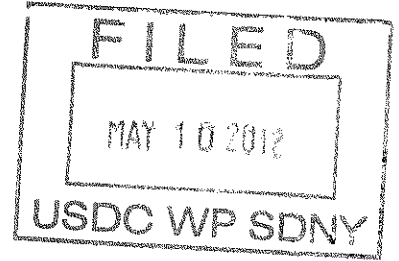


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**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK**

12 CV 3750

THOSE CERTAIN UNDERWRITERS AT  
 LLOYD'S, LONDON, SUBSCRIBING TO  
 CERTIFICATE NO. MB10854,

Plaintiff

-against-

ALLIED HOME MORTGAGE CAPITAL  
 CORPORATION, ALLIED HOME  
 MORTGAGE CORPORATION, JIM C.  
 HODGE and JEANNE L. STELL,

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT FOR  
 DECLARATORY  
 JUDGMENT**

Plaintiffs, THOSE CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING TO CERTIFICATE NO. MB10854 ("Underwriters"), by and through their attorneys, Littleton Joyce Ughetta Park & Kelly LLP and Karbal, Cohen, Economou, Silk & Dunne, LLC, and, pursuant to 28 U.S.C. §§ 2201 and 2202, for their Complaint for Declaratory Judgment against Defendants, ALLIED HOME MORTGAGE CAPITAL CORPORATION ("Allied Capital"), ALLIED HOME MORTGAGE CORPORATION ("Allied Corp.") (Allied Capital and Allied Corp. may be referred to herein as "Allied"), JIM C. HODGE ("Hodge") and JEANNE L. STELL ("Stell") (collectively "Defendants"), state as follows:

## NATURE OF THE CASE AND BACKGROUND FACTS

1. In this action, Underwriters seek a declaration from this Court that they owe no obligation to defend or indemnify Defendants under a Mortgage Bankers and Mortgage Brokers Professional Liability Insurance Policy No. MB10854, incepting December 31, 2010 and expiring December 31, 2011 (“the Policy”) issued to Allied Capital with respect to a lawsuit captioned as *United States of America ex rel. Peter Belli v. Americus Mortgage Corporation f/k/a Allied Home Mortgage Corporation and United States of America v. Allquest Allied Home Mortgage Corporation f/k/a Allied Home Mortgage Corporation, Americus Mortgage Corporation f/k/a Allied Home Mortgage Capital Corporation, Jim C. Hodge and Jeanne L. Stell*, No. 11 Civ. 05443 (VM), initially filed November 1, 2011 and pending in the United States District Court for the Southern District of New York (“the Underlying Litigation”).

2. The Underlying Litigation, which is a civil fraud action, is brought by the United States of America (“the United States” or “Underlying Plaintiff”) against the Defendants for alleged fraud on the United States Department of Housing and Urban Development (“HUD”) with respect to Allied’s mortgage lending business.

3. Underwriters seek a declaration that the Policy does not afford a duty to defend or indemnify the Defendants for the Underlying Litigation pursuant to the terms, definitions, conditions and exclusions contained in the Policy, including, but not limited to, the following defenses to coverage:

- a. The Underlying Litigation does not allege that the Defendants committed a “wrongful act” (*i.e.*, negligent act) under the Policy;

- b. The Underlying Litigation seeks damages in the form of civil fines and penalties (including treble damages) and injunctive relief, which does not constitute “damages” or “loss” under the Policy;
- c. The Underlying Litigation does not allege damages because of the performance of the Defendants’ “professional services,” as that term is defined in the Policy; and
- d. The Underlying Litigation alleges that the Defendants engaged in deceptive trade practices, which is excluded from coverage under the Policy.

4. Underwriters also seek a declaration that they may cease defending Defendants and that Defendants reimburse Underwriters for all defense fees and costs paid for the defense of uncovered claims.

#### **PARTIES**

5. **Plaintiffs, Underwriters, are Those Certain Underwriters at Lloyd’s, London subscribing, severally each for itself, and not jointly for one another, to the Policy. Each of the Underwriters is incorporated in England and Wales with their principal place of business in London, England. The participating Syndicates are Syndicate Nos. 4444, 1084, 1400, and 1183.**

- **Syndicate 4444 has the following members: Canopius Capital Two Limited, Canopius Capital Four Limited, Canopius Capital Seven Limited, Scor and Walsham Brothers.**
- **Syndicate 1084 has the following members: Chaucer Corporate Capital No. 2 Limited and Labuan Re Underwriting Limited.**

- **Syndicate 1400 has two members: Alterra Corporate Capital 2 Limited f/k/a Max Corporate Capital 2 Limited and Alterra Corporate Capital 3 Limited f/k/a Max Corporate Capital 3 Ltd. f/k/a Imagine Corporate Capital 3 Ltd.**
- **Syndicate 1183 has one member: Talbot 2002 Underwriting Capital Ltd.**

**With the exception of Labuan Re Underwriting Limited,<sup>1</sup> all members are organized under the laws of England and Wales with principal place of business in the United Kingdom.**

6. Upon information and belief, Defendant Allied Capital is a Texas corporation with its principal place of business located in Houston, Texas.

7. Upon information and belief, Defendant Allied Corp. is a Texas corporation with its principal place of business located in Houston, Texas.

8. Upon information and belief, at all times relevant, Defendant Hodge was the President and Chief Executive Officer of Allied Capital and Allied Corp. On information and belief, Hodge is a resident of and domiciled in Texas.

9. Upon information and belief, at all times relevant, Defendant Stell was the Executive Vice President and Director of Compliance for Allied Capital and Allied Corp. On information and belief, Stell is a resident of and domiciled in Texas.

#### **JURISDICTION AND VENUE**

10. Jurisdiction is proper in this Court, pursuant to 28 U.S.C. § 1332(a), because there is complete diversity between Plaintiffs and Defendants and the amount in controversy exceeds

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<sup>1</sup> Labuan Re Underwriting Limited is organized under the laws of England and Wales with its principal place of business in Malaysia.

\$75,000 exclusive of interest. Specifically, the Policy states aggregate limit of liability under Coverage A in the amount of \$3 million. Further, the damages sought by the United States against the Defendants likely to far exceed the limits of the Policy.

11. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(a)(1) and (c), because the events leading up to the filing of the instant coverage action occurred in this District. Specifically, the Underlying Litigation against the Defendants is pending in this District.

### **THE UNDERLYING LITIGATION**

12. On or about November 1, 2011, the United States filed its Complaint-In-Intