legal conclusion reached by the arbitrators shall be conclusive and binding on the parties. Any such civil action shall be submitted, heard and determined solely on the basis of the facts found by the arbitrators. Neither of the parties shall, or shall be entitled to, submit any additional or different facts for consideration by the court. In the event any civil action is commenced under this paragraph (i), if the party who prevails or substantially prevails (as determined by the court) in such civil action shall be entitled to recover from the other party all costs, expenses and reasonable attorneys' fees incurred by the prevailing party in connection with such action and on appeal.

(j) Except as limited by paragraph (i) above, the parties agree that judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. In the event legal proceedings are commenced to enforce the rights awarded in an arbitration proceeding, if the Executive prevails or substantially prevails in such legal proceeding, the Executive shall be entitled to recover from the Company, all costs, expenses and reasonable attorneys' fees incurred by the Executive in connection with such legal proceeding and on appeal.

(k) Except as provided above, (i) no legal action may be brought by either party with respect to any Dispute and (ii) all Disputes shall be determined only in accordance with the procedures set forth above.

## **ARTICLE 7 MISCELLANEOUS**

### **7.1 No Mitigation or Offset**

The provisions of this Agreement are not intended to, nor shall they be construed to, require that the Executive mitigate the amount of any payment provided for in this Agreement by seeking or accepting other employment, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer or otherwise. Without limitation of the foregoing, the Company's obligations to make the payments to the Executive required under this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set off, counterclaim, recoupment, defense or other claim, right or action that the Company may have against the Executive, except that the Company may deduct from any amount required to be reimbursed to the Company by the Executive under Article 6 the amount of any payment which the Company is then required to make to the Executive hereunder.

7.2 Indemnification

Except as would not materially adversely affect the Executive's right to indemnification from the Company, no provision of the Company's Certificate of Incorporation or by-laws may be amended, modified or repealed.

7.3 Assignability

The obligations of the Executive hereunder are personal and may not be assigned or delegated by the Executive or transferred in any manner whatsoever, nor are such obligations subject to involuntary alienation, assignment or transfer. The Company shall have the right to assign this Agreement and to delegate all rights, duties and obligations hereunder as provided in Section 7.6.

7.4 Notices

All notices and all other communications provided for in the Agreement shall be in writing and addressed (i) if to the Company, at its principal office address or such other address as it may have designated by written notice to the Executive for purposes hereof, directed to the attention of the CEO with a copy to the Secretary of the Company and (ii) if to the Executive, at the Executive's residence address on the records of the Company or to such other address as the Executive may have designated to the Company in writing for purposes hereof. Each such notice or other communication shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, except that any notice of change of address shall be effective only upon receipt.

7.5 Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

7.6 Successors: Binding Agreement

(a) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by agreement in form and substance reasonably acceptable to the Executive, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of the Company to obtain such agreement prior to the effectiveness of any such succession shall be a material breach of this Agreement. As used herein, the term "Company" shall include any successor to its business and/or assets as aforesaid which executes and delivers the Agreement provided for in this Section 7.6 or which otherwise becomes bound by all terms and provisions of this Agreement by operation of law.

(b) This Agreement and all rights of the Executive hereunder shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any amounts would be payable to the Executive hereunder if the Executive had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to the Executive's devisee, legatee, or other designee or, if there be no such designee, to the Executive's estate.

7.7 Tax Matters

The Company shall withhold from all payments hereunder all applicable taxes (federal, state or other) that it is required to withhold therefrom unless the Executive has otherwise paid (or made other arrangements satisfactory) to the Company the amount of such taxes.

7.8 Section 409A of the Code

This Agreement is intended to comply with the requirements of Code Section 409A (including the exceptions thereto), to the extent applicable, and the Company shall administer and interpret this Agreement in accordance with such requirements. Notwithstanding any other provision hereof, if any provision of this Agreement conflicts with the requirements of Code Section 409A, the requirements of Code Section 409A shall supersede any such provision.

In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on the Executive by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code.

7.9 Certain Terminations.

Unless the Executive expressly agrees otherwise, if the Company gives written notice of its intent to discontinue the daily extensions of the Term as provided for in Section 2.2 hereof within the two months preceding or the 18 months following a Change of Control, the giving of such notice shall be treated as a termination by the Company for other than Gross Misconduct as of the date such notice is given.

7.10 Amendments and Waivers

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Executive and the Company. No waiver by either party hereto at any time of any breach by the other party hereto of, or in compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.11 Entire Agreement, Termination of Other Agreements

This Agreement is an integration of the parties' agreement and no agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party that are not set forth expressly in this Agreement.

7.12 Governing Law

THE VALIDITY, INTERPRETATION, CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS.

7.13 Counterparts

This Agreement may be executed in or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on September 22, 2014.

**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**

By: /s/ Malon Wilkus  
Malon Wilkus, Chief Executive Officer

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**THE EXECUTIVE:**

/s/ Gary Kain

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## EXHIBIT A

### TARGET INCENTIVE PAYMENT AND PIP AWARDS

#### 1. Target Incentive Payments.

The Executive's Target Incentive Payments for each calendar year beginning for 2010 shall be based in part on the Company's performance on certain performance metrics ("Performance Metric") in relation to the Company's "Peer Group" (as defined below), and in part on subjective criteria chosen by the Board of Managers in its reasonable discretion (the "Board Criteria"). The Performance Metrics are "Company Price to Book Ratio," "Company Economic Return" and "Company Total Stock Return," each as defined below. In the event that the Company becomes investment manager for a Company Managed Fund that is not a Publicly Traded Company Managed Fund, the Company and the Executive agree that they will work in good faith to establish alternative Performance Metrics that will apply with respect to such non-Publicly Traded Company Managed Fund.

The Target Incentive Payment shall be paid based on the extent to which the specific performance goals are satisfied on a quarterly basis and on an annual basis. Each calendar quarter, the Executive will be eligible to earn an amount up to the Quarterly Target Incentive Payment Amount, and for the calendar year the Executive will be eligible to earn a Target Incentive Payment up to his Target Incentive Payment Amount less the aggregate Quarterly Target Incentive Payments that have been paid with regard to such calendar year.

The portion of any Target Incentive Payment to which the Executive will be entitled for any quarterly period will be determined by first calculating the score for each of the four Performance Metrics in the table below and multiplying it by the Weight Percentage and adding them together (the "Weighted Score"), then dividing the Weighted Score by 4, and multiplying that amount by 100 to arrive at the "Incentive Payment Percentage." The Company agrees to provide in writing to the Executive the applicable quarterly subjective evaluation and the overall quarterly "Incentive Payment Percentage" no later than the delivery of the applicable Target Incentive Payment.

The portion of the Target Incentive Payment Amount to which the Executive will be entitled to earn for the full year (before deducting the Quarterly Target Incentive Payment Amounts that have been paid with regard to such year) will be determined based on averaging the "Adjusted Weighted Score" for each of the four quarters in the year, where the Adjusted Weighted Score for each quarter shall equal the Weighted Score for such quarter recalculated using the Company Total Stock Return calculated on a full year basis, and then dividing such average by 4 and multiplying the amount by 100 to arrive at the "Annual Incentive Payment Percentage."

Performance Metric	Weight %	Score
Company Price to Book	40%	<ul style="list-style-type: none"> <li>• &gt;0% of Peer Member Price to Book = 0</li> <li>• Linear interpolation between 0 and 4 depending on the percentage of Peer Group members that have a Peer Member Price to Book for the particular quarter or calendar year that is equal to or less than the Company Price to Book for such period.</li> <li>• &gt;100% of Peer Member Price to Book= 4</li> </ul>
Company Economic Return	20%	<ul style="list-style-type: none"> <li>• &gt;0% of Peer Member Economic Return = 0</li> <li>• Linear interpolation between 0 and 4 depending on the percentage of Peer Group members that have a Peer Member Economic Return for the particular quarter or calendar year that is equal to or less than the Company Economic Return for such period.</li> <li>• &gt;100% of Peer Member Economic Return = 4</li> </ul>
Company Total Stock Return	20%	<ul style="list-style-type: none"> <li>• &gt;0% of Peer Member Total Stock Return = 0</li> <li>• Linear interpolation between 0 and 4 depending on the percentage of Peer Group members that have a Peer Member Total Stock Return for the particular quarter or calendar year that is equal to or less than the Company Total Stock Return for such period.</li> <li>• &gt;100% of Peer Member Total Stock Return = 4</li> </ul>
Board Criteria	20%	Determined by Board of Managers in its reasonable discretion.

Notwithstanding any other provision of the Agreement, including this Exhibit A thereto, for purposes of this Section 1 of Exhibit A, (i) the Incentive Payment Percentage will be capped at 75% for any calendar quarter, as applicable, in which the average Company Price to Book for each business day during the last month of the calendar quarter, as applicable, is less than 0.98 and (ii) the Annual Incentive Payment Percentage will be capped at 75% if the Incentive Payment Percentage is so capped at 75% for at least 3 of the 4 quarters of the year.

Example: Assume the Executive is paid Base Salary for an entire calendar year at a rate of \$1,000,000, so that the Quarterly Target Incentive Payment Amount is \$250,000. Assume further that for the first and second calendar quarters, (i) the Company Price to Book is greater than the Peer Member Price to Book of 50% of the members of its Peer Group, (ii) the Company Economic Return is greater than the Peer Member Economic Return of 0% of the members of its Peer Group, and (iii) the Company Total Stock Return is greater than the Peer Member Total Stock return of 100% of the members of its Peer Group.

Assume further that for the third and fourth calendar quarters, (i) the Company Price to Book is greater than the Peer Member Price to Book of 25% of the members of its Peer Group, (ii) the Company Economic Return is greater than the Peer Member Economic Return of 75% of the members of its Peer Group, and (iii) the Company Total Stock Return is greater than the Peer Member Total Stock return of 50% of the members of its Peer Group.

Assume in addition that for the entire calendar year, the Company Total Stock Return is greater than the Peer Member Total Stock return of 100% of the members of its Peer Group.

Assume finally that for each calendar quarter and for the calendar year the Executive has completely satisfied the subjective criteria established by the Board of Managers in its reasonable discretion (and thus the score for all quarters was 4), and that the average Company Price to Book for each business day during the last month of every calendar quarter is greater than 0.98. .

The Weighted Score for the first and second quarters would equal 2.4  $((.4 * 2) + (.2 * 0) + (.2 * 4) + (.2 * 4))$ , and the Incentive Payment Percentage for the first and second quarters would equal 60%  $(2.4/4 * 100)$ . The Executive would be entitled to Target Incentive Payments for each of the first and second quarters of \$150,000  $(\$250,000 * 60\%)$ .

The Weighted Score for the third and fourth quarters would equal 2.2  $((.4 * 1) + (.2 * 3) + (.2 * 2) + (.2 * 4))$ , and the Incentive Payment Percentage for the third and fourth quarters would equal 55%  $(2.2/4 * 100)$ . The Executive would be entitled to Target Incentive Payments for each of the third and fourth quarters of \$137,500  $(\$250,000 * 55\%)$ .

The Weighted Score for the calendar year would equal 2.5 or the arithmetic average of the four quarters (2.4, 2.4, 2.6, and 2.6) after replacing the Quarterly Total Stock Return with the Actual Annual Total Stock Return Figure. The 3<sup>rd</sup> and 4<sup>th</sup> quarter numbers in this example were recalculated for the purposes of the Annual Incentive Payment calculation to use the full year Total Stock Return of 100 % rather than the original 3<sup>rd</sup> and 4<sup>th</sup> quarter numbers of 50 % as follows:  $((.4 * 1) + (.2 * 3) + (.2 * 4) + (.2 * 4))$  Therefore, the Annual Incentive Payment Percentage would equal 62.5%  $(2.5/4 * 100)$ . The Executive's Calendar Year Total Annual Incentive Payment Amount would equal \$1.25 million  $(\$2,000,000 * 0.625)$ . The Executive's actual cash Annual Incentive Payment would equal \$ 675,000  $(\$1.25 \text{ million} - \$150\text{k} - \$150\text{k} - 137.5\text{k} - 137.5\text{k})$ .

Any Target Incentive Payment to which the Executive becomes entitled will be paid no later than the 75<sup>th</sup> day immediately following the last day of the period to which such Target Incentive Payment relates. Except as set forth in Article 4 of the Agreement, the Executive must be employed on the Target Incentive Payment date to be entitled to payment.

In the event that there shall be a Company Managed Fund that does not have publicly-traded equity securities, the Company and the Executive shall make appropriate adjustments to this

Section 1 to provide a basis for awarding Target Incentive Payments to the Executive attributable to such Company Managed Fund.

## 2. PIP Awards.

At each date on which a calendar year Target Incentive Payment is made in accordance Section 1 above, the Company shall make cash contributions to the PIPs in a total amount equal to the product of (a) the Annual Incentive Payment Percentage for such year, and (b) the sum of (i) the product of (A) 0.001, and (B) the Equity Value under Management at the end of the calendar year up to \$10 billion, (ii) the product of (A) 0.0008, and (B) the Equity Value under Management at the end of the calendar year in excess of \$10 billion, if any, up to \$20 billion, (iii) the product of (A) 0.0006, and (B) the Equity Value under Management at the end of the calendar year in excess of \$20 billion, if any, up to \$30 billion, and (iv) the product of (A) 0.0004, and (B) the Equity Value under Management at the end of the calendar year in excess of \$30 billion, if any. For example, if Equity Value under Management was \$23 billion at the end of the calendar year and the Annual Incentive Payment Percentage was 60%, then the PIP contribution would be \$11,880,000  $(0.60 * ((0.001 * \$10B) + (0.0008 * \$10B) + (0.0006 * \$3B)))$ .

The amount granted under each of the AGNC PIP and MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds will be proportional to the year-end net asset value of each such Company Managed Fund; provided that the amount granted under the MTGE PIP shall not be less than 10% of the total amount granted under the AGNC PIP and MTGE PIP. Any such awards will be subject to the terms and conditions of the AGNC PIP, MTGE PIP and any such similar plans and forms of agreement attached hereto as Exhibits A.2-AGNC and A.2-MTGE or similar forms of agreement under any such similar plans. At the Board of Manager's sole discretion, up to 25% of the initial value of any such awards under the plans described above shall be notionally invested in shares of common stock of ACAS and shall be subject to the same vesting schedule as other notional investments under such plans.

At the option of the Board of Managers, any cash contribution required under this paragraph may instead be fully or partially made by the contribution to the applicable PIP of shares of common stock of the applicable Company Managed Fund or by the reallocation of shares of such stock already held by the rabbi trust associated with the applicable PIP.

Notwithstanding any other provision of the Agreement, including this Exhibit A thereto, for purposes of this Section 2 of Exhibit A, (i) the Incentive Payment Percentage will be capped at 75% for any calendar quarter, as applicable, in which the average Company Price to Book for each business day during the last month of the calendar quarter, as applicable, is less than 0.98 and (ii) the Incentive Payment Percentage will be capped at 75% if the Incentive Payment Percentage is so capped at 75% for at least 3 of the 4 quarters of the year.

In the event that there shall be a Company Managed Fund that does not have publicly-traded equity securities, the Company and the Executive shall make appropriate adjustments to this Section 2 to provide a basis for awarding PIP to the Executive attributable to such Company Managed Fund.

### 3. Definitions.

Capitalized terms used in this Exhibit A and not otherwise defined herein shall have the meanings ascribed to such terms in the Employment Agreement.

“Company Economic Return” for any period means the ratio of (a) the sum of (i) the sum of the positive or negative changes in Net Asset Value of a share of the common stock of each Publicly Traded Company Managed Fund from the last day of the prior period to the last day of the relevant period, and (ii) the sum of any dividends declared with respect to a share of common stock of each Publicly Traded Company Managed Fund during the relevant period, over (b) the sum of the Net Asset Values of a share of common stock of each Publicly Traded Company Managed Fund on the last day of the prior period.

“Company Price to Book” as of any date means the ratio of (a) the sum of Fair Market Values of a share of common stock of each Publicly Traded Company Managed Fund, over (b) the sum of the net asset values of all Publicly Traded Company Managed Funds as of the most recent quarter end as determined by the reasonable application of such reasonable method as may be chosen by the Board of Managers in good faith. When determined in connection with a payment based on performance in a calendar quarter, the Company Price to Book shall be calculated as of the last business day of such quarter, and when determined in connection with a payment or award based on performance in a calendar year, the Company Price to Book shall be calculated as of the last business day of such year.

“Company Total Stock Return” for any period means the ratio of (a) the sum of (i) the sum of the positive or negative changes in Fair Market Value of a share of the common stock of each Publicly Traded Company Managed Fund from the last day of the prior period to the last day of the relevant period, and (ii) the sum of any dividends declared with respect to a share of common stock of each Publicly Traded Company Managed Fund during the relevant period, over (b) the sum of the Fair Market Values of a share of common stock of each Publicly Traded Company Managed Fund on the last day of the prior period.

“Fair Market Value” as of any date means the value of a security determined as follows: (a) if shares of such security are listed on any established exchange or traded on The NASDAQ Global Select Market, the Fair Market Value of a share of such security shall be the closing sales price for such security (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the security) as of such date, as reported in *The Wall Street Journal* or such other source as the Board of Managers deems reliable; or (b) in the absence of such an exchange or market for such security, the Fair Market Value shall be determined by the reasonable application of such other reasonable method as may be chosen by the Board of Managers in good faith.

“Peer Group” means a group of peer companies determined by the Board of Managers for each calendar year in its reasonable discretion and communicated to the Executive in writing. For 2010, the members of the Peer Group are Annaly Capital Management, Inc., Anworth Mortgage Asset Corp., Capstead Mortgage Corp., Hatteras Financial Corporation, and Cypress Sharpridge Investments.

“Peer Member Economic Return” for any period means, for any entity that is a member of the Peer Group, the ratio of (a) the sum of (i) the sum of the positive or negative changes in Net Asset Value of a share of the common stock of such member of the Peer Group from the last day of the prior period to the last day of the relevant period, and (ii) the sum of any dividends declared with respect to a share of common stock of such member of the Peer Group during the relevant period, over (b) the sum of the Net Asset Values of a share of common stock of such member of the Peer Group on the last day of the prior period.

“Peer Member Price to Book” as of any date means, for any entity that is a member of the Peer Group, the ratio of (a) the closing price for a share of common stock of such entity, over (b) the reported net asset value per share of common stock for such entity for the most recent quarter end. When determined in connection with a payment based on performance in a calendar quarter, Peer Member Price to Book shall be calculated as of the last business day of such quarter, and when determined in connection with a payment or award based on performance in a calendar year, Peer Member Price to Book shall be calculated as of the last business day of such year.

“Peer Member Total Stock Return” for any period means, for any entity that is a member of the Peer Group, the ratio of (a) the sum of (i) the positive or negative change in Fair Market Value of a share of the common stock of such entity from the last day of the prior period to the last day of the relevant period, and (ii) any dividends declared with respect to a share of common stock of such entity during the relevant period, over (b) the Fair Market Value of a share of the common stock of such entity on the last day of the prior period.

“Publicly Traded Company Managed Fund” means any Company Managed Fund the equity shares of which are listed on any established exchange or traded on The NASDAQ Global Select Market.

# Memorandum and Acceptance Agreement

**To:** Gary Kain  
**From:** American Capital Mortgage Management, LLC  
**Date:**  
**Re:** Performance Incentive Plan - AGNC Award

We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC (the “Plan”) in the amount of \$\_\_\_\_\_, subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of five (5) equal installments (each, an “Installment”), each of which shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	Earlier of [Insert One-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Second Installment	Earlier of [Insert Two-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Third Installment	Earlier of [Insert Three-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fourth Installment	Earlier of [Insert Four-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fifth Installment	Earlier of [Insert Five-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service

For purposes of this Agreement, a “Qualifying Separation from Service” means your Separation from Service by the Company other than for “Gross Misconduct” (as defined in your Second Amended and Restated Employment Agreement with the Company dated as of September 22, 2014 (the “Employment Agreement”)) or by you with “Good Reason” (as defined in the Employment Agreement).

Notwithstanding the foregoing, your Award will immediately cease to vest in the event of, and no Installment payments shall be made after, a Separation from Service that is not a Qualifying Separation from Service; provided that all Installments not previously forfeited shall fully vest immediately upon your death or becoming Disabled, or upon the occurrence of a Change of Control, in accordance with Section 6.3(a) of the Plan.

In addition, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan’s recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.



Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Gary Kain \_\_\_\_\_

# Memorandum and Acceptance Agreement

**To:** Gary Kain

**From:** American Capital Mortgage Management, LLC

**Date:**

**Re:** Performance Incentive Plan - MTGE Award

We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE (the “Plan”) in the amount of \$\_\_\_\_\_, subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of five (5) equal installments (each, an “Installment”), each of which shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	Earlier of [Insert One-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Second Installment	Earlier of [Insert Two-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Third Installment	Earlier of [Insert Three-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fourth Installment	Earlier of [Insert Four-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fifth Installment	Earlier of [Insert Five-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service

For purposes of this Agreement, a “Qualifying Separation from Service” means your Separation from Service by the Company other than for “Gross Misconduct” (as defined in your Second Amended and Restated Employment Agreement with the Company dated as of September 22, 2014 (the “Employment Agreement”)) or by you with “Good Reason” (as defined in the Employment Agreement).

Notwithstanding the foregoing, your Award will immediately cease to vest in the event of, and no Installment payments shall be made after, a Separation from Service that is not a Qualifying Separation from Service; provided that all Installments not previously forfeited shall fully vest immediately upon your death or becoming Disabled, or upon the occurrence of a Change of Control, in accordance with Section 6.3(a) of the Plan.

In addition, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan’s recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Gary Kain \_\_\_\_\_

# Memorandum and Acceptance Agreement

**To:** Gary Kain  
**From:** American Capital Mortgage Management, LLC  
**Date:**  
**Re:** Performance Incentive Plan - AGNC Award

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We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC (the “Plan”) in the amount of \$ \_\_\_\_\_ (the “Total Amount”), subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of two (2) installments (each, an “Installment”), the first Installment equal to twenty percent (20%) of the Total Amount and the second Installment equal to eighty percent (80%) of the Total Amount. Each Installment shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	[Insert one-year anniversary date of Termination Date]
Second Installment	[Insert eighteen (18) month anniversary date of Termination Date]

Notwithstanding the foregoing, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Second Amended and Restated Employment Agreement between you and the Company dated September 22, 2014.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan's recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Gary Kain \_\_\_\_\_

# Memorandum and Acceptance Agreement

**To:** Gary Kain  
**From:** American Capital Mortgage Management, LLC  
**Date:**  
**Re:** Performance Incentive Plan - MTGE Award

---

We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE (the “Plan”) in the amount of \$\_\_\_\_\_ (the “Total Amount”), subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of two (2) installments (each, an “Installment”), the first Installment equal to twenty percent (20%) of the Total Amount and the second Installment equal to eighty percent (80%) of the Total Amount. Each Installment shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	[Insert one-year anniversary date of Termination Date]
Second Installment	[Insert eighteen (18) month anniversary date of Termination Date]

Notwithstanding the foregoing, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Second Amended and Restated Employment Agreement between you and the Company dated September 22, 2014.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan's recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Gary Kain \_\_\_\_\_



**EXHIBIT 4.5(h)**  
**RELEASE AGREEMENT**

THIS RELEASE AGREEMENT (the "Agreement"), is made as of the \_\_\_\_\_ day of \_\_\_\_\_, by and between AMERICAN CAPITAL AGENCY MANAGEMENT, LLC, a Delaware limited liability company with its principal place of business at 2 Bethesda Metro Center, 14<sup>th</sup> Floor, Bethesda, Maryland (the "Corporation"), and \_\_\_\_\_, an individual (the "Executive").

**WITNESSETH:**

WHEREAS, the parties hereto are parties to a certain Second Amended and Restated Employment Agreement entered into as of September 22, 2014 (the "Employment Agreement"); and

WHEREAS, the execution and delivery of this Release Agreement as of the date hereof is a requirement of Section 4.5(d) thereof.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Mutual Release.

(a) The Executive, on his own behalf and on behalf of his heirs, representatives and assigns, hereby waives, releases, and forever and irrevocably discharges the Corporation, and its parent company, and their agents, attorneys, officers, directors, employees, successors and assigns (collectively, the "Corporation Released Parties") from any and all obligations, debts, demands, claims and liabilities of every kind and nature, either in law or in equity, that the Executive may now have, may in the future have or may ever have had, against the Corporation Released Parties arising in any manner from or in any manner related, directly or indirectly, to the Executive's service or employment as a director, officer and/or an employee of the Corporation including, without limitation, the circumstances relating to the termination thereof, except for such obligations as shall specifically survive the termination of the Executive's employment under the terms of the Employment Agreement.

(b) The Corporation, on its own behalf and on behalf of its successors and assigns, hereby waives, releases, and forever and irrevocably discharges the Executive, and his agents, attorneys, heirs, representatives and assigns (collectively, the "Executive Released Parties") from any and all obligations, debts, demands, claims and liabilities of every kind and nature, either in law or in equity, that the Corporation may now have, may in the future have or may ever have had against the Executive Released Parties arising in any manner from or in any manner related to, directly or indirectly, the Executive's service or employment as a director, officer and/or an employee of the Corporation including, without limitation, the circumstances relating to the termination thereof, except for such obligations as shall specifically survive the termination of the Executive's employment under the terms of the Employment Agreement and, unless

otherwise specifically agreed to in writing, any breach by the Executive of Article 6 of the Employment Agreement.

2. Miscellaneous. This Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof and supersedes all prior negotiations, representations and agreements, either written or oral, between them except for the Surviving Agreements. There are no conditions, agreements, or representations between the parties except those expressed herein. This Agreement may be altered, modified, amended, or repealed only by a duly executed written instrument signed by the parties hereto. This Agreement shall be governed by the law of the State of Maryland, without giving effect to the conflicts of laws provisions thereof. Each party binds himself or itself and his or its heirs, successors, legal representatives and assigns in respect to all covenants and agreements contained herein. Except as specifically contemplated herein, nothing herein shall be construed as giving any right or benefit hereunder to anyone other than the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first hereinabove written.

**WITNESS:**

**THE EXECUTIVE:**

(Seal)

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**AMERICAN CAPITAL AGENCY MANAGEMENT, LLC**  
A Delaware Limited Liability Company

By:

(Seal)

Name:  
Title

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July 1, 2016

**PERSONAL AND CONFIDENTIAL**

Peter Federico  
American Capital Mortgage Management, LLC  
Two Bethesda Metro Center, 14th Floor  
Bethesda, MD 20814

Dear Peter:

In connection with the transactions contemplated by the Purchase and Sale Agreement, dated as of May 23, 2016, by and among American Capital Asset Management, LLC, American Capital Mortgage Management, LLC (the "Company"), American Capital, Ltd. ("ACAS") and American Capital Agency Corp. ("AGNC") (such agreement, the "Purchase Agreement"), you and the Company hereby agree to the following changes to the Employment Agreement, entered into as of March 30, 2012, by and between the Company and you (the "Employment Agreement").

1. Notwithstanding anything contained in your Employment Agreement to the contrary, as of the date hereof, your titles shall be Executive Vice President and Chief Financial Officer of AGNC and Executive Vice President and Treasurer of the Company, and you shall report to the Chief Executive Officer, President and Chief Investment Officer of AGNC.
2. Each reference to the "Board of Managers" in your Employment Agreement shall be deemed to be a reference to the "Board of Directors of American Capital Agency Corp. or its designee".
3. Each reference to "American Capital, Ltd." or "ACAS" in your Employment Agreement shall be deemed to be a reference to "American Capital Agency Corp."
4. With respect to any award that the Company is obligated to provide to you (whether by your Employment Agreement or otherwise) pursuant to the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC, the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE or any other similar plan (whether payable in shares of stock of ACAS, AGNC, American Capital Mortgage Investment Corp. or otherwise), the Company may (in the discretion of the Board of Directors of AGNC or its designee), in lieu thereof, provide (a) a substitute cash award, which shall be granted solely pursuant to the terms and conditions of a comparable cash incentive plan, or (b) a substitute equity award, which shall be granted solely pursuant to the terms and conditions of an equity incentive plan (but only if such a plan has received all required corporate approvals, including, if required, approval by the stockholders of AGNC). Any such substitute cash award or substitute equity award shall (i) have the same cash value as the corresponding replaced award, (ii) have the same or shorter vesting schedule as the corresponding replaced award, and (iii) provide for the accrual and payment of dividends

(or a cash award of like value) in a manner comparable to the accrual and payment of dividends under the corresponding replaced award.

5. You acknowledge and agree that the consummation of the transactions contemplated by the Purchase Agreement shall not constitute grounds for you to terminate your employment for “Good Reason.”

Very truly yours,  
**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**

By:       /s/ Gary Kain        
Name: Gary Kain  
Title: Chief Executive Officer and  
President

Accepted and Agreed:

By: /s/ Peter Federico  
Peter Federico

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of March 30, 2012 (the "Effective Date"), by and between AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC (formerly known as American Capital Agency Management, LLC), a Delaware limited liability company (the "Company"), and PETER J. FEDERICO (the "Executive").

### WITNESSETH:

WHEREAS, the Company is currently engaged through its subsidiaries in the business of, among other things, managing mortgage real estate investment trusts ("REITs"), which invest in (a) agency securities for which the principal and interest payments are guaranteed by U.S. Government agencies and U.S. Government-sponsored entities, (b) non-agency securities, and/or (c) other mortgage related investments; and

WHEREAS, the Executive is Senior Vice President and Chief Risk Officer of the Company, and in such role, the Executive has received and will continue to receive specific trade secrets and confidential information, training and the benefit of established customer relationships relating to the businesses of the Company, which trade secrets and confidential information, training and access to established customer relationships are necessary to enable the Executive to perform the Executive's duties and to receive future compensation, and the Executive has played and will continue to play a significant role in the development and management of the businesses of the Company; and

WHEREAS, it is in the interests of the Company that the Executive's services continue to be available to the Company; and

WHEREAS, the Company and the Executive wish to enter into this Agreement to govern the terms and conditions of the Executive's employment with the Company on and after the Effective Date; and

WHEREAS, it is a condition to the Executive's continued employment by the Company that the Executive execute and deliver this Agreement, and in order to induce the Executive to continue his employment, the Company has agreed to provide him with the rights and benefits described more fully herein.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATIONS**

**1.1**    Definitions

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following respective meanings:

“ACAS” shall mean American Capital, Ltd., a Delaware corporation.

“AGNC” shall mean American Capital Agency Corp., and its successors and assigns.

“Base Salary” shall have the meaning specified in Section 3.1.

“Board of Managers” shall mean the Board of Managers of the Company.

“Change of Control” shall mean the occurrence of any of the following events: (i) any person or group of persons (as defined in Section 13(d) and 14(d) of the Exchange Act) together with its affiliates, excluding employee benefit plans of the Company, becomes, directly or indirectly, the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding securities; (ii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation or entity regardless of which entity is the survivor, other than a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) at least 51% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (iii) the stockholders of the Company approve a plan of complete liquidation or winding-up of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company’s assets.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Company Managed Fund” shall mean any entity for which the Company or a subsidiary of the Company serves as investment manager or in a substantially similar capacity pursuant to a written agreement. For avoidance of doubt, as of the Effective Date, the Company Managed Funds are AGNC and MTGE.

“Confidential Information” shall have the meaning specified in Section 5.1(a).

“Disability” shall mean a physical or mental condition of the Executive that, in the good faith judgment of not less than a majority of the Board of Managers, prevents the Executive from being able to perform the services required under this Agreement and that results in the Executive becoming eligible for long-term disability benefits (if such benefits are provided by the Company). If any dispute arises as to whether a Disability has occurred, or whether a Disability has ceased and the Executive is able to resume duties, then such dispute shall be referred to a licensed physician appointed by the president of the Medical Society or similar

organization in Washington, D.C., at the request of either party. The Executive shall submit to such examinations and provide information as such physician may request and the determination of such physician as to the Executive's physical or mental condition shall be binding and conclusive on the parties. The Company shall pay the cost of any such physician and examination.

"Dispute" shall have the meaning specified in Article VI.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Expiration Date" shall have the meaning specified in Section 2.2.

"Good Reason" shall mean any of the following, which occur within the two months preceding or the 18 months following a Change of Control and without the Executive's express written consent:

(i) a material diminution of the Executive's authority, duties or responsibilities with the Company;

(ii) a material breach by the Company of any material provision of this Agreement; or

(iii) any material change in the geographic location at which the Executive must perform services (in this case, a material change means any location outside of the Washington, D.C. metropolitan area).

The Executive must provide written notice to the Company within 90 days of the initial existence of a condition set forth in clauses (i) - (iii) and the Company shall have 30 days after receipt of any such notice to remedy the condition. If the Company timely remedies such condition, such condition shall not constitute Good Reason. The Executive may not terminate the Executive's employment hereunder for Good Reason more than six months after the initial existence of one (or more) of the conditions set forth in clauses (i) - (iii) which constitutes Good Reason.

"Misconduct" shall mean one or more of the following:

(i) the willful and continued failure by the Executive to perform substantially the Executive's duties described in Section 2.3 (other than any such failure resulting from the Executive's incapacity due to physical or mental illness) after two (2) written notices of such failure have been given to the Executive by the Company and the Executive has had a reasonable period (not to exceed 15 days from the second notice) to correct such failure;

(ii) the commission by the Executive of acts that are dishonest and demonstrably injurious to the Company or any Company Managed Fund (monetarily or otherwise) in any material respect; or

(iii) a material breach or violation by the Executive of (a) any material provision of this Agreement or (b) any material Company employment policy, including its Code

of Ethics, that the Company may publish from time to time, which, if capable of being remedied, remains unremedied for more than 15 days after written notice thereof is given to the Executive by the Company.

For purposes of this definition, no act or failure to act on the Executive's part shall be considered "Misconduct" if done or omitted to be done by the Executive in good faith and in the reasonable belief that such act or failure to act was in the best interest of the Company or in furtherance of the Executive's duties and responsibilities described in Section 2.3.

"MTGE" shall mean American Capital Mortgage Investment Corp., and its successors and assigns.

"Notice of Termination" shall mean a notice purporting to terminate the Executive's employment in accordance with Section 4.1, 4.2 or 4.3. Such notice shall specify the effective date of such termination, which date shall not be less than 30 days (one (1) day in the case of a termination by the Company for Misconduct) or more than 60 days after the date such notice is given. If such termination is by the Company for Disability or Misconduct or by the Executive for Good Reason, such notice shall set forth in reasonable detail the reason for such termination and the facts and circumstances claimed to provide a basis therefor.

"Person" shall mean and include an individual, a partnership, a joint venture, a corporation, a trust and an unincorporated organization.

"Target Incentive Payment Plan" shall have the meaning specified in Section 3.2.

"Term" shall have the meaning specified in Section 2.2.

"Termination Date" shall mean the effective date of the Executive's termination of employment and shall be the date specified in a Notice of Termination delivered in accordance with this Agreement. If earlier, the date of the Executive's death shall be the Termination Date.

## 1.2 Interpretations

(a) In this Agreement, unless a clear contrary intention appears, (i) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision, (ii) reference to any Article or Section, means such Article or Section hereof, (iii) the words "including" (and with correlative meaning "include") means including, without limiting the generality of any description preceding such term, and (iv) where any provision of this Agreement refers to action to be taken by either party, or which such party is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such party.

(b) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

(c) References herein to a termination of employment shall be interpreted to mean a "separation from service" within the meaning of Section 409A of the Code.



**ARTICLE 2**  
**EMPLOYMENT: TERM, POSITIONS AND DUTIES, ETC.**

**2.1 Employment**

The Company agrees to employ the Executive and the Executive agrees to accept employment with the Company, in each case on the terms and conditions set forth in this Agreement.

**2.2 Term of Employment**

Unless sooner terminated pursuant to Article IV, the term of the Executive's employment under this Agreement (the "Term") shall commence on the Effective Date and shall continue until the second anniversary of the Effective Date (the "Expiration Date"); provided, however, that on each date during the Term, the Expiration Date shall be reset to the date two years after the date thereof, except that either party may terminate this Agreement by giving written notice that such daily extensions of the Term shall be discontinued in which case the Expiration Date shall be the date two years after the delivery of such notice.

**2.3 Positions and Duties**

(a) While employed hereunder, the Executive shall serve as Senior Vice President and Chief Risk Officer of the Company. As such, the Executive shall have the responsibilities and authorities designated to him by the President and Chief Investment Officer of the Company (the "President") or the Board of Managers.

(b) While employed hereunder, the Executive shall (i) report directly to the President or such other person designated by the Board of Managers, and (ii) observe and comply with all lawful policies, directions and instructions of the President or other person so designated that are consistent with the foregoing provisions of this Section 2.3.

(c) While employed hereunder, the Executive shall (i) devote substantially all of the Executive's business time, attention, skill and efforts to the faithful and efficient performance of the Executive's duties hereunder and (ii) not accept employment with any Person other than with the Company. Notwithstanding the foregoing, the Executive may engage in the following activities so long as they do not interfere in any material respect with the performance of the Executive's duties and responsibilities hereunder: (i) serve on corporate, civic, religious, educational or charitable boards or committees and (ii) manage the Executive's personal investments.

(d) While employed hereunder, the Executive shall not knowingly prejudice, in any material respect, the reputation of the Company or the Company Managed Funds in the fields of business in which they are engaged or with the investment community or the public at large.

**ARTICLE 3  
COMPENSATION AND BENEFITS**

**3.1 Base Salary**

(a) For services rendered by the Executive under this Agreement, the Company shall pay to the Executive an annual base salary (“Base Salary”) of \$800,000, evenly paid twice a month or on such other schedule as salaried employees of the Company are generally and regularly compensated. Subject to paragraph (b) below, the Board of Managers may adjust the amount of the Base Salary at any time as it may deem appropriate in its sole discretion.

(b) The amount of the Base Salary may not be decreased without the prior written approval of the Executive except that if the Board of Managers increases the Base Salary as provided in the last sentence of paragraph (a) above, the Board of Managers may thereafter decrease the Base Salary, provided that in no event shall any such decrease cause the Executive’s Base Salary to fall below \$800,000.

**3.2 Target Incentive Payment Plan**

During the Term, the Company shall maintain and the Executive shall be entitled to participate in an annual incentive payment plan described in greater detail in Exhibit A hereto (the “Target Incentive Payment Plan”), which will provide for the payment of lump sum cash incentive payments to be made on the schedule set forth in Exhibit A. Under the Target Incentive Payment Plan, the Executive will be eligible to earn target incentive payments (each, a “Target Incentive Payment”) each year totaling not less than 150% of the Base Salary paid to the Executive during the calendar year to which the Target Incentive Payment relates (the “Target Incentive Payment Amount”). With regard to each calendar quarter, the Executive will be eligible to earn a Target Incentive Payment of not less than 75% of the Base Salary paid to the Executive during such calendar quarter (the “Quarterly Target Incentive Payment Amount”).

**3.3 Performance Incentive Plan Awards**

(a) Upon execution of this Agreement, the Executive will be granted an award or awards under the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC (the “AGNC PIP”) valued at \$900,000 in the aggregate (the “AGNC PIP Awards”). The AGNC PIP Awards will generally vest annually and equally over five years from the date of grant, subject to the Executive’s continued employment with the Company; provided that such AGNC PIP Awards shall provide for continued vesting of unvested award tranches after the Executive’s termination of employment by the Company without Cause or by the Executive with Good Reason on the earlier of the originally scheduled vesting date for such award tranche or the eighteen (18) month anniversary of the Termination Date, subject to the Executive’s continued compliance with his obligations under Article V of this Agreement. Each vesting tranche of the AGNC PIP Awards shall be considered a separate payment for purposes of Section 409A of the Code. The AGNC PIP Awards will also be subject to the terms and conditions of the AGNC PIP and any associated award documentation. At the Board of Manager’s sole discretion, up to 25%

of the initial value of the AGNC PIP Awards shall be notionally invested in shares of common stock of ACAS.

(b) Upon execution of this Agreement, the Executive will be granted an award or awards under the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE (the “MTGE PIP”) valued at \$100,000 in the aggregate (the “MTGE PIP Awards”). The MTGE PIP Awards will generally vest annually and equally over five years from the date of grant, subject to the Executive’s continued employment with the Company; provided that such MTGE PIP Awards shall provide for continued vesting of unvested award tranches after the Executive’s termination of employment by the Company without Cause or by the Executive with Good Reason on the earlier of the originally scheduled vesting date for such award tranche or the eighteen (18) month anniversary of the Termination Date, subject to the Executive’s continued compliance with his obligations under Article V of this Agreement. Each vesting tranche of the MTGE PIP Awards shall be considered a separate payment for purposes of Section 409A of the Code. The MTGE PIP Awards will also be subject to the terms and conditions of the MTGE PIP and any associated award documentation. At the Board of Manager’s sole discretion, up to 25% of the initial value of the MTGE PIP Awards shall be notionally invested in shares of common stock of ACAS.

(c) The Executive will also be granted, subject to his continued employment on the date of grant, future awards under the AGNC PIP and MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds. The annual value of such awards would equal .03% of the prior year-end combined equity value of the Company Managed Funds up to \$10 billion, .02% of the prior year-end combined equity value of the Company Managed Funds between \$10 billion and \$15 billion, and .01% of the prior year-end combined equity value of the Company Managed Funds above \$15 billion. The amount granted under each of the AGNC PIP and MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds will be proportional to the year-end equity value of each such Company Managed Fund. Any such future awards will be subject to the terms and conditions of the AGNC PIP, MTGE PIP and any such similar plans and forms of agreement attached hereto as Exhibits 3.3(c)-AGNC and 3.3(c)-MTGE or similar forms of agreement under any such similar plans. At the Board of Manager’s sole discretion, up to 25% of the initial value of any such future awards shall be notionally invested in shares of common stock of ACAS.

#### 3.4 Vacation

While employed hereunder, the Executive shall be entitled to vacation benefits in accordance with the vacation policy adopted by the Company from time to time.

#### 3.5 Other Benefits

The Executive shall be entitled to receive all employee benefits, fringe benefits and other perquisites that may be offered by the Company to its employees as a group, including, without limitation, participation by the Executive and, where applicable, the Executive’s dependents, in the various employee benefit plans or programs (including, without limitation, pension plans, profit sharing plans, stock plans, health plans, life insurance, parking and disability insurance)

generally provided to employees of the Company, subject to meeting the eligibility requirements with respect to each of such benefit plans or programs. However, nothing in this Section 3.5 shall be deemed to prohibit the Company from making any changes in any of the plans, programs or benefits described herein, provided such changes apply to all similarly situated employees.

#### **ARTICLE 4 TERMINATION OF EMPLOYMENT**

##### **4.1 Termination by the Executive**

The Executive may, at any time prior to the Expiration Date, terminate the Executive's employment hereunder for any reason by delivering a Notice of Termination to the Board of Managers. Unless such termination is for Good Reason, upon such termination, the Executive shall be entitled only to those rights and payments payable under Section 4.4.

##### **4.2 Termination by the Company**

The Board of Managers may, at any time prior to the Expiration Date, terminate the Executive's employment hereunder for any reason by delivering a Notice of Termination to the Executive.

##### **4.3 Termination Due to Disability or Death**

The Board of Managers may terminate the Executive's employment by reason of Disability by delivering a Notice of Termination to the Executive, and Executive's employment will automatically terminate in the event of his death.

##### **4.4 Payment of Accrued Base Salary, Vacation Pay, etc.**

(a) Promptly upon the Executive's Termination Date in the event of the termination of the Executive's employment for any reason (including death and Disability), and in no event later than 60 days following the Executive's Termination Date, as applicable, the Company shall pay to the Executive (or the Executive's estate) a lump sum amount equal to the sum of all (i) unpaid Base Salary earned hereunder prior to the Termination Date and (ii) unused vacation time accrued by the Executive as of the Termination Date to the extent payable under the policy described in Section 3.4. All unpaid benefits earned or vested, as the case may be, by the Executive as of the Termination Date under any and all incentive or deferred compensation plans or programs of the Company shall be paid to the Executive in accordance with the terms of such plans or programs.

(b) A termination of the Executive's employment in accordance with this Agreement shall not alter or impair any of the Executive's accrued rights or benefits as of the Termination Date under any employee benefit plan or program maintained by the Company, in each case except as provided therein or in any written agreement entered into between the Company and the Executive pursuant thereto.

4.5 Additional Rights in Connection With Termination by the Executive with Good Reason or by the Company for Other than Misconduct or Disability.

In the event that the Executive terminates the Executive's employment with the Company pursuant to Section 4.1 for Good Reason or the Company terminates the Executive's employment with the Company pursuant to Section 4.2 for other than Misconduct or Disability, the Executive shall be entitled to the payments and benefits set forth in this Section 4.5.

(a) Severance Payments and Target Incentive Payment.

(i) The Company shall pay to the Executive an amount equal to eighteen (18) months of Base Salary in eighteen (18) substantially equal monthly installment payments beginning with the first calendar month that begins at least 60 days after the Termination Date. Each monthly installment shall be treated as a separate payment for purposes of Section 409A of the Code.

(ii) The Executive shall be entitled to a pro rata portion of the Executive's Target Incentive Payment, if any, for the calendar year in which the Termination Date occurs, payable at the normal payment time as if the Executive's employment had not terminated, but in no event later than March 15 of the calendar year following the calendar year in which the Termination Date occurs.

(iii) The Executive shall be entitled to receive an additional severance payment in an amount equal to the product of (A) 1.5, and (B) his Target Incentive Payment Amount. This additional severance payment shall be paid in a single lump sum between January 1 and March 15 of the year following the calendar year in which the Termination Date occurs.

(b) Accelerated Vesting of Prior PIP Awards. To the extent any awards under the AGNC PIP and/or the MTGE PIP granted prior to the date hereof are unvested, such awards shall immediately be vested as of the Termination Date, and distributions in respect of such awards shall be made as soon as practicable (and in all event within 60 days) after the Termination Date.

(c) Pro Rata PIP Awards. On or as soon as practicable (and in all event within 60 days) after the Termination Date, the Executive will be granted awards under the AGNC PIP, MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds equal in the aggregate to .03% of the prior year-end combined equity value of the Company Managed Funds up to \$10 billion, .02% of the prior year-end combined equity value of the Company Managed Funds between \$10 billion and \$15 billion, and .01% of the prior year-end combined equity value of the Company Managed Funds above \$15 billion, pro rated to reflect the number of days in the calendar year in which the Termination Date occurs during which the Executive was employed by the Company; provided that such pro rated amount shall be reduced by the value of any awards made under the AGNC PIP, MTGE PIP and any such similar plans calculated by reference to such prior year combined equity value of the Company Managed Funds (the "Termination PIP Awards"). The amount of Termination PIP Awards granted under each of the AGNC PIP, MTGE PIP and any such similar plans will (after taking into account any other awards calculated by reference to such prior year combined equity value)

be proportional to the year-end equity value of each such Company Managed Fund. Subject to the Executive's continued compliance with his obligations under Article V of this Agreement, twenty percent (20%) of the Termination PIP Awards will vest and be paid out on the one-year anniversary of the Termination Date, and the remainder will vest and be paid out on the eighteen (18) month anniversary of the Termination Date. Any Termination PIP Awards will be subject to the terms and conditions of the AGNC PIP and MTGE PIP and forms of agreement attached hereto as Exhibits 4.5(c)-AGNC and 4.5(c)-MTGE or similar forms of agreement under any similar plans maintained by the Company relating to any other Company Managed Funds. At the Board of Manager's sole discretion, up to 25% of the initial value of any such Termination PIP Awards shall be notionally invested in shares of common stock of ACAS.

(d) Release. Notwithstanding anything in this Section 4.5 to the contrary, as a condition to the receipt of any payment or benefit under this Section 4.5, the Executive must first execute and deliver to the Company, within 45 days following the Executive's Termination Date, an effective release in the form set out in Exhibit 4.5(d) hereto, that becomes irrevocable prior to the 60<sup>th</sup> day following the Executive's Termination Date, releasing the Company and Company Managed Funds, and their officers, board members, employees and agents from any and all claims and from any and all causes of action of any kind or character that the Executive may have arising out of the Executive's employment with the Company or the termination of such employment, but excluding any claims and causes of action that the Executive may have arising under or based upon this Agreement.

#### 4.6 Specified Employees

Notwithstanding anything to the contrary herein, if a payment or benefit under this Agreement is due to a "separation from service" for purposes of the rules under Treas. Reg. § 1.409A-3(i)(2) (payments to specified employees upon a separation from service) and the Executive is determined to be a "specified employee" (as determined under Treas. Reg. § 1.409A-1(i) and the related Company procedures), such payment shall, to the extent necessary to comply with the requirements of Section 409A of the Code, be made on the later of the date specified by the foregoing provisions of this Agreement or the date that is six months after the date of the Executive's separation from service. Any installment payments that are delayed pursuant to this Section 4.6 shall be accumulated and paid in a lump sum on the first day of the seventh month following the date of the Executive's Termination Date, and the remaining installment payments shall begin on such date in accordance with the schedule provided in this Agreement.

### **ARTICLE 5 CONFIDENTIAL INFORMATION, NON-COMPETITION AND INTELLECTUAL PROPERTY**

#### 5.1 Confidential Information

(a) The Executive recognizes that the services to be performed by the Executive hereunder are special, unique and extraordinary and that, by reason of such employment with the Company, the Executive has acquired and will continue to acquire Confidential Information

concerning the operation of the Company, the use or disclosure of which would cause the Company substantial loss and damages which could not be readily calculated and for which no remedy at law would be adequate. Accordingly, the Executive agrees that the Executive will not (directly or indirectly) at any time, whether during or after the Executive's employment hereunder, (i) knowingly use for an improper personal benefit any Confidential Information that the Executive may learn or has learned by reason of the Executive's employment with the Company or (ii) disclose any such Confidential Information to any Person except (A) in the performance of the Executive's obligations to the Company hereunder, (B) as required by applicable law or (C) with the prior written consent of the Board of Managers. As used herein, "Confidential Information" includes information with respect to the operation and performance of the Company, ACAS and the Company Managed Funds, their investments, portfolio companies, products, services, facilities, product methods, research and development, trade secrets and other intellectual property, systems, patents and patent applications, procedures, manuals, confidential reports, product price lists, customer lists, financial information, business plans, prospects or opportunities (including, as applicable, all of the foregoing information regarding the Company's, ACAS's and/or the Company Managed Funds' past, current and prospective portfolio companies); provided, however, that such term shall not include any information that (x) is or becomes generally known or available other than as a result of a disclosure by the Executive or (y) is or becomes known or available to the Executive on a nonconfidential basis from a source (other than the Company) that, to the Executive's knowledge, is not prohibited from disclosing such information to the Executive by a legal, contractual, fiduciary or other obligation to the Company.

(b) The Executive confirms that all Confidential Information is the exclusive property of the Company. All business records, papers and documents kept or made by the Executive while employed by the Company relating to the business of the Company shall be and remain the property of the Company at all times. Upon the request of the Company at any time, the Executive shall promptly deliver to the Company, and shall retain no copies of, any written materials, records and documents made by the Executive or coming into the Executive's possession while employed by the Company concerning the business or affairs of the Company other than personal materials, records and documents (including notes and correspondence) of the Executive not containing proprietary information relating to such business or affairs. Notwithstanding the foregoing, the Executive shall be permitted to retain copies of, or have access to, all such materials, records and documents relating to any disagreement, dispute or litigation (pending or threatened) between the Executive and the Company.

## 5.2 Non-Competition; Non-Solicitation.

(a) The Executive agrees that during the term of his employment with the Company and for a period of eighteen (18) months beginning on the date of termination of his employment for any reason (the "Non-Competition Period"), the Executive shall not, directly or indirectly, engage or participate in, prepare or set up, assist or have any interest in any person, partnership, corporation, firm, association, or other business organization, entity or enterprise, whether as an officer, employee, director, partner, stockholder, consultant or otherwise, that would be the same or competitive with any business activity engaged in by the Company or any Company Managed

Fund (a “Restricted Business”). Notwithstanding the foregoing, the Executive shall not be precluded from purchasing or owning, directly or beneficially, as a passive investment, two percent (2%) or less of any class of publicly traded securities if he does not actively participate in or control, directly or indirectly, any investment or other decisions with respect to such entity.

(b) During the Non-Competition Period, the Executive shall not, directly or indirectly:

(i) hire, offer to hire, divert, entice away, solicit or in any other manner persuade, or attempt to do any of the foregoing (each, a “Solicitation”), any person who is an officer, employee, consultant or board member of the Company or any Company Managed Fund to accept employment or an engagement with a third party or engage in a Solicitation with respect to any person or entity who is, or was, at any time within six months prior to the Solicitation, an officer, employee, agent or consultant of the Company or any Company Managed Fund to work for a third party engaged in a Restricted Business or to engage in any of the activities hereby prohibited with respect to the Executive under Sections 5.2(b)(ii) or (iii) below; or

(ii) solicit, divert, entice away or in any other manner persuade, or attempt to do any of the foregoing, on (A) any actual or prospective customer of or investor in the Company or any Company Managed Fund to become a customer of or investor in any third party engaged in a Restricted Business or (B) any customer or investor to cease doing business with the Company or any Company Managed Fund; or

(iii) make any statements or perform any acts intended to advance the interest of any person engaged in or proposing to engage in a Restricted Business in any way that is intended to injure the interests of the Company or any Company Managed Fund.

### 5.3 Intellectual Property.

The Executive agrees that during the term of the Executive’s employment with the Company, any and all inventions, discoveries, innovations, writings, domain names, improvements, trade secrets, designs, drawings, business processes, secret processes and know-how, whether or not patentable or a copyright or trademark, which the Executive may create, conceive, develop or make, either alone or in conjunction with others and related or in any way connected with the Company, its strategic plans, products, processes, apparatus or business now or hereafter carried on by the Company (collectively, “Inventions”), shall be fully and promptly disclosed to the Company and shall be the sole and exclusive property of the Company (as it shall determine) as against the Executive or any of the Executive’s assignees. Regardless of the status of the Executive’s employment by the Company, the Executive and the Executive’s heirs, assigns and representatives hereby assigns, or shall promptly assign, to the Company any and all right, title and interest in and to such Inventions made during the term of the Executive’s employment by the Company. Except as set forth on Schedule 1 to this Agreement, there are no Inventions with respect to the Company conceived of, developed or made by the Executive before the date of this Agreement which have not been disclosed to and assigned to the Company.



#### 5.4 Early Resolution Conference.

This Agreement is understood to be clear and is intended to be enforceable as written and is executed by both parties on that basis. However, should the Executive determine to later challenge any provision as unclear, unenforceable or inapplicable to an activity that the Executive intends to engage in, the Executive will first notify the Company in writing and meet with a representative of the Company and a neutral mediator (if the Company elects to retain one at its expense) to discuss resolution of any dispute between the parties with respect to such challenge. The Executive will provide this notification at least fourteen (14) days before Executive the engages in any activity on behalf of a Restricted Business or engages in other activity that could foreseeably fall within a questioned restriction. The failure to comply with this requirement shall waive the Executive's right to challenge the reasonable scope, clarity, applicability or enforceability of this Agreement and its restrictions at a later time. All rights of the parties will be preserved if the early resolution conference requirement is complied with even if no agreement is reached in the conference.

#### 5.5 Remedies

(a) The Executive acknowledges that a breach of any of the covenants contained in this Article V may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach, any payments or benefits remaining under the terms of this Agreement shall cease and the Company shall be entitled to obtain a temporary restraining order or a preliminary or permanent injunction from any court restraining the Executive from engaging in activities prohibited by this Article V or such other relief as may be required to specifically enforce any of the covenants contained in this Article V. The Executive agrees to and hereby does submit to *in personam* jurisdiction before each and every such court for that purpose.

(b) The period of time during which the restrictions set forth in Article V hereof will be in effect will be extended by the length of time during which the Executive is in breach of the terms of those provisions as determined by any court of competent jurisdiction on the Company's application for injunctive relief.

### **ARTICLE 6 DISPUTE RESOLUTION**

In the event a dispute (other than a dispute arising under Article V of this Agreement) shall arise between the parties as to whether the provisions of this Agreement have been complied with (a "Dispute"), the parties agree to resolve such Dispute in accordance with the following procedure:

(a) A meeting shall be held promptly between the parties, attended (in the case of the Company) by one or more individuals with decision-making authority regarding the Dispute, to attempt in good faith to negotiate a resolution of the Dispute.

(b) If, within 10 days after such meeting, the parties have not succeeded in negotiating a resolution of the Dispute, the parties agree to submit the Dispute to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association except that Disputes with regard to the existence of a Disability shall be resolved in accordance with the definition of the term "Disability" above.

(c) The parties will jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the American Arbitration Association if they have been unable to agree upon such appointment within 10 days following the 10-day period referred to in clause (b) above.

(d) Upon appointment of the mediator, the parties agree to participate in good faith in the mediation and negotiations relating thereto for 15 days.

(e) If the parties are not successful in resolving the Dispute through mediation within such 15-day period, the parties agree that the Dispute shall be settled by arbitration in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association.

(f) The fees and expenses of the mediator/arbitrators shall be borne solely by the non-prevailing party or, in the event there is no clear prevailing party, as the mediator/arbitrators deem appropriate.

(g) Except as provided above, each party shall pay its own costs and expenses (including, without limitation, attorneys' fees) relating to any mediation/arbitration proceeding conducted under this Article VI.

(h) All mediation/arbitration conferences and hearings will be held in the greater Washington, D.C. area.

(i) In the event there is any disputed question of law involved in any arbitration proceeding, such as the proper legal interpretation of any provision of this Agreement, the arbitrators shall make separate and distinct findings of all facts material to the disputed question of law to be decided and, on the basis of the facts so found, express their conclusion of the question of law. The facts so found shall be conclusive and binding on the parties, but any legal conclusion reached by the arbitrators from such facts may be submitted by either party to a court of law for final determination by initiation of a civil action in the manner provided by law. Such action, to be valid, must be commenced within 20 days after receipt of the arbitrators' decision. If no such civil action is commenced within such 20-day period, the legal conclusion reached by the arbitrators shall be conclusive and binding on the parties. Any such civil action shall be submitted, heard and determined solely on the basis of the facts found by the arbitrators. Neither of the parties shall, or shall be entitled to, submit any additional or different facts for consideration by the court. In the event any civil action is commenced under this paragraph (i), the party who prevails or substantially prevails (as determined by the court) in such civil action shall be entitled to recover from the other party all costs, expenses and reasonable attorneys' fees incurred by the prevailing party in connection with such action and on appeal.

(j) Except as limited by paragraph (i) above, the parties agree that judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. In the event legal proceedings are commenced to enforce the rights awarded in an arbitration proceeding, the party who prevails or substantially prevails in such legal proceeding shall be entitled to recover from the other party all costs, expenses and reasonable attorneys' fees incurred by the prevailing party in connection with such legal proceeding and on appeal.

(k) Except as provided above, (i) no legal action may be brought by either party with respect to any Dispute and (ii) all Disputes shall be determined only in accordance with the procedures set forth above.

(l) For avoidance of doubt, no dispute, disagreement or claim relating to any provision of Article V shall be governed by or subject to any provision of this Article VI.

## **ARTICLE 7 MISCELLANEOUS**

### **7.1 No Mitigation or Offset**

The provisions of this Agreement are not intended to, nor shall they be construed to, require that the Executive mitigate the amount of any payment provided for in this Agreement by seeking or accepting other employment, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer or otherwise. Without limitation of the foregoing, the Company's obligations to make the payments to the Executive required under this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set off, counterclaim, recoupment, defense or other claim, right or action that the Company may have against the Executive, except that the Company may deduct from any amount required to be reimbursed to the Company by the Executive under Article VI the amount of any payment which the Company is then required to make to the Executive hereunder.

### **7.2 Indemnification**

No provision of the Company's Certificate of Incorporation or by-laws may be amended, modified or repealed if the result would be to materially adversely affect the Executive's right to indemnification from the Company.

### **7.3 Assignability**

The obligations of the Executive hereunder are personal and may not be assigned or delegated by the Executive or transferred in any manner whatsoever, nor are such obligations subject to involuntary alienation, assignment or transfer. The Company shall have the right to assign this Agreement and to delegate all rights, duties and obligations hereunder as provided in Section 7.6.

### **7.4 Notices**

All notices and all other communications provided for in the Agreement shall be in writing and addressed (a) if to the Company, at its principal office address or such other address as it may have designated by written notice to the Executive for purposes hereof, directed to the attention of the Board of Managers with a copy to the Secretary of the Company and (b) if to the Executive, at the Executive's residence address on the records of the Company or to such other address as the Executive may have designated to the Company in writing for purposes hereof. Each such notice or other communication shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, except that any notice of change of address shall be effective only upon receipt.

7.5 Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

7.6 Successors: Binding Agreement

(a) The Company and Executive agree that this Agreement and all of the Company's rights and obligations hereunder may be assigned or transferred by the Company to and may be assumed by and become binding upon and may inure to the benefit of any affiliate of or successor to the Company. The term "affiliate" shall mean (with respect to the Company) any other corporation or other business entity of which the Company is, directly or indirectly, the majority equityholder. The term "successor" shall mean (with respect to the Company) any other corporation or other business entity that, by merger, consolidation, purchase of the assets, or otherwise, acquires all or a material part of its assets or equity. Any assignment by the Company of its rights or obligations hereunder to any affiliate of or successor to the Company shall not be a termination of employment for purposes of this Agreement. Except as provided in paragraph (b) below, on and after the date of any such assignment, the Executive shall have no recourse to the Company for any amounts alleged to be due under this Agreement on or after the date of such assignment.

(b) The Company will require any affiliate or successor to which this Agreement and the Company's rights and obligations hereunder are assigned expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such assignment had taken place. Failure of the Company to obtain such agreement in connection with any such assignment shall not excuse performance by any party. As used herein, and where the context requires, the term "Company" shall include any affiliate or successor to which this Agreement and the Company's rights and obligations hereunder are assigned.

(c) This Agreement and all rights of the Executive hereunder shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any amounts would be payable to the Executive hereunder if the Executive had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the

terms of this Agreement to the Executive's devisee, legatee, or other designee or, if there be no such designee, to the Executive's estate.

7.7 Tax Matters

The Company shall withhold from all payments hereunder all applicable taxes (federal, state or other) that it is required to withhold therefrom unless the Executive has otherwise paid (or made other arrangements satisfactory) to the Company the amount of such taxes.

7.8 Section 409A of the Code

This Agreement is intended to comply with the requirements of Section 409A of the Code (including the exceptions thereto), to the extent applicable, and the Company shall administer and interpret this Agreement in accordance with such requirements. Notwithstanding any other provision hereof, if any provision of this Agreement conflicts with the requirements of Section 409A of the Code, the requirements of Section 409A of the Code shall supersede any such provision.

In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on the Executive by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code.

7.9 Certain Terminations.

Unless the Executive expressly agrees otherwise, if the Company gives written notice of its intent to discontinue the daily extensions of the Term as provided for in Section 2.2 hereof within the two months preceding or the 18 months following a Change of Control, the giving of such notice shall be treated as a termination by the Company for other than Misconduct as of the date such notice is given.

7.10 Amendments and Waivers

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Executive and the Company. No waiver by either party hereto at any time of any breach by the other party hereto of, or in compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.11 Entire Agreement, Termination of Other Agreements

This Agreement is an integration of the parties' agreement and no agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party that are not set forth expressly in this Agreement.

7.12 Governing Law

THE VALIDITY, INTERPRETATION, CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS.

7.13 Counterparts

This Agreement may be executed in or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties have executed this Agreement on March 30, 2012.

**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**

By: /s/ Malon Wilkus  
Malon Wilkus, Chief Executive Officer

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**THE EXECUTIVE:**

/s/ Peter Federico

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## EXHIBIT A

### TARGET INCENTIVE PAYMENT AND PIP AWARDS

#### 1. Target Incentive Payments.

The Executive's Target Incentive Payments for each calendar year beginning for 2012 shall be based in part on the Company's performance on certain performance metrics ("Performance Metric") in relation to the Company's "Peer Group" (as defined below), and in part on subjective criteria chosen by the Board of Managers in its reasonable discretion (the "Board Criteria"). The Performance Metrics are "Company Price to Book Ratio," "Company Economic Return" and "Company Total Stock Return," each as defined below. In the event that the Company becomes investment manager for a Company Managed Fund that is not a Publicly Traded Company Managed Fund, the Board of Managers and the President will work in good faith to establish alternative Performance Metrics that will apply with respect to such non-Publicly Traded Company Managed Fund.

The Target Incentive Payment shall be paid based on the extent to which the specific performance goals are satisfied on a quarterly basis and on an annual basis. Each calendar quarter, the Executive will be eligible to earn an amount up to the Quarterly Target Incentive Payment Amount, and for the calendar year the Executive will be eligible to earn a Target Incentive Payment up to his Target Incentive Payment Amount less the aggregate Quarterly Target Incentive Payments that have been paid with regard to such calendar year.

The portion of any Target Incentive Payment to which the Executive will be entitled for any quarterly period will be determined by first calculating the score for each of the three Performance Metrics in the table below and the Board Criteria and multiplying it by the Weight Percentage and adding them together (the "Weighted Score"), then dividing the Weighted Score by 4, and multiplying that amount by 100 to arrive at the "Incentive Payment Percentage." The Company agrees to provide in writing to the Executive the applicable quarterly subjective evaluation and the overall quarterly "Incentive Payment Percentage" no later than the delivery of the applicable Target Incentive Payment.

The portion of the Target Incentive Payment Amount which the Executive will be entitled to earn for the full year (before deducting the Quarterly Target Incentive Payment Amounts that have been paid with regard to such year) will be determined based on averaging the "Adjusted Weighted Score" for each of the four quarters in the year, where the Adjusted Weighted Score for each quarter shall equal the Weighted Score for such quarter recalculated using the Company Total Stock Return calculated on a full year basis, and then dividing such average by 4 and multiplying the amount by 100 to arrive at the "Annual Incentive Payment Percentage."

Performance Metric	Weight %	Score
Company Price to Book	33-1/3%	<ul style="list-style-type: none"> <li>• &gt;0% of Peer Member Price to Book = 0</li> <li>• Linear interpolation between 0 and 4 depending on the percentage of Peer Group members that have a Peer Member Price to Book for the particular quarter or calendar year that is equal to or less than the Company Price to Book for such period.</li> <li>• &gt;=80% of Peer Member Price to Book= 4</li> </ul>
Company Economic Return	16-2/3%	<ul style="list-style-type: none"> <li>• &gt;0% of Peer Member Economic Return = 0</li> <li>• Linear interpolation between 0 and 4 depending on the percentage of Peer Group members that have a Peer Member Economic Return for the particular quarter or calendar year that is equal to or less than the Company Economic Return for such period.</li> <li>• &gt;=80% of Peer Member Economic Return = 4</li> </ul>
Company Total Stock Return	16-2/3%	<ul style="list-style-type: none"> <li>• &gt;0% of Peer Member Total Stock Return = 0</li> <li>• Linear interpolation between 0 and 4 depending on the percentage of Peer Group members that have a Peer Member Total Stock Return for the particular quarter or calendar year that is equal to or less than the Company Total Stock Return for such period.</li> <li>• &gt;=80% of Peer Member Total Stock Return = 4</li> </ul>
Board Criteria	33-1/3%	Determined by Board of Managers in its reasonable discretion.

Example: Assume the Executive is paid Base Salary for an entire calendar year at a rate of \$800,000, so that the Quarterly Target Incentive Payment Amount is \$150,000. Assume further that for the first and second calendar quarters, (i) the Company Price to Book is greater than the Peer Member Price to Book of 40% of the members of its Peer Group, (ii) the Company Economic Return is greater than the Peer Member Economic Return of 0% of the members of its Peer Group, and (iii) the Company Total Stock Return is greater than the Peer Member Total Stock return of 80% of the members of its Peer Group.

Assume further that for the third and fourth calendar quarters, (i) the Company Price to Book is greater than the Peer Member Price to Book of 20% of the members of its Peer Group, (ii) the Company Economic Return is greater than the Peer Member Economic Return of 60% of the members of its Peer Group, and (iii) the Company Total Stock Return is greater than the Peer Member Total Stock return of 40% of the members of its Peer Group.



Assume in addition that for the entire calendar year, the Company Total Stock Return is greater than the Peer Member Total Stock return of 80% of the members of its Peer Group.

Assume finally that for each calendar quarter and for the calendar year the Executive has completely satisfied the subjective criteria established by the Board of Managers in its reasonable discretion (and thus the score for all quarters was 4).

The Weighted Score for the first and second quarters would equal  $2\frac{2}{3}$  ( $(\frac{1}{3} * 2) + (\frac{1}{6} * 0) + (\frac{1}{6} * 4) + (\frac{1}{3} * 4)$ ), and the Incentive Payment Percentage for the first and second quarters would equal  $66\frac{2}{3}\%$  ( $(\frac{2\frac{2}{3}}{4} * 100)$ ). The Executive would be entitled to Target Incentive Payments for each of the first and second quarters of \$100,000 ( $\$150,000 * 66\frac{2}{3}\%$ ).

The Weighted Score for the third and fourth quarters would equal 2.5 ( $(\frac{1}{3} * 1) + (\frac{1}{6} * 3) + (\frac{1}{6} * 2) + (\frac{1}{3} * 4)$ ), and the Incentive Payment Percentage for the third and fourth quarters would equal 62.5% ( $(\frac{2.5}{4} * 100)$ ). The Executive would be entitled to Target Incentive Payments for each of the third and fourth quarters of \$93,750 ( $\$150,000 * 62.5\%$ ).

The Weighted Score for the calendar year would equal 2.75 or the arithmetic average of the four quarters (2-2/3, 2-2/3, 2-5/6, and 2-5/6) after replacing the Quarterly Total Stock Return with the Actual Annual Total Stock Return Figure. The 3<sup>rd</sup> and 4<sup>th</sup> quarter numbers in this example were recalculated for the purposes of the Annual Incentive Payment calculation to use the full year Total Stock Return of 100 % rather than the original 3<sup>rd</sup> and 4<sup>th</sup> quarter numbers of 50 % as follows:  $(\frac{1}{3} * 1) + (\frac{1}{6} * 3) + (\frac{1}{6} * 4) + (\frac{1}{3} * 4)$  Therefore, the Annual Incentive Payment Percentage would equal 68.75% ( $(\frac{2.75}{4} * 100)$ ). The Executive's Calendar Year Total Annual Incentive Payment Amount would equal \$825,000 ( $\$1,200,000 * 0.6875$ ). The Executive's actual cash Annual Incentive Payment would equal \$ 437,500 ( $\$825,000 - \$100,000 - \$100,000 - \$93,750 - \$93,750$ ).

Any Target Incentive Payment to which the Executive becomes entitled will be paid no later than the 75<sup>th</sup> day immediately following the last day of the period to which such Target Incentive Payment relates. Except as set forth in Article 4 of the Agreement, the Executive must be employed on the Target Incentive Payment date to be entitled to payment.

In the event that there shall be a Company Managed Fund that does not have publicly-traded equity securities, the Board of Managers will work with the President to make appropriate adjustments to this Section 1 to provide a basis for awarding Target Incentive Payments to the Executive attributable to such Company Managed Fund.

## 2. Definitions.

Capitalized terms used in this Exhibit A and not otherwise defined herein shall have the meanings ascribed to such terms in the Employment Agreement.

“Company Economic Return” for any period means the ratio of (a) the sum of (i) the sum of the positive or negative changes in net asset value of a share of the common stock of each Publicly Traded Company Managed Fund from the last day of the prior period to the last day of the relevant period, and (ii) the sum of any dividends declared with respect to a share of common stock of each Publicly Traded Company Managed Fund during the relevant period, over (b) the sum of the net asset values of a share of common stock of each Publicly Traded Company Managed Fund on the last day of the prior period.

“Company Price to Book” as of any date means the ratio of (a) the sum of Fair Market Values of a share of common stock of each Publicly Traded Company Managed Fund, over (b) the sum of the net asset values of all Publicly Traded Company Managed Funds as of the most recent quarter end as determined by the reasonable application of such reasonable method as may be chosen by the Board of Managers in good faith. When determined in connection with a payment based on performance in a calendar quarter, the Company Price to Book shall be calculated as of the last business day of such quarter, and when determined in connection with a payment or award based on performance in a calendar year, the Company Price to Book shall be calculated as of the last business day of such year.

“Company Total Stock Return” for any period means the ratio of (a) the sum of (i) the sum of the positive or negative changes in Fair Market Value of a share of the common stock of each Publicly Traded Company Managed Fund from the last day of the prior period to the last day of the relevant period, and (ii) the sum of any dividends declared with respect to a share of common stock of each Publicly Traded Company Managed Fund during the relevant period, over (b) the sum of the Fair Market Values of a share of common stock of each Publicly Traded Company Managed Fund on the last day of the prior period.

“Fair Market Value” as of any date means the value of a security determined as follows: (a) if shares of such security are listed on any established exchange or traded on The NASDAQ Global Select Market, the Fair Market Value of a share of such security shall be the closing sales price for such security (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the security) as of such date, as reported in *The Wall Street Journal* or such other source as the Board of Managers deems reliable; or (b) in the absence of such an exchange or market for such security, the Fair Market Value shall be determined by the reasonable application of such other reasonable method as may be chosen by the Board of Managers in good faith.

“Peer Group” means a group of peer companies determined by the Board of Managers for each calendar year in its reasonable discretion and communicated to the Executive in writing.

“Peer Member Economic Return” for any period means, for any entity that is a member of the Peer Group, the ratio of (a) the sum of (i) the sum of the positive or negative changes in net asset

value of a share of the common stock of such member of the Peer Group from the last day of the prior period to the last day of the relevant period, and (ii) the sum of any dividends declared with respect to a share of common stock of such member of the Peer Group during the relevant period, over (b) the sum of the net asset values of a share of common stock of such member of the Peer Group on the last day of the prior period.

“Peer Member Price to Book” as of any date means, for any entity that is a member of the Peer Group, the ratio of (a) the closing price for a share of common stock of such entity, over (b) the reported net asset value per share of common stock for such entity for the most recent quarter end. When determined in connection with a payment based on performance in a calendar quarter, Peer Member Price to Book shall be calculated as of the last business day of such quarter, and when determined in connection with a payment or award based on performance in a calendar year, Peer Member Price to Book shall be calculated as of the last business day of such year.

“Peer Member Total Stock Return” for any period means, for any entity that is a member of the Peer Group, the ratio of (a) the sum of (i) the positive or negative change in Fair Market Value of a share of the common stock of such entity from the last day of the prior period to the last day of the relevant period, and (ii) any dividends declared with respect to a share of common stock of such entity during the relevant period, over (b) the Fair Market Value of a share of the common stock of such entity on the last day of the prior period.

“Publicly Traded Company Managed Fund” means any Company Managed Fund the equity shares of which are listed on any established exchange or traded on The NASDAQ Global Select Market.

# Memorandum and Acceptance Agreement

**To:** Peter J. Federico

**From:** American Capital Mortgage Management, LLC

**Date:**

**Re:** Performance Incentive Plan - AGNC Award

We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC (the “Plan”) in the amount of \$\_\_\_\_\_, subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of five (5) equal installments (each, an “Installment”), each of which shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	Earlier of [Insert One-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Second Installment	Earlier of [Insert Two-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Third Installment	Earlier of [Insert Three-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fourth Installment	Earlier of [Insert Four-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fifth Installment	Earlier of [Insert Five-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service

For purposes of this Agreement, a “Qualifying Separation from Service” means your Separation from Service by the Company other than for “Misconduct” (as defined in your Employment Agreement with the Company dated as of March \_\_\_\_, 2012 (the “Employment Agreement”)) or by you with “Good Reason” (as defined in the Employment Agreement).

Notwithstanding the foregoing, your Award will immediately cease to vest in the event of, and no Installment payments shall be made after, a Separation from Service that is not a Qualifying Separation from Service; provided that all Installments not previously forfeited shall fully vest immediately upon your death or becoming Disabled, or upon the occurrence of a Change of Control, in accordance with Section 6.3(a) of the Plan.

In addition, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan’s recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Peter J. Federico

\_\_\_\_\_

# Memorandum and Acceptance Agreement

**To:** Peter J. Federico

**From:** American Capital Mortgage Management, LLC

**Date:**

**Re:** Performance Incentive Plan - MTGE Award

We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE (the “Plan”) in the amount of \$\_\_\_\_\_, subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of five (5) equal installments (each, an “Installment”), each of which shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	Earlier of [Insert One-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Second Installment	Earlier of [Insert Two-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Third Installment	Earlier of [Insert Three-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fourth Installment	Earlier of [Insert Four-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fifth Installment	Earlier of [Insert Five-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service

For purposes of this Agreement, a “Qualifying Separation from Service” means your Separation from Service by the Company other than for “Misconduct” (as defined in your Employment Agreement with the Company dated as of March \_\_\_\_, 2012 (the “Employment Agreement”)) or by you with “Good Reason” (as defined in the Employment Agreement).

Notwithstanding the foregoing, your Award will immediately cease to vest in the event of, and no Installment payments shall be made after, a Separation from Service that is not a Qualifying Separation from Service; provided that all Installments not previously forfeited shall fully vest immediately upon your death or becoming Disabled, or upon the occurrence of a Change of Control, in accordance with Section 6.3(a) of the Plan.

In addition, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan’s recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.



Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Peter J. Federico

\_\_\_\_\_

# Memorandum and Acceptance Agreement

**To:** Peter J. Federico

**From:** American Capital Mortgage Management, LLC

**Date:**

**Re:** Performance Incentive Plan - AGNC Award

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Your Award consists of two (2) installments (each, an “Installment”), the first Installment equal to twenty percent (20%) of the Total Amount and the second Installment equal to eighty percent (80%) of the Total Amount. Each Installment shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	[Insert one-year anniversary date of Termination Date]
Second Installment	[Insert eighteen (18) month anniversary date of Termination Date]

Notwithstanding the foregoing, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement between you and the Company dated March \_\_, 2012.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan's recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Peter J. Federico

\_\_\_\_\_

# Memorandum and Acceptance Agreement

**To:** Peter J. Federico

**From:** American Capital Mortgage Management, LLC

**Date:**

**Re:** Performance Incentive Plan - MTGE Award

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Your Award consists of two (2) installments (each, an “Installment”), the first Installment equal to twenty percent (20%) of the Total Amount and the second Installment equal to eighty percent (80%) of the Total Amount. Each Installment shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	[Insert one-year anniversary date of Termination Date]
Second Installment	[Insert eighteen (18) month anniversary date of Termination Date]

Notwithstanding the foregoing, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement between you and the Company dated March \_\_, 2012.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan's recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Peter J. Federico

\_\_\_\_\_

**EXHIBIT 4.5(d)**  
**RELEASE AGREEMENT**

THIS RELEASE AGREEMENT (the "Agreement"), is made as of the \_\_\_\_\_ day of \_\_\_\_\_, by and between AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC, a Delaware limited liability company with its principal place of business at 2 Bethesda Metro Center, 14<sup>th</sup> Floor, Bethesda, Maryland (the "Company"), and PETER J. FEDERICO, an individual (the "Executive").

**W I T N E S S E T H:**

WHEREAS, the parties hereto are parties to an Employment Agreement entered into as of March \_\_, 2012 (the "Employment Agreement"); and

WHEREAS, the execution and delivery of this Release Agreement as of the date hereof is a requirement of Section 4.5(d) thereof.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Mutual Release.

(a) The Executive, on his own behalf and on behalf of his heirs, representatives and assigns, hereby waives, releases, and forever and irrevocably discharges the Company and the "Company Managed Funds" (as defined in the Employment Agreement), and their agents, attorneys, officers, directors, employees, successors and assigns (collectively, the "Company Released Parties") from any and all obligations, debts, demands, claims and liabilities of every kind and nature, either in law or in equity, that the Executive may now have, may in the future have or may ever have had, against the Company Released Parties arising in any manner from or in any manner related, directly or indirectly, to the Executive's service or employment as a director, manager, officer and/or an employee of the Company including, without limitation, the circumstances relating to the termination thereof, except for such obligations as shall specifically survive the termination of the Executive's employment under the terms of the Employment Agreement.

(b) The Company, on its own behalf and on behalf of its successors and assigns, hereby waives, releases, and forever and irrevocably discharges the Executive, and his agents, attorneys, heirs, representatives and assigns (collectively, the "Executive Released Parties") from any and all obligations, debts, demands, claims and liabilities of every kind and nature, either in law or in equity, that the Company may now have, may in the future have or may ever have had against the Executive Released Parties arising in any manner from or in any manner related to, directly or indirectly, the Executive's service or employment as a director, officer and/or an employee of the Company including, without limitation, the circumstances relating to the termination thereof, except for such obligations as shall specifically survive the termination of the Executive's employment under the terms of the Employment Agreement.

2. Miscellaneous. This Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof and supersedes all prior negotiations, representations and agreements, either written or oral, between them except for the Surviving Agreements. There are no conditions, agreements, or representations between the parties except those expressed herein. This Agreement may be altered, modified, amended, or repealed only by a duly executed written instrument signed by the parties hereto. This Agreement shall be governed by the law of the State of Maryland, without giving effect to the conflicts of laws provisions thereof. Each party binds himself or itself and his or its heirs, successors, legal representatives and assigns in respect to all covenants and agreements contained herein. Except as specifically contemplated herein, nothing herein shall be construed as giving any right or benefit hereunder to anyone other than the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first hereinabove written.

**WITNESS:**

**THE EXECUTIVE:**

(Seal)

---

**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**  
A Delaware Limited Liability Company

By:

(Seal)

Name:

Title

---

**Schedule 1**

(b)  
**None.**



July 1, 2016

**PERSONAL AND CONFIDENTIAL**

Christopher Kuehl  
American Capital Mortgage Management, LLC  
Two Bethesda Metro Center, 14th Floor  
Bethesda, MD 20814

Dear Christopher:

In connection with the transactions contemplated by the Purchase and Sale Agreement, dated as of May 23, 2016, by and among American Capital Asset Management, LLC, American Capital Mortgage Management, LLC (the "Company"), American Capital, Ltd. ("ACAS") and American Capital Agency Corp. ("AGNC") (such agreement, the "Purchase Agreement"), you and the Company hereby agree to the following changes to the Employment Agreement, entered into as of March 30, 2012, by and between the Company and you (the "Employment Agreement").

1. Notwithstanding anything contained in your Employment Agreement to the contrary, as of the date hereof, your titles shall be Senior Vice President, Agency Portfolio Investments of AGNC, Senior Vice President, Agency Portfolio Investments of American Capital Mortgage Investment Corp. ("MTGE") and Senior Vice President of the Company, and you shall report to the Chief Executive Officer, President and Chief Investment Officer of AGNC.
2. Each reference to the "Board of Managers" in your Employment Agreement shall be deemed to be a reference to the "Board of Directors of American Capital Agency Corp. or its designee".
3. Each reference to "American Capital, Ltd." or "ACAS" in your Employment Agreement shall be deemed to be a reference to "American Capital Agency Corp."
4. With respect to any award that the Company is obligated to provide to you (whether by your Employment Agreement or otherwise) pursuant to the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC, the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE or any other similar plan (whether payable in shares of stock of ACAS, AGNC, MTGE or otherwise), the Company may (in the discretion of the Board of Directors of AGNC or its designee), in lieu thereof, provide (a) a substitute cash award, which shall be granted solely pursuant to the terms and conditions of a comparable cash incentive plan, or (b) a substitute equity award, which shall be granted solely pursuant to the terms and conditions of an equity incentive plan (but only if such a plan has received all required corporate approvals, including, if required, approval by the stockholders of AGNC). Any such substitute cash award or substitute equity award shall (i) have the same cash value as the corresponding replaced award, (ii) have the same or

shorter vesting schedule as the corresponding replaced award, and (iii) provide for the accrual and payment of dividends (or a cash award of like value) in a manner comparable to the accrual and payment of dividends under the corresponding replaced award.

5. You acknowledge and agree that the consummation of the transactions contemplated by the Purchase Agreement shall not constitute grounds for you to terminate your employment for "Good Reason."

Very truly yours,  
**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**

By:       /s/ Gary Kain        
Name: Gary Kain  
Title: Chief Executive Officer and  
President

Accepted and Agreed:

By: /s/ Christopher Kuehl  
Christopher Kuehl

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of March 30, 2012 (the "Effective Date"), by and between AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC (formerly known as American Capital Agency Management, LLC), a Delaware limited liability company (the "Company"), and CHRISTOPHER J. KUEHL (the "Executive").

### WITNESSETH:

WHEREAS, the Company is currently engaged through its subsidiaries in the business of, among other things, managing mortgage real estate investment trusts ("REITs"), which invest in (a) agency securities for which the principal and interest payments are guaranteed by U.S. Government agencies and U.S. Government-sponsored entities, (b) non-agency securities, and/or (c) other mortgage related investments; and

WHEREAS, the Executive is Senior Vice President of Mortgage Investments of the Company, and in such role, the Executive has received and will continue to receive specific trade secrets and confidential information, training and the benefit of established customer relationships relating to the businesses of the Company, which trade secrets and confidential information, training and access to established customer relationships are necessary to enable the Executive to perform the Executive's duties and to receive future compensation, and the Executive has played and will continue to play a significant role in the development and management of the businesses of the Company; and

WHEREAS, it is in the interests of the Company that the Executive's services continue to be available to the Company; and

WHEREAS, the Company and the Executive wish to enter into this Agreement to govern the terms and conditions of the Executive's employment with the Company on and after the Effective Date; and

WHEREAS, it is a condition to the Executive's continued employment by the Company that the Executive execute and deliver this Agreement, and in order to induce the Executive to continue his employment, the Company has agreed to provide him with the rights and benefits described more fully herein.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements contained herein, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following respective meanings:

“ACAS” shall mean American Capital, Ltd., a Delaware corporation.

“AGNC” shall mean American Capital Agency Corp., and its successors and assigns.

“Base Salary” shall have the meaning specified in Section 3.1.

“Board of Managers” shall mean the Board of Managers of the Company.

“Change of Control” shall mean the occurrence of any of the following events: (i) any person or group of persons (as defined in Section 13(d) and 14(d) of the Exchange Act) together with its affiliates, excluding employee benefit plans of the Company, becomes, directly or indirectly, the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of securities of the Company representing 50% or more of the combined voting power of the Company’s then outstanding securities; (ii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation or entity regardless of which entity is the survivor, other than a merger or consolidation that would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or being converted into voting securities of the surviving entity) at least 51% of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or (iii) the stockholders of the Company approve a plan of complete liquidation or winding-up of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company’s assets.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Company Managed Fund” shall mean any entity for which the Company or a subsidiary of the Company serves as investment manager or in a substantially similar capacity pursuant to a written agreement. For avoidance of doubt, as of the Effective Date, the Company Managed Funds are AGNC and MTGE.

“Confidential Information” shall have the meaning specified in Section 5.1(a).

“Disability” shall mean a physical or mental condition of the Executive that, in the good faith judgment of not less than a majority of the Board of Managers, prevents the Executive from being able to perform the services required under this Agreement and that results in the Executive becoming eligible for long-term disability benefits (if such benefits are provided by the Company). If any dispute arises as to whether a Disability has occurred, or whether a Disability has ceased and the Executive is able to resume duties, then such dispute shall be referred to a licensed physician appointed by the president of the Medical Society or similar organization in Washington, D.C., at the request of either party. The Executive shall submit to such examinations and provide information as such physician may request and the determination of such physician as to the Executive’s physical or mental condition shall be binding and

conclusive on the parties. The Company shall pay the cost of any such physician and examination.

“Dispute” shall have the meaning specified in Article VI.

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended.

“Expiration Date” shall have the meaning specified in Section 2.2.

“Good Reason” shall mean any of the following, which occur within the two months preceding or the 18 months following a Change of Control and without the Executive’s express written consent:

(i) a material diminution of the Executive’s authority, duties or responsibilities with the Company;

(ii) a material breach by the Company of any material provision of this Agreement; or

(iii) any material change in the geographic location at which the Executive must perform services (in this case, a material change means any location outside of the Washington, D.C. metropolitan area).

The Executive must provide written notice to the Company within 90 days of the initial existence of a condition set forth in clauses (i) - (iii) and the Company shall have 30 days after receipt of any such notice to remedy the condition. If the Company timely remedies such condition, such condition shall not constitute Good Reason. The Executive may not terminate the Executive’s employment hereunder for Good Reason more than six months after the initial existence of one (or more) of the conditions set forth in clauses (i) - (iii) which constitutes Good Reason.

“Misconduct” shall mean one or more of the following:

(i) the willful and continued failure by the Executive to perform substantially the Executive’s duties described in Section 2.3 (other than any such failure resulting from the Executive’s incapacity due to physical or mental illness) after two (2) written notices of such failure have been given to the Executive by the Company and the Executive has had a reasonable period (not to exceed 15 days from the second notice) to correct such failure;

(ii) the commission by the Executive of acts that are dishonest and demonstrably injurious to the Company or any Company Managed Fund (monetarily or otherwise) in any material respect; or

(iii) a material breach or violation by the Executive of (a) any material provision of this Agreement or (b) any material Company employment policy, including its Code of Ethics, that the Company may publish from time to time, which, if capable of being remedied, remains unremedied for more than 15 days after written notice thereof is given to the Executive by the Company.

For purposes of this definition, no act or failure to act on the Executive's part shall be considered "Misconduct" if done or omitted to be done by the Executive in good faith and in the reasonable belief that such act or failure to act was in the best interest of the Company or in furtherance of the Executive's duties and responsibilities described in Section 2.3.

"MTGE" shall mean American Capital Mortgage Investment Corp., and its successors and assigns.

"Notice of Termination" shall mean a notice purporting to terminate the Executive's employment in accordance with Section 4.1, 4.2 or 4.3. Such notice shall specify the effective date of such termination, which date shall not be less than 30 days (one (1) day in the case of a termination by the Company for Misconduct) or more than 60 days after the date such notice is given. If such termination is by the Company for Disability or Misconduct or by the Executive for Good Reason, such notice shall set forth in reasonable detail the reason for such termination and the facts and circumstances claimed to provide a basis therefor.

"Person" shall mean and include an individual, a partnership, a joint venture, a corporation, a trust and an unincorporated organization.

"Target Incentive Payment Plan" shall have the meaning specified in Section 3.2.

"Term" shall have the meaning specified in Section 2.2.

"Termination Date" shall mean the effective date of the Executive's termination of employment and shall be the date specified in a Notice of Termination delivered in accordance with this Agreement. If earlier, the date of the Executive's death shall be the Termination Date.

## 1.2 Interpretations

(a) In this Agreement, unless a clear contrary intention appears, (i) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision, (ii) reference to any Article or Section, means such Article or Section hereof, (iii) the words "including" (and with correlative meaning "include") means including, without limiting the generality of any description preceding such term, and (iv) where any provision of this Agreement refers to action to be taken by either party, or which such party is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such party.

(b) The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

(c) References herein to a termination of employment shall be interpreted to mean a "separation from service" within the meaning of Section 409A of the Code.

**ARTICLE 2**  
**EMPLOYMENT: TERM, POSITIONS AND DUTIES, ETC.**

**2.1 Employment**

The Company agrees to employ the Executive and the Executive agrees to accept employment with the Company, in each case on the terms and conditions set forth in this Agreement.

**2.2 Term of Employment**

Unless sooner terminated pursuant to Article IV, the term of the Executive's employment under this Agreement (the "Term") shall commence on the Effective Date and shall continue until the second anniversary of the Effective Date (the "Expiration Date"); provided, however, that on each date during the Term, the Expiration Date shall be reset to the date two years after the date thereof, except that either party may terminate this Agreement by giving written notice that such daily extensions of the Term shall be discontinued in which case the Expiration Date shall be the date two years after the delivery of such notice.

**2.3 Positions and Duties**

(a) While employed hereunder, the Executive shall serve as Senior Vice President of Mortgage Investments of the Company. As such, the Executive shall have the responsibilities and authorities designated to him by the President and Chief Investment Officer of the Company (the "President") or the Board of Managers.

(b) While employed hereunder, the Executive shall (i) report directly to the President or such other person designated by the Board of Managers, and (ii) observe and comply with all lawful policies, directions and instructions of the President or other person so designated that are consistent with the foregoing provisions of this Section 2.3.

(c) While employed hereunder, the Executive shall (i) devote substantially all of the Executive's business time, attention, skill and efforts to the faithful and efficient performance of the Executive's duties hereunder and (ii) not accept employment with any Person other than with the Company. Notwithstanding the foregoing, the Executive may engage in the following activities so long as they do not interfere in any material respect with the performance of the Executive's duties and responsibilities hereunder: (i) serve on corporate, civic, religious, educational or charitable boards or committees and (ii) manage the Executive's personal investments.

(d) While employed hereunder, the Executive shall not knowingly prejudice, in any material respect, the reputation of the Company or the Company Managed Funds in the fields of business in which they are engaged or with the investment community or the public at large.

**ARTICLE 3  
COMPENSATION AND BENEFITS**

**3.1 Base Salary**

(a) For services rendered by the Executive under this Agreement, the Company shall pay to the Executive an annual base salary (“Base Salary”) of \$900,000, evenly paid twice a month or on such other schedule as salaried employees of the Company are generally and regularly compensated. Subject to paragraph (b) below, the Board of Managers may adjust the amount of the Base Salary at any time as it may deem appropriate in its sole discretion.

(b) The amount of the Base Salary may not be decreased without the prior written approval of the Executive except that if the Board of Managers increases the Base Salary as provided in the last sentence of paragraph (a) above, the Board of Managers may thereafter decrease the Base Salary, provided that in no event shall any such decrease cause the Executive’s Base Salary to fall below \$900,000.

**3.2 Target Incentive Payment Plan**

During the Term, the Company shall maintain and the Executive shall be entitled to participate in an annual incentive payment plan described in greater detail in Exhibit A hereto (the “Target Incentive Payment Plan”), which will provide for the payment of lump sum cash incentive payments to be made on the schedule set forth in Exhibit A. Under the Target Incentive Payment Plan, the Executive will be eligible to earn target incentive payments (each, a “Target Incentive Payment”) each year totaling not less than 200% of the Base Salary paid to the Executive during the calendar year to which the Target Incentive Payment relates (the “Target Incentive Payment Amount”). With regard to each calendar quarter, the Executive will be eligible to earn a Target Incentive Payment of not less than 100% of the Base Salary paid to the Executive during such calendar quarter (the “Quarterly Target Incentive Payment Amount”).

**3.3 Performance Incentive Plan Awards**

(a) Upon execution of this Agreement, the Executive will be granted an award or awards under the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC (the “AGNC PIP”) valued at \$900,000 in the aggregate (the “AGNC PIP Awards”). The AGNC PIP Awards will generally vest annually and equally over five years from the date of grant, subject to the Executive’s continued employment with the Company; provided that such AGNC PIP Awards shall provide for continued vesting of unvested award tranches after the Executive’s termination of employment by the Company without Cause or by the Executive with Good Reason on the earlier of the originally scheduled vesting date for such award tranche or the eighteen (18) month anniversary of the Termination Date, subject to the Executive’s continued compliance with his obligations under Article V of this Agreement. Each vesting tranche of the AGNC PIP Awards shall be considered a separate payment for purposes of Section 409A of the Code. The AGNC PIP Awards will also be subject to the terms and conditions of the AGNC PIP and any associated award documentation. At the Board of Manager’s sole discretion, up to 25%



of the initial value of the AGNC PIP Awards shall be notionally invested in shares of common stock of ACAS.

(b) Upon execution of this Agreement, the Executive will be granted an award or awards under the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE (the “MTGE PIP”) valued at \$100,000 in the aggregate (the “MTGE PIP Awards”). The MTGE PIP Awards will generally vest annually and equally over five years from the date of grant, subject to the Executive’s continued employment with the Company; provided that such MTGE PIP Awards shall provide for continued vesting of unvested award tranches after the Executive’s termination of employment by the Company without Cause or by the Executive with Good Reason on the earlier of the originally scheduled vesting date for such award tranche or the eighteen (18) month anniversary of the Termination Date, subject to the Executive’s continued compliance with his obligations under Article V of this Agreement. Each vesting tranche of the MTGE PIP Awards shall be considered a separate payment for purposes of Section 409A of the Code. The MTGE PIP Awards will also be subject to the terms and conditions of the MTGE PIP and any associated award documentation. At the Board of Manager’s sole discretion, up to 25% of the initial value of the MTGE PIP Awards shall be notionally invested in shares of common stock of ACAS.

(c) The Executive will also be granted, subject to his continued employment on the date of grant, future awards under the AGNC PIP and MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds. The annual value of such awards would equal .03% of the prior year-end combined equity value of the Company Managed Funds up to \$10 billion, .02% of the prior year-end combined equity value of the Company Managed Funds between \$10 billion and \$15 billion, and .01% of the prior year-end combined equity value of the Company Managed Funds above \$15 billion. The amount granted under each of the AGNC PIP and MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds will be proportional to the year-end equity value of each such Company Managed Fund. Any such future awards will be subject to the terms and conditions of the AGNC PIP, MTGE PIP and any such similar plans and forms of agreement attached hereto as Exhibits 3.3(c)-AGNC and 3.3(c)-MTGE or similar forms of agreement under any such similar plans. At the Board of Manager’s sole discretion, up to 25% of the initial value of any such future awards shall be notionally invested in shares of common stock of ACAS.

### 3.4 Vacation

While employed hereunder, the Executive shall be entitled to vacation benefits in accordance with the vacation policy adopted by the Company from time to time.

### 3.5 Other Benefits

The Executive shall be entitled to receive all employee benefits, fringe benefits and other perquisites that may be offered by the Company to its employees as a group, including, without limitation, participation by the Executive and, where applicable, the Executive’s dependents, in the various employee benefit plans or programs (including, without limitation, pension plans, profit sharing plans, stock plans, health plans, life insurance, parking and disability insurance)

generally provided to employees of the Company, subject to meeting the eligibility requirements with respect to each of such benefit plans or programs. However, nothing in this Section 3.5 shall be deemed to prohibit the Company from making any changes in any of the plans, programs or benefits described herein, provided such changes apply to all similarly situated employees.

#### **ARTICLE 4 TERMINATION OF EMPLOYMENT**

##### **4.1 Termination by the Executive**

The Executive may, at any time prior to the Expiration Date, terminate the Executive's employment hereunder for any reason by delivering a Notice of Termination to the Board of Managers. Unless such termination is for Good Reason, upon such termination, the Executive shall be entitled only to those rights and payments payable under Section 4.4.

##### **4.2 Termination by the Company**

The Board of Managers may, at any time prior to the Expiration Date, terminate the Executive's employment hereunder for any reason by delivering a Notice of Termination to the Executive.

##### **4.3 Termination Due to Disability or Death**

The Board of Managers may terminate the Executive's employment by reason of Disability by delivering a Notice of Termination to the Executive, and Executive's employment will automatically terminate in the event of his death.

##### **4.4 Payment of Accrued Base Salary, Vacation Pay, etc.**

(a) Promptly upon the Executive's Termination Date in the event of the termination of the Executive's employment for any reason (including death and Disability), and in no event later than 60 days following the Executive's Termination Date, as applicable, the Company shall pay to the Executive (or the Executive's estate) a lump sum amount equal to the sum of all (i) unpaid Base Salary earned hereunder prior to the Termination Date and (ii) unused vacation time accrued by the Executive as of the Termination Date to the extent payable under the policy described in Section 3.4. All unpaid benefits earned or vested, as the case may be, by the Executive as of the Termination Date under any and all incentive or deferred compensation plans or programs of the Company shall be paid to the Executive in accordance with the terms of such plans or programs.

(b) A termination of the Executive's employment in accordance with this Agreement shall not alter or impair any of the Executive's accrued rights or benefits as of the Termination Date under any employee benefit plan or program maintained by the Company, in each case except as provided therein or in any written agreement entered into between the Company and the Executive pursuant thereto.

4.5 Additional Rights in Connection With Termination by the Executive with Good Reason or by the Company for Other than Misconduct or Disability.

In the event that the Executive terminates the Executive's employment with the Company pursuant to Section 4.1 for Good Reason or the Company terminates the Executive's employment with the Company pursuant to Section 4.2 for other than Misconduct or Disability, the Executive shall be entitled to the payments and benefits set forth in this Section 4.5.

(a) Severance Payments and Target Incentive Payment.

(i) The Company shall pay to the Executive an amount equal to eighteen (18) months of Base Salary in eighteen (18) substantially equal monthly installment payments beginning with the first calendar month that begins at least 60 days after the Termination Date. Each monthly installment shall be treated as a separate payment for purposes of Section 409A of the Code.

(ii) The Executive shall be entitled to a pro rata portion of the Executive's Target Incentive Payment, if any, for the calendar year in which the Termination Date occurs, payable at the normal payment time as if the Executive's employment had not terminated, but in no event later than March 15 of the calendar year following the calendar year in which the Termination Date occurs.

(iii) The Executive shall be entitled to receive an additional severance payment in an amount equal to the product of (A) 1.5, and (B) his Target Incentive Payment Amount. This additional severance payment shall be paid in a single lump sum between January 1 and March 15 of the year following the calendar year in which the Termination Date occurs.

(b) Accelerated Vesting of Prior PIP Awards. To the extent any awards under the AGNC PIP and/or the MTGE PIP granted prior to the date hereof are unvested, such awards shall immediately be vested as of the Termination Date, and distributions in respect of such awards shall be made as soon as practicable (and in all event within 60 days) after the Termination Date.

(c) Pro Rata PIP Awards. On or as soon as practicable (and in all event within 60 days) after the Termination Date, the Executive will be granted awards under the AGNC PIP, MTGE PIP and any similar plans maintained by the Company relating to any other Company Managed Funds equal in the aggregate to .03% of the prior year-end combined equity value of the Company Managed Funds up to \$10 billion, .02% of the prior year-end combined equity value of the Company Managed Funds between \$10 billion and \$15 billion, and .01% of the prior year-end combined equity value of the Company Managed Funds above \$15 billion, pro rated to reflect the number of days in the calendar year in which the Termination Date occurs during which the Executive was employed by the Company; provided that such pro rated amount shall be reduced by the value of any awards made under the AGNC PIP, MTGE PIP and any such similar plans calculated by reference to such prior year combined equity value of the Company Managed Funds (the "Termination PIP Awards"). The amount of Termination PIP Awards granted under each of the AGNC PIP, MTGE PIP and any such similar plans will (after taking into account any other awards calculated by reference to such prior year combined equity value)

be proportional to the year-end equity value of each such Company Managed Fund. Subject to the Executive's continued compliance with his obligations under Article V of this Agreement, twenty percent (20%) of the Termination PIP Awards will vest and be paid out on the one-year anniversary of the Termination Date, and the remainder will vest and be paid out on the eighteen (18) month anniversary of the Termination Date. Any Termination PIP Awards will be subject to the terms and conditions of the AGNC PIP and MTGE PIP and forms of agreement attached hereto as Exhibits 4.5(c)-AGNC and 4.5(c)-MTGE or similar forms of agreement under any similar plans maintained by the Company relating to any other Company Managed Funds. At the Board of Manager's sole discretion, up to 25% of the initial value of any such Termination PIP Awards shall be notionally invested in shares of common stock of ACAS.

(d) Release. Notwithstanding anything in this Section 4.5 to the contrary, as a condition to the receipt of any payment or benefit under this Section 4.5, the Executive must first execute and deliver to the Company, within 45 days following the Executive's Termination Date, an effective release in the form set out in Exhibit 4.5(d) hereto, that becomes irrevocable prior to the 60<sup>th</sup> day following the Executive's Termination Date, releasing the Company and Company Managed Funds, and their officers, board members, employees and agents from any and all claims and from any and all causes of action of any kind or character that the Executive may have arising out of the Executive's employment with the Company or the termination of such employment, but excluding any claims and causes of action that the Executive may have arising under or based upon this Agreement.

#### 4.6 Specified Employees

Notwithstanding anything to the contrary herein, if a payment or benefit under this Agreement is due to a "separation from service" for purposes of the rules under Treas. Reg. § 1.409A-3(i)(2) (payments to specified employees upon a separation from service) and the Executive is determined to be a "specified employee" (as determined under Treas. Reg. § 1.409A-1(i) and the related Company procedures), such payment shall, to the extent necessary to comply with the requirements of Section 409A of the Code, be made on the later of the date specified by the foregoing provisions of this Agreement or the date that is six months after the date of the Executive's separation from service. Any installment payments that are delayed pursuant to this Section 4.6 shall be accumulated and paid in a lump sum on the first day of the seventh month following the date of the Executive's Termination Date, and the remaining installment payments shall begin on such date in accordance with the schedule provided in this Agreement.

### **ARTICLE 5 CONFIDENTIAL INFORMATION, NON-COMPETITION AND INTELLECTUAL PROPERTY**

#### 5.1 Confidential Information

(a) The Executive recognizes that the services to be performed by the Executive hereunder are special, unique and extraordinary and that, by reason of such employment with the Company, the Executive has acquired and will continue to acquire Confidential Information

concerning the operation of the Company, the use or disclosure of which would cause the Company substantial loss and damages which could not be readily calculated and for which no remedy at law would be adequate. Accordingly, the Executive agrees that the Executive will not (directly or indirectly) at any time, whether during or after the Executive's employment hereunder, (i) knowingly use for an improper personal benefit any Confidential Information that the Executive may learn or has learned by reason of the Executive's employment with the Company or (ii) disclose any such Confidential Information to any Person except (A) in the performance of the Executive's obligations to the Company hereunder, (B) as required by applicable law or (C) with the prior written consent of the Board of Managers. As used herein, "Confidential Information" includes information with respect to the operation and performance of the Company, ACAS and the Company Managed Funds, their investments, portfolio companies, products, services, facilities, product methods, research and development, trade secrets and other intellectual property, systems, patents and patent applications, procedures, manuals, confidential reports, product price lists, customer lists, financial information, business plans, prospects or opportunities (including, as applicable, all of the foregoing information regarding the Company's, ACAS's and/or the Company Managed Funds' past, current and prospective portfolio companies); provided, however, that such term shall not include any information that (x) is or becomes generally known or available other than as a result of a disclosure by the Executive or (y) is or becomes known or available to the Executive on a nonconfidential basis from a source (other than the Company) that, to the Executive's knowledge, is not prohibited from disclosing such information to the Executive by a legal, contractual, fiduciary or other obligation to the Company.

(d) The Executive confirms that all Confidential Information is the exclusive property of the Company. All business records, papers and documents kept or made by the Executive while employed by the Company relating to the business of the Company shall be and remain the property of the Company at all times. Upon the request of the Company at any time, the Executive shall promptly deliver to the Company, and shall retain no copies of, any written materials, records and documents made by the Executive or coming into the Executive's possession while employed by the Company concerning the business or affairs of the Company other than personal materials, records and documents (including notes and correspondence) of the Executive not containing proprietary information relating to such business or affairs. Notwithstanding the foregoing, the Executive shall be permitted to retain copies of, or have access to, all such materials, records and documents relating to any disagreement, dispute or litigation (pending or threatened) between the Executive and the Company.

## 5.2 Non-Competition; Non-Solicitation.

(a) The Executive agrees that during the term of his employment with the Company and for a period of eighteen (18) months beginning on the date of termination of his employment for any reason (the "Non-Competition Period"), the Executive shall not, directly or indirectly, engage or participate in, prepare or set up, assist or have any interest in any person, partnership, corporation, firm, association, or other business organization, entity or enterprise, whether as an officer, employee, director, partner, stockholder, consultant or otherwise, that would be the same or competitive with any business activity engaged in by the Company or any Company Managed

Fund (a “Restricted Business”). Notwithstanding the foregoing, the Executive shall not be precluded from purchasing or owning, directly or beneficially, as a passive investment, two percent (2%) or less of any class of publicly traded securities if he does not actively participate in or control, directly or indirectly, any investment or other decisions with respect to such entity.

(b) During the Non-Competition Period, the Executive shall not, directly or indirectly:

(i) hire, offer to hire, divert, entice away, solicit or in any other manner persuade, or attempt to do any of the foregoing (each, a “Solicitation”), any person who is an officer, employee, consultant or board member of the Company or any Company Managed Fund to accept employment or an engagement with a third party or engage in a Solicitation with respect to any person or entity who is, or was, at any time within six months prior to the Solicitation, an officer, employee, agent or consultant of the Company or any Company Managed Fund to work for a third party engaged in a Restricted Business or to engage in any of the activities hereby prohibited with respect to the Executive under Sections 5.2(b)(ii) or (iii) below; or

(ii) solicit, divert, entice away or in any other manner persuade, or attempt to do any of the foregoing, on (A) any actual or prospective customer of or investor in the Company or any Company Managed Fund to become a customer of or investor in any third party engaged in a Restricted Business or (B) any customer or investor to cease doing business with the Company or any Company Managed Fund; or

(iii) make any statements or perform any acts intended to advance the interest of any person engaged in or proposing to engage in a Restricted Business in any way that is intended to injure the interests of the Company or any Company Managed Fund.

### 5.3 Intellectual Property.

The Executive agrees that during the term of the Executive’s employment with the Company, any and all inventions, discoveries, innovations, writings, domain names, improvements, trade secrets, designs, drawings, business processes, secret processes and know-how, whether or not patentable or a copyright or trademark, which the Executive may create, conceive, develop or make, either alone or in conjunction with others and related or in any way connected with the Company, its strategic plans, products, processes, apparatus or business now or hereafter carried on by the Company (collectively, “Inventions”), shall be fully and promptly disclosed to the Company and shall be the sole and exclusive property of the Company (as it shall determine) as against the Executive or any of the Executive’s assignees. Regardless of the status of the Executive’s employment by the Company, the Executive and the Executive’s heirs, assigns and representatives hereby assigns, or shall promptly assign, to the Company any and all right, title and interest in and to such Inventions made during the term of the Executive’s employment by the Company. Except as set forth on Schedule 1 to this Agreement, there are no Inventions with respect to the Company conceived of, developed or made by the Executive before the date of this Agreement which have not been disclosed to and assigned to the Company.

#### 5.4 Early Resolution Conference.

This Agreement is understood to be clear and is intended to be enforceable as written and is executed by both parties on that basis. However, should the Executive determine to later challenge any provision as unclear, unenforceable or inapplicable to an activity that the Executive intends to engage in, the Executive will first notify the Company in writing and meet with a representative of the Company and a neutral mediator (if the Company elects to retain one at its expense) to discuss resolution of any dispute between the parties with respect to such challenge. The Executive will provide this notification at least fourteen (14) days before Executive the engages in any activity on behalf of a Restricted Business or engages in other activity that could foreseeably fall within a questioned restriction. The failure to comply with this requirement shall waive the Executive's right to challenge the reasonable scope, clarity, applicability or enforceability of this Agreement and its restrictions at a later time. All rights of the parties will be preserved if the early resolution conference requirement is complied with even if no agreement is reached in the conference.

#### 5.5 Remedies

(a) The Executive acknowledges that a breach of any of the covenants contained in this Article V may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of such a breach, any payments or benefits remaining under the terms of this Agreement shall cease and the Company shall be entitled to obtain a temporary restraining order or a preliminary or permanent injunction from any court restraining the Executive from engaging in activities prohibited by this Article V or such other relief as may be required to specifically enforce any of the covenants contained in this Article V. The Executive agrees to and hereby does submit to *in personam* jurisdiction before each and every such court for that purpose.

(b) The period of time during which the restrictions set forth in Article V hereof will be in effect will be extended by the length of time during which the Executive is in breach of the terms of those provisions as determined by any court of competent jurisdiction on the Company's application for injunctive relief.

### **ARTICLE 6 DISPUTE RESOLUTION**

In the event a dispute (other than a dispute arising under Article V of this Agreement) shall arise between the parties as to whether the provisions of this Agreement have been complied with (a "Dispute"), the parties agree to resolve such Dispute in accordance with the following procedure:

(a) A meeting shall be held promptly between the parties, attended (in the case of the Company) by one or more individuals with decision-making authority regarding the Dispute, to attempt in good faith to negotiate a resolution of the Dispute.

(b) If, within 10 days after such meeting, the parties have not succeeded in negotiating a resolution of the Dispute, the parties agree to submit the Dispute to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association except that Disputes with regard to the existence of a Disability shall be resolved in accordance with the definition of the term "Disability" above.

(c) The parties will jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the American Arbitration Association if they have been unable to agree upon such appointment within 10 days following the 10-day period referred to in clause (b) above.

(d) Upon appointment of the mediator, the parties agree to participate in good faith in the mediation and negotiations relating thereto for 15 days.

(e) If the parties are not successful in resolving the Dispute through mediation within such 15-day period, the parties agree that the Dispute shall be settled by arbitration in accordance with the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association.

(f) The fees and expenses of the mediator/arbitrators shall be borne solely by the non-prevailing party or, in the event there is no clear prevailing party, as the mediator/arbitrators deem appropriate.

(g) Except as provided above, each party shall pay its own costs and expenses (including, without limitation, attorneys' fees) relating to any mediation/arbitration proceeding conducted under this Article VI.

(h) All mediation/arbitration conferences and hearings will be held in the greater Washington, D.C. area.

(i) In the event there is any disputed question of law involved in any arbitration proceeding, such as the proper legal interpretation of any provision of this Agreement, the arbitrators shall make separate and distinct findings of all facts material to the disputed question of law to be decided and, on the basis of the facts so found, express their conclusion of the question of law. The facts so found shall be conclusive and binding on the parties, but any legal conclusion reached by the arbitrators from such facts may be submitted by either party to a court of law for final determination by initiation of a civil action in the manner provided by law. Such action, to be valid, must be commenced within 20 days after receipt of the arbitrators' decision. If no such civil action is commenced within such 20-day period, the legal conclusion reached by the arbitrators shall be conclusive and binding on the parties. Any such civil action shall be submitted, heard and determined solely on the basis of the facts found by the arbitrators. Neither of the parties shall, or shall be entitled to, submit any additional or different facts for consideration by the court. In the event any civil action is commenced under this paragraph (i), the party who prevails or substantially prevails (as determined by the court) in such civil action shall be entitled to recover from the other party all costs, expenses and reasonable attorneys' fees incurred by the prevailing party in connection with such action and on appeal.



(j) Except as limited by paragraph (i) above, the parties agree that judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. In the event legal proceedings are commenced to enforce the rights awarded in an arbitration proceeding, the party who prevails or substantially prevails in such legal proceeding shall be entitled to recover from the other party all costs, expenses and reasonable attorneys' fees incurred by the prevailing party in connection with such legal proceeding and on appeal.

(k) Except as provided above, (i) no legal action may be brought by either party with respect to any Dispute and (ii) all Disputes shall be determined only in accordance with the procedures set forth above.

(l) For avoidance of doubt, no dispute, disagreement or claim relating to any provision of Article V shall be governed by or subject to any provision of this Article VI.

## **ARTICLE 7 MISCELLANEOUS**

### **7.1 No Mitigation or Offset**

The provisions of this Agreement are not intended to, nor shall they be construed to, require that the Executive mitigate the amount of any payment provided for in this Agreement by seeking or accepting other employment, nor shall the amount of any payment provided for in this Agreement be reduced by any compensation earned by the Executive as the result of employment by another employer or otherwise. Without limitation of the foregoing, the Company's obligations to make the payments to the Executive required under this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set off, counterclaim, recoupment, defense or other claim, right or action that the Company may have against the Executive, except that the Company may deduct from any amount required to be reimbursed to the Company by the Executive under Article VI the amount of any payment which the Company is then required to make to the Executive hereunder.

### **7.2 Indemnification**

No provision of the Company's Certificate of Incorporation or by-laws may be amended, modified or repealed if the result would be to materially adversely affect the Executive's right to indemnification from the Company.

### **7.3 Assignability**

The obligations of the Executive hereunder are personal and may not be assigned or delegated by the Executive or transferred in any manner whatsoever, nor are such obligations subject to involuntary alienation, assignment or transfer. The Company shall have the right to assign this Agreement and to delegate all rights, duties and obligations hereunder as provided in Section 7.6.

### **7.4 Notices**

All notices and all other communications provided for in the Agreement shall be in writing and addressed (a) if to the Company, at its principal office address or such other address as it may have designated by written notice to the Executive for purposes hereof, directed to the attention of the Board of Managers with a copy to the Secretary of the Company and (b) if to the Executive, at the Executive's residence address on the records of the Company or to such other address as the Executive may have designated to the Company in writing for purposes hereof. Each such notice or other communication shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, except that any notice of change of address shall be effective only upon receipt.

7.5 Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

7.6 Successors: Binding Agreement

(a) The Company and Executive agree that this Agreement and all of the Company's rights and obligations hereunder may be assigned or transferred by the Company to and may be assumed by and become binding upon and may inure to the benefit of any affiliate of or successor to the Company. The term "affiliate" shall mean (with respect to the Company) any other corporation or other business entity of which the Company is, directly or indirectly, the majority equityholder. The term "successor" shall mean (with respect to the Company) any other corporation or other business entity that, by merger, consolidation, purchase of the assets, or otherwise, acquires all or a material part of its assets or equity. Any assignment by the Company of its rights or obligations hereunder to any affiliate of or successor to the Company shall not be a termination of employment for purposes of this Agreement. Except as provided in paragraph (b) below, on and after the date of any such assignment, the Executive shall have no recourse to the Company for any amounts alleged to be due under this Agreement on or after the date of such assignment.

(b) The Company will require any affiliate or successor to which this Agreement and the Company's rights and obligations hereunder are assigned expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such assignment had taken place. Failure of the Company to obtain such agreement in connection with any such assignment shall not excuse performance by any party. As used herein, and where the context requires, the term "Company" shall include any affiliate or successor to which this Agreement and the Company's rights and obligations hereunder are assigned.

(c) This Agreement and all rights of the Executive hereunder shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If the Executive should die while any amounts would be payable to the Executive hereunder if the Executive had continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the

terms of this Agreement to the Executive's devisee, legatee, or other designee or, if there be no such designee, to the Executive's estate.

7.7 Tax Matters

The Company shall withhold from all payments hereunder all applicable taxes (federal, state or other) that it is required to withhold therefrom unless the Executive has otherwise paid (or made other arrangements satisfactory) to the Company the amount of such taxes.

7.8 Section 409A of the Code

This Agreement is intended to comply with the requirements of Section 409A of the Code (including the exceptions thereto), to the extent applicable, and the Company shall administer and interpret this Agreement in accordance with such requirements. Notwithstanding any other provision hereof, if any provision of this Agreement conflicts with the requirements of Section 409A of the Code, the requirements of Section 409A of the Code shall supersede any such provision.

In no event whatsoever shall the Company be liable for any additional tax, interest or penalties that may be imposed on the Executive by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code.

7.9 Certain Terminations.

Unless the Executive expressly agrees otherwise, if the Company gives written notice of its intent to discontinue the daily extensions of the Term as provided for in Section 2.2 hereof within the two months preceding or the 18 months following a Change of Control, the giving of such notice shall be treated as a termination by the Company for other than Misconduct as of the date such notice is given.

7.10 Amendments and Waivers

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Executive and the Company. No waiver by either party hereto at any time of any breach by the other party hereto of, or in compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

7.11 Entire Agreement, Termination of Other Agreements

This Agreement is an integration of the parties' agreement and no agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party that are not set forth expressly in this Agreement.

7.12 Governing Law

THE VALIDITY, INTERPRETATION, CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS.

7.13 Counterparts

This Agreement may be executed in or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same instrument.

\* \* \* \* \*

IN WITNESS WHEREOF, the parties have executed this Agreement on March 30, 2012.

**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**

By:           /s/ Malon Wilkus  
          Malon Wilkus, Chief Executive Officer

**THE EXECUTIVE:**

          /s/ Christopher Kuehl

## EXHIBIT A

### TARGET INCENTIVE PAYMENT AND PIP AWARDS

#### 1. Target Incentive Payments.

The Executive's Target Incentive Payments for each calendar year beginning for 2012 shall be based in part on the Company's performance on certain performance metrics ("Performance Metric") in relation to the Company's "Peer Group" (as defined below), and in part on subjective criteria chosen by the Board of Managers in its reasonable discretion (the "Board Criteria"). The Performance Metrics are "Company Price to Book Ratio," "Company Economic Return" and "Company Total Stock Return," each as defined below. In the event that the Company becomes investment manager for a Company Managed Fund that is not a Publicly Traded Company Managed Fund, the Board of Managers and the President will work in good faith to establish alternative Performance Metrics that will apply with respect to such non-Publicly Traded Company Managed Fund.

The Target Incentive Payment shall be paid based on the extent to which the specific performance goals are satisfied on a quarterly basis and on an annual basis. Each calendar quarter, the Executive will be eligible to earn an amount up to the Quarterly Target Incentive Payment Amount, and for the calendar year the Executive will be eligible to earn a Target Incentive Payment up to his Target Incentive Payment Amount less the aggregate Quarterly Target Incentive Payments that have been paid with regard to such calendar year.

The portion of any Target Incentive Payment to which the Executive will be entitled for any quarterly period will be determined by first calculating the score for each of the three Performance Metrics in the table below and the Board Criteria and multiplying it by the Weight Percentage and adding them together (the "Weighted Score"), then dividing the Weighted Score by 4, and multiplying that amount by 100 to arrive at the "Incentive Payment Percentage." The Company agrees to provide in writing to the Executive the applicable quarterly subjective evaluation and the overall quarterly "Incentive Payment Percentage" no later than the delivery of the applicable Target Incentive Payment.

The portion of the Target Incentive Payment Amount which the Executive will be entitled to earn for the full year (before deducting the Quarterly Target Incentive Payment Amounts that have been paid with regard to such year) will be determined based on averaging the "Adjusted Weighted Score" for each of the four quarters in the year, where the Adjusted Weighted Score for each quarter shall equal the Weighted Score for such quarter recalculated using the Company Total Stock Return calculated on a full year basis, and then dividing such average by 4 and multiplying the amount by 100 to arrive at the "Annual Incentive Payment Percentage."

Performance Metric	Weight %	Score
Company Price to Book	33-1/3%	<ul style="list-style-type: none"> <li>• &gt;0% of Peer Member Price to Book = 0</li> <li>• Linear interpolation between 0 and 4 depending on the percentage of Peer Group members that have a Peer Member Price to Book for the particular quarter or calendar year that is equal to or less than the Company Price to Book for such period.</li> <li>• &gt;=80% of Peer Member Price to Book= 4</li> </ul>
Company Economic Return	16-2/3%	<ul style="list-style-type: none"> <li>• &gt;0% of Peer Member Economic Return = 0</li> <li>• Linear interpolation between 0 and 4 depending on the percentage of Peer Group members that have a Peer Member Economic Return for the particular quarter or calendar year that is equal to or less than the Company Economic Return for such period.</li> <li>• &gt;=80% of Peer Member Economic Return = 4</li> </ul>
Company Total Stock Return	16-2/3%	<ul style="list-style-type: none"> <li>• &gt;0% of Peer Member Total Stock Return = 0</li> <li>• Linear interpolation between 0 and 4 depending on the percentage of Peer Group members that have a Peer Member Total Stock Return for the particular quarter or calendar year that is equal to or less than the Company Total Stock Return for such period.</li> <li>• &gt;=80% of Peer Member Total Stock Return = 4</li> </ul>
Board Criteria	33-1/3%	Determined by Board of Managers in its reasonable discretion.

Example: Assume the Executive is paid Base Salary for an entire calendar year at a rate of \$900,000, so that the Quarterly Target Incentive Payment Amount is \$225,000. Assume further that for the first and second calendar quarters, (i) the Company Price to Book is greater than the Peer Member Price to Book of 40% of the members of its Peer Group, (ii) the Company Economic Return is greater than the Peer Member Economic Return of 0% of the members of its Peer Group, and (iii) the Company Total Stock Return is greater than the Peer Member Total Stock return of 80% of the members of its Peer Group.

Assume further that for the third and fourth calendar quarters, (i) the Company Price to Book is greater than the Peer Member Price to Book of 20% of the members of its Peer Group, (ii) the Company Economic Return is greater than the Peer Member Economic Return of 60% of the members of its Peer Group, and (iii) the Company Total Stock Return is greater than the Peer Member Total Stock return of 40% of the members of its Peer Group.

Assume in addition that for the entire calendar year, the Company Total Stock Return is greater than the Peer Member Total Stock return of 80% of the members of its Peer Group.

Assume finally that for each calendar quarter and for the calendar year the Executive has completely satisfied the subjective criteria established by the Board of Managers in its reasonable discretion (and thus the score for all quarters was 4).

The Weighted Score for the first and second quarters would equal  $2\frac{2}{3}$  ( $(\frac{1}{3} * 2) + (\frac{1}{6} * 0) + (\frac{1}{6} * 4) + (\frac{1}{3} * 4)$ ), and the Incentive Payment Percentage for the first and second quarters would equal  $66\frac{2}{3}\%$  ( $(\frac{2\frac{2}{3}}{4} * 100)$ ). The Executive would be entitled to Target Incentive Payments for each of the first and second quarters of \$150,000 ( $\$225,000 * 66\frac{2}{3}\%$ ).

The Weighted Score for the third and fourth quarters would equal 2.5 ( $(\frac{1}{3} * 1) + (\frac{1}{6} * 3) + (\frac{1}{6} * 2) + (\frac{1}{3} * 4)$ ), and the Incentive Payment Percentage for the third and fourth quarters would equal 62.5% ( $2.5/4 * 100$ ). The Executive would be entitled to Target Incentive Payments for each of the third and fourth quarters of \$140,625 ( $\$225,000 * 62.5\%$ ).

The Weighted Score for the calendar year would equal 2.75 or the arithmetic average of the four quarters ( $2\frac{2}{3}$ ,  $2\frac{2}{3}$ ,  $2\frac{5}{6}$ , and  $2\frac{5}{6}$ ) after replacing the Quarterly Total Stock Return with the Actual Annual Total Stock Return Figure. The 3<sup>rd</sup> and 4<sup>th</sup> quarter numbers in this example were recalculated for the purposes of the Annual Incentive Payment calculation to use the full year Total Stock Return of 100 % rather than the original 3<sup>rd</sup> and 4<sup>th</sup> quarter numbers of 50 % as follows:  $(\frac{1}{3} * 1) + (\frac{1}{6} * 3) + (\frac{1}{6} * 4) + (\frac{1}{3} * 4)$  Therefore, the Annual Incentive Payment Percentage would equal 68.75% ( $2.75/4 * 100$ ). The Executive's Calendar Year Total Annual Incentive Payment Amount would equal \$1,237,500 ( $\$1,800,000 * 0.6875$ ). The Executive's actual cash Annual Incentive Payment would equal \$ 656,250 ( $\$1,237,500 - \$150,000 - \$150,000 - \$140,625 - \$140,625$ ).

Any Target Incentive Payment to which the Executive becomes entitled will be paid no later than the 75<sup>th</sup> day immediately following the last day of the period to which such Target Incentive Payment relates. Except as set forth in Article 4 of the Agreement, the Executive must be employed on the Target Incentive Payment date to be entitled to payment.

In the event that there shall be a Company Managed Fund that does not have publicly-traded equity securities, the Board of Managers will work with the President to make appropriate adjustments to this Section 1 to provide a basis for awarding Target Incentive Payments to the Executive attributable to such Company Managed Fund.

## 2. Definitions.

Capitalized terms used in this Exhibit A and not otherwise defined herein shall have the meanings ascribed to such terms in the Employment Agreement.

“Company Economic Return” for any period means the ratio of (a) the sum of (i) the sum of the positive or negative changes in net asset value of a share of the common stock of each Publicly Traded Company Managed Fund from the last day of the prior period to the last day of the relevant period, and (ii) the sum of any dividends declared with respect to a share of common stock of each Publicly Traded Company Managed Fund during the relevant period, over (b) the sum of the net asset values of a share of common stock of each Publicly Traded Company Managed Fund on the last day of the prior period.

“Company Price to Book” as of any date means the ratio of (a) the sum of Fair Market Values of a share of common stock of each Publicly Traded Company Managed Fund, over (b) the sum of the net asset values of all Publicly Traded Company Managed Funds as of the most recent quarter end as determined by the reasonable application of such reasonable method as may be chosen by the Board of Managers in good faith. When determined in connection with a payment based on performance in a calendar quarter, the Company Price to Book shall be calculated as of the last business day of such quarter, and when determined in connection with a payment or award based on performance in a calendar year, the Company Price to Book shall be calculated as of the last business day of such year.

“Company Total Stock Return” for any period means the ratio of (a) the sum of (i) the sum of the positive or negative changes in Fair Market Value of a share of the common stock of each Publicly Traded Company Managed Fund from the last day of the prior period to the last day of the relevant period, and (ii) the sum of any dividends declared with respect to a share of common stock of each Publicly Traded Company Managed Fund during the relevant period, over (b) the sum of the Fair Market Values of a share of common stock of each Publicly Traded Company Managed Fund on the last day of the prior period.

“Fair Market Value” as of any date means the value of a security determined as follows: (a) if shares of such security are listed on any established exchange or traded on The NASDAQ Global Select Market, the Fair Market Value of a share of such security shall be the closing sales price for such security (or the closing bid, if no sales were reported) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the security) as of such date, as reported in *The Wall Street Journal* or such other source as the Board of Managers deems reliable; or (b) in the absence of such an exchange or market for such security, the Fair Market Value shall be determined by the reasonable application of such other reasonable method as may be chosen by the Board of Managers in good faith.

“Peer Group” means a group of peer companies determined by the Board of Managers for each calendar year in its reasonable discretion and communicated to the Executive in writing.

“Peer Member Economic Return” for any period means, for any entity that is a member of the Peer Group, the ratio of (a) the sum of (i) the sum of the positive or negative changes in net asset



value of a share of the common stock of such member of the Peer Group from the last day of the prior period to the last day of the relevant period, and (ii) the sum of any dividends declared with respect to a share of common stock of such member of the Peer Group during the relevant period, over (b) the sum of the net asset values of a share of common stock of such member of the Peer Group on the last day of the prior period.

“Peer Member Price to Book” as of any date means, for any entity that is a member of the Peer Group, the ratio of (a) the closing price for a share of common stock of such entity, over (b) the reported net asset value per share of common stock for such entity for the most recent quarter end. When determined in connection with a payment based on performance in a calendar quarter, Peer Member Price to Book shall be calculated as of the last business day of such quarter, and when determined in connection with a payment or award based on performance in a calendar year, Peer Member Price to Book shall be calculated as of the last business day of such year.

“Peer Member Total Stock Return” for any period means, for any entity that is a member of the Peer Group, the ratio of (a) the sum of (i) the positive or negative change in Fair Market Value of a share of the common stock of such entity from the last day of the prior period to the last day of the relevant period, and (ii) any dividends declared with respect to a share of common stock of such entity during the relevant period, over (b) the Fair Market Value of a share of the common stock of such entity on the last day of the prior period.

“Publicly Traded Company Managed Fund” means any Company Managed Fund the equity shares of which are listed on any established exchange or traded on The NASDAQ Global Select Market.

# Memorandum and Acceptance Agreement

**To:** Christopher J. Kuehl

**From:** American Capital Mortgage Management, LLC

**Date:**

**Re:** Performance Incentive Plan - AGNC Award

We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC (the “Plan”) in the amount of \$\_\_\_\_\_, subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of five (5) equal installments (each, an “Installment”), each of which shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	Earlier of [Insert One-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Second Installment	Earlier of [Insert Two-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Third Installment	Earlier of [Insert Three-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fourth Installment	Earlier of [Insert Four-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fifth Installment	Earlier of [Insert Five-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service

For purposes of this Agreement, a “Qualifying Separation from Service” means your Separation from Service by the Company other than for “Misconduct” (as defined in your Employment Agreement with the Company dated as of March \_\_\_\_, 2012 (the “Employment Agreement”)) or by you with “Good Reason” (as defined in the Employment Agreement).

Notwithstanding the foregoing, your Award will immediately cease to vest in the event of, and no Installment payments shall be made after, a Separation from Service that is not a Qualifying Separation from Service; provided that all Installments not previously forfeited shall fully vest immediately upon your death or becoming Disabled, or upon the occurrence of a Change of Control, in accordance with Section 6.3(a) of the Plan.

In addition, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan’s recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Christopher J. Kuehl \_\_\_\_\_

# Memorandum and Acceptance Agreement

**To:** Christopher J. Kuehl

**From:** American Capital Mortgage Management, LLC

**Date:**

**Re:** Performance Incentive Plan - MTGE Award

We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE (the “Plan”) in the amount of \$\_\_\_\_\_, subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of five (5) equal installments (each, an “Installment”), each of which shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	Earlier of [Insert One-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Second Installment	Earlier of [Insert Two-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Third Installment	Earlier of [Insert Three-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fourth Installment	Earlier of [Insert Four-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service
Fifth Installment	Earlier of [Insert Five-Year Anniversary of the Date of Grant] and eighteen (18) month anniversary of a Qualifying Separation from Service

For purposes of this Agreement, a “Qualifying Separation from Service” means your Separation from Service by the Company other than for “Misconduct” (as defined in your Employment Agreement with the Company dated as of March \_\_\_\_, 2012 (the “Employment Agreement”)) or by you with “Good Reason” (as defined in the Employment Agreement).

Notwithstanding the foregoing, your Award will immediately cease to vest in the event of, and no Installment payments shall be made after, a Separation from Service that is not a Qualifying Separation from Service; provided that all Installments not previously forfeited shall fully vest immediately upon your death or becoming Disabled, or upon the occurrence of a Change of Control, in accordance with Section 6.3(a) of the Plan.

In addition, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan’s recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Christopher J. Kuehl \_\_\_\_\_

# Memorandum and Acceptance Agreement

**To:** Christopher J. Kuehl

**From:** American Capital Mortgage Management, LLC

**Date:**

**Re:** Performance Incentive Plan - AGNC Award

We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC (the “Plan”) in the amount of \$\_\_\_\_\_ (the “Total Amount”), subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of two (2) installments (each, an “Installment”), the first Installment equal to twenty percent (20%) of the Total Amount and the second Installment equal to eighty percent (80%) of the Total Amount. Each Installment shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	[Insert one-year anniversary date of Termination Date]
Second Installment	[Insert eighteen (18) month anniversary date of Termination Date]



Notwithstanding the foregoing, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement between you and the Company dated March \_\_, 2012.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan's recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Christopher J. Kuehl \_\_\_\_\_



# Memorandum and Acceptance Agreement

**To:** Christopher J. Kuehl

**From:** American Capital Mortgage Management, LLC

**Date:**

**Re:** Performance Incentive Plan - MTGE Award

We are pleased to inform you that on \_\_\_\_\_, \_\_\_\_\_, American Capital Mortgage Management, LLC (the “Company”) granted you an Incentive Award (the “Award”) under the terms of the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE (the “Plan”) in the amount of \$\_\_\_\_\_ (the “Total Amount”), subject to your acceptance of and agreement to the terms and conditions described in this Memorandum and Acceptance Agreement (this “Agreement”). As your Award vests, it will be paid to you. You may not elect to defer payment of this Award. Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

Your Award consists of two (2) installments (each, an “Installment”), the first Installment equal to twenty percent (20%) of the Total Amount and the second Installment equal to eighty percent (80%) of the Total Amount. Each Installment shall be considered a separate payment for purposes of Section 409A of the Code. Your Installments shall vest on the following vesting schedule (notwithstanding Section 6.3(b) of the Plan), subject to the conditions set forth below and in the Plan:

Installment	Vesting Date
First Installment	[Insert one-year anniversary date of Termination Date]
Second Installment	[Insert eighteen (18) month anniversary date of Termination Date]

Notwithstanding the foregoing, your Award will immediately cease to vest in the event that, and no Installment payments shall be made after, the Committee reasonably determines that you have breached any provision of Article V of the Employment Agreement between you and the Company dated March \_\_, 2012.

Notwithstanding any other provision of the Plan, each Installment will be paid as soon as practicable (and in no event more than thirty (30) days) after the date on which it vests.

You agree that you will cooperate with the Company to facilitate payment of Installments, which cooperation may include being required to maintain a brokerage account with the Plan's recordkeeper.

Please note that the Plan and this Agreement are intended to comply, and shall be interpreted in a manner consistent, with the requirements of Section 409A of the Code and the regulations and other regulatory guidance thereunder. In no event will the Company or any affiliate be liable for any tax, interest or penalties that may be imposed by Section 409A of the Code or any damages for failing to comply with Section 409A of the Code. In addition, please note that the Company shall comply with six-month delay provisions of Section 409A(a)(2)(B) of the Code to the extent applicable.

If you have any questions, please contact your Human Resources representative.

Otherwise, please sign below and return to \_\_\_\_\_ by \_\_\_\_\_ to accept and agree to the terms of the Award, including your agreement that the Award is fully subject to, and governed by, the terms of the Plan (as specifically modified herein), a copy of which the Company has previously provided to you.

Sincerely,

American Capital Mortgage Management, LLC

Accepted and agreed this \_\_\_\_\_ day of \_\_\_\_\_:

Christopher J. Kuehl

\_\_\_\_\_

**EXHIBIT 4.5(d)**  
**RELEASE AGREEMENT**

THIS RELEASE AGREEMENT (the "Agreement"), is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC, a Delaware limited liability company with its principal place of business at 2 Bethesda Metro Center, 14<sup>th</sup> Floor, Bethesda, Maryland (the "Company"), and CHRISTOPHER J. KUEHL, an individual (the "Executive").

**W I T N E S S E T H:**

WHEREAS, the parties hereto are parties to an Employment Agreement entered into as of March \_\_, 2012 (the "Employment Agreement"); and

WHEREAS, the execution and delivery of this Release Agreement as of the date hereof is a requirement of Section 4.5(d) thereof.

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Mutual Release.

(a) The Executive, on his own behalf and on behalf of his heirs, representatives and assigns, hereby waives, releases, and forever and irrevocably discharges the Company and the "Company Managed Funds" (as defined in the Employment Agreement), and their agents, attorneys, officers, directors, employees, successors and assigns (collectively, the "Company Released Parties") from any and all obligations, debts, demands, claims and liabilities of every kind and nature, either in law or in equity, that the Executive may now have, may in the future have or may ever have had, against the Company Released Parties arising in any manner from or in any manner related, directly or indirectly, to the Executive's service or employment as a director, manager, officer and/or an employee of the Company including, without limitation, the circumstances relating to the termination thereof, except for such obligations as shall specifically survive the termination of the Executive's employment under the terms of the Employment Agreement.

(b) The Company, on its own behalf and on behalf of its successors and assigns, hereby waives, releases, and forever and irrevocably discharges the Executive, and his agents, attorneys, heirs, representatives and assigns (collectively, the "Executive Released Parties") from any and all obligations, debts, demands, claims and liabilities of every kind and nature, either in law or in equity, that the Company may now have, may in the future have or may ever have had against the Executive Released Parties arising in any manner from or in any manner related to, directly or indirectly, the Executive's service or employment as a director, officer and/or an employee of the Company including, without limitation, the circumstances relating to the

termination thereof, except for such obligations as shall specifically survive the termination of the Executive's employment under the terms of the Employment Agreement.

2. Miscellaneous. This Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof and supersedes all prior negotiations, representations and agreements, either written or oral, between them except for the Surviving Agreements. There are no conditions, agreements, or representations between the parties except those expressed herein. This Agreement may be altered, modified, amended, or repealed only by a duly executed written instrument signed by the parties hereto. This Agreement shall be governed by the law of the State of Maryland, without giving effect to the conflicts of laws provisions thereof. Each party binds himself or itself and his or its heirs, successors, legal representatives and assigns in respect to all covenants and agreements contained herein. Except as specifically contemplated herein, nothing herein shall be construed as giving any right or benefit hereunder to anyone other than the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first hereinabove written.

**WITNESS:**

**THE EXECUTIVE:**

(Seal)

---

**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**  
A Delaware Limited Liability Company

By:

(Seal)

Name:  
Title

---

**Schedule 1**

(b)  
**None.**

July 1, 2016

**PERSONAL AND CONFIDENTIAL**

Bernice Bell  
American Capital Mortgage Management, LLC  
Two Bethesda Metro Center, 14th Floor  
Bethesda, MD 20814

Dear Bernie:

In connection with the transactions contemplated by the Purchase and Sale Agreement, dated as of May 23, 2016, by and among American Capital Asset Management, LLC, American Capital Mortgage Management, LLC (the "Company"), American Capital, Ltd. ("ACAS") and American Capital Agency Corp. ("AGNC"), you and the Company hereby agree to the following changes to the Employment Letter, dated as of December 1, 2015, by and between the Company and you (the "Employment Letter").

1. Notwithstanding anything contained in your Employment Letter to the contrary, as of the date hereof, your titles shall be Senior Vice President and Chief Accounting Officer of AGNC and Senior Vice President and Chief Financial Officer of American Capital AGNC Management, LLC, and you shall report to the Executive Vice President and Chief Financial Officer of AGNC.
2. Each reference to the "Board of Managers" in your Employment Letter shall be deemed to be a reference to the "Board of Directors of American Capital Agency Corp. or its designee".
3. Each reference to "American Capital, Ltd." in your Employment Letter shall be deemed to be a reference to "American Capital Agency Corp."
4. With respect to any award that the Company is obligated to provide to you (whether by your Employment Letter or otherwise) pursuant to the American Capital Mortgage Management, LLC Performance Incentive Plan – AGNC, the American Capital Mortgage Management, LLC Performance Incentive Plan – MTGE or any other similar plan (whether payable in shares of stock of ACAS, AGNC, American Capital Mortgage Investment Corp. or otherwise), the Company may (in the discretion of the Board of Directors of AGNC or its designee), in lieu thereof, provide (a) a substitute cash award, which shall be granted solely pursuant to the terms and conditions of a comparable cash incentive plan, or (b) a substitute equity award, which shall be granted solely pursuant to the terms and conditions of an equity incentive plan (but only if such a plan has received all required corporate approvals, including, if required, approval by the stockholders of AGNC). Any such substitute cash award or substitute equity award shall (i) have the same cash value as the corresponding replaced award, (ii) have the same or shorter vesting schedule as the corresponding replaced award, and (iii) provide for the accrual and payment of dividends



(or a cash award of like value) in a manner comparable to the accrual and payment of dividends under the corresponding replaced award.

Very truly yours,  
**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**

By:     /s/ Gary Kain      
Name: Gary Kain  
Title: Chief Executive Officer and  
President

Accepted and Agreed:

By:     /s/ Bernice Bell      
Bernice Bell

December 1, 2015

Via E-mail

Bernie Bell  
[ADDRESS REDACTED]

Dear Bernie:

I am pleased to notify you regarding some changes to the terms and conditions of your employment. Effective January 1, 2016, your titles will be Senior Vice President and Chief Financial Officer of American Capital Mortgage Management, LLC (the "Company" or "ACMM"), where you will continue reporting to John Erickson.

If you accept, then effective January 1, 2016, your total rewards package from the Company will initially include the following:

1. Semi-monthly salary of \$16,666.67, which is equivalent to an annual salary of \$400,000.
2. Continued participation in the Company's cash bonus program, which will allow you to earn an annual bonus of 50% of your annual base salary (the "Target Bonus"). Under our bonus program, participants may be eligible to receive quarterly payments representing 12.5% (1/8) of their Target Bonus paid in the first three quarters. Such quarterly payments are at the discretion of Company management and its Board of Managers. Any unpaid portion of the Target Bonus may be paid by March 15 of the following year. Bonuses will be based on both the overall performance of the Company and your individual performance on a variety of measures, and remain subject to the complete discretion of Company management and the Board of Managers. Notwithstanding the foregoing, assuming you are still employed by the Company at the time year-end bonuses for 2015 would normally be paid, you will be entitled to a cumulative annual bonus for 2015 (including prior quarterly payments) of no less than \$151,725.
3. Continued participation in either or both of the American Capital Agency Management, LLC Performance Incentive Plan – MTGE (the "MTGE PIP") or the American Capital Agency Management, LLC Performance Incentive Plan – AGNC (the "AGNC PIP," and with the MTGE PIP, the "PIPs").

Please note that all equity compensation awards are subject to the terms and conditions of the applicable plan document(s) and award agreements thereunder. Without limiting the foregoing, all awards are subject to approval by the Board of Managers of the Company.

4. In the event that you are involuntarily separated from service by the Company without cause (as defined below), you will be entitled to a severance payment equal to \$600,000, payable in a lump sum (the "Severance Payment") as soon as practicable (and in no event more than

sixty (60) days) following your separation date. Your receipt of the Severance Payment is contingent on your signing a general release of claims no more than sixty (60) days following your separation date in a form reasonably satisfactory to the Company. The form will be provided to you on or as soon as possible (and in all events within 15 days) after the date of your separation from service.

For purposes of this letter, "cause" shall be deemed to exist if you: (a) commit or engage in an act of fraud, embezzlement, sexual harassment, dishonesty or theft in connection with your duties for the Company; (b) are convicted of, or plead nolo contendere with respect to, an act of criminal misconduct, involving any financial crime or an act of moral turpitude; (c) engage in an act of gross negligence or willful failure to perform your duties or responsibilities; and/or (d) materially breach or violate any Company employment policy, including its Code of Ethics.

5. Participation in the Company's Benefits program, under which ACMM currently pays 100% of the cost of medical, dental, and vision benefits for full-time employees and their dependents.
6. Five (5) weeks of vacation, subject to the Company's Vacation Policy.

I hope this general description helps you understand some of the important terms and conditions of your continued employment at the Company. This letter is not to be construed as an agreement of future employment, and your employment will continue to be at will. Please note further that all amounts payable to you as an employee are subject to applicable withholding.

Note further that you will be subject to certain reporting requirements with regard to your personal investing activities and the Company's Code of Ethics and Conduct.

In addition, by signing below, you agree that during your employment by the Company and the one (1) year period beginning on your separation from service with the Company, you will not, whether for your own benefit or for the benefit of any other person, directly or indirectly, communicate with any employee of the Company or any of its affiliates, including American Capital, Ltd., in an effort to solicit, induce, or attempt to solicit or induce such employee to terminate employment with the Company or accept employment elsewhere.

We appreciate your contributions to the Company during your time as an employee, and look forward to continuing to work with you. If you have any questions please feel free to call us at any time.

Best regards,

/s/ Gary Kain

Gary Kain  
President and Chief Investment Officer  
American Capital Mortgage Management, LLC

Agreed and accepted this 1st day of December, 2015.

\_\_\_\_\_  
/s/ Bernie Bell

Bernie Bell

July 1, 2016

**PERSONAL AND CONFIDENTIAL**

Bernice Bell  
[ADDRESS REDACTED]

Dear Bernice:

In connection with the Purchase and Sale Agreement, dated as of May 23, 2016, by and among American Capital Asset Management, LLC, American Capital Mortgage Management, LLC (the "Company"), American Capital, Ltd. and American Capital Agency Corp., the Company has approved the payment of two retention bonuses to you. This letter agreement sets forth the terms and conditions of these two retention bonuses, including the requirements that you must meet in order to receive each of them.

1. Eligibility, Amount and Payment.

- (a) (i) If you remain continuously employed with the Company or any of its subsidiaries or affiliates from the date hereof until March 1, 2017 (the "First Vesting Date"), you will be entitled to receive a bonus in an amount equal to \$159,375.00 (the "First Retention Bonus"), which will be paid to you in a lump sum in cash within thirty (30) days following the First Vesting Date. Except as described in Section 1(b), if your employment terminates for any reason prior to the First Vesting Date, you will not be entitled to receive the First Retention Bonus.
- (ii) If you remain continuously employed with the Company or any of its subsidiaries or affiliates from the date hereof until March 1, 2018 (the "Second Vesting Date"), you will be entitled to receive a bonus in an amount equal to \$159,375.00 (the "Second Retention Bonus"), which will be paid to you in a lump sum in cash within thirty (30) days following the Second Vesting Date. Except as described in Section 1(b), if your employment terminates for any reason prior to the Second Vesting Date, you will not be entitled to receive the Second Retention Bonus.
- (b) Notwithstanding Sections 1(a)(i) and 1(a)(ii), if (i) your employment with the Company or any of its subsidiaries or affiliates terminates after the date hereof but prior to the Second Vesting Date as a result of a Termination Without Cause (as defined below) and (ii) prior to the sixtieth (60th) day following such Termination Without Cause you execute a general release of claims, in a form to be provided to you by the Company within fifteen (15) days following such Termination Without Cause (the "Release"), and any applicable revocation period expires during such sixty (60) day period without you revoking the Release, you will be entitled to

receive the First Retention Bonus (to the extent not already paid pursuant to Section 1(a)(i)) and the Second Retention Bonus, which will be paid to you in an aggregate lump sum cash payment on the first payroll date following the date on which the Release becomes irrevocable. If you do not execute the Release in accordance with the preceding sentence, or, if permitted, you revoke the Release after executing it, you will not be entitled to receive the First Retention Bonus or the Second Retention Bonus pursuant to this Section 1(b).

2. Termination Without Cause. For purposes of this letter agreement, "Termination Without Cause" means the termination by the Company or any of its subsidiaries or affiliates of your employment for any reason, other than as a result of your death or permanent disability (as determined by the Company) or (a) your commission of or engagement in an act of fraud, embezzlement, sexual harassment, dishonesty or theft in connection with your duties to the Company or any of its subsidiaries or affiliates, (b) your conviction of, or plea of *nolo contendere* with respect to, any act of criminal misconduct, involving any financial crime or act of moral turpitude, (c) your gross negligence or willful misconduct with respect to the Company or any of its subsidiaries or affiliates, (d) your insubordination or failure to follow the directions of the individual(s) to whom you report, which is not cured within ten (10) days after written notice thereof to you or (e) your breach of a material employment policy of the Company or any of its subsidiaries or affiliates, including the Code of Ethics.

3. Tax Withholding. The Company or any of its subsidiaries or affiliates may withhold from the First Retention Bonus or the Second Retention Bonus all federal, state, city or other taxes as the Company or such subsidiary or affiliate is required to withhold pursuant to any applicable law, regulation or ruling. Notwithstanding any other provision of this letter agreement, neither the Company nor any of its subsidiaries or affiliates shall be obligated to guarantee any particular tax result for you with respect to the First Retention Bonus or the Second Retention Bonus, and you shall be responsible for any taxes imposed on you with respect to any such payment.

4. Confidentiality. The provisions of this letter agreement are confidential. You shall not disclose, publicize or discuss any of the terms or conditions of the First Retention Bonus or the Second Retention Bonus with anyone except your spouse, if any, or your attorney, financial advisor and/or tax advisor to the extent necessary for such advisor to render appropriate legal, financial or tax advice. In the event you disclose any of the terms or conditions of the First Retention Bonus or the Second Retention Bonus to your spouse, attorney, financial advisor and/or tax advisor, it shall be your duty to advise such persons of the confidential nature of the First Retention Bonus or the Second Retention Bonus and to direct them not to disclose, publicize or discuss any of the terms or conditions of the First Retention Bonus or the Second Retention Bonus with any other person.

5. Complete Agreement. This letter agreement embodies the complete agreement and understanding between the parties with respect to the subject matter hereof and effective as of its date supersedes and preempts any prior understandings, agreements or representations by

or between the parties, written or oral, which may have related to the subject matter hereof in any way.

Please be aware that this letter agreement does not constitute an offer or guarantee of ongoing employment with the Company or any of its subsidiaries or affiliates for any period of time, and you will remain an at-will employee of the Company. Please indicate your agreement to the terms set forth herein by executing this letter agreement in the space provided below.

We thank you for your contributions and look forward to our future endeavors together.

Very truly yours,

**AMERICAN CAPITAL MORTGAGE MANAGEMENT, LLC**

By: /s/Gary Kain

Name: Gary Kain

Title: Chief Executive Officer, President & Chief Investment Officer

Accepted and Agreed:

By: /s/ Bernice Bell

**Bernice Bell**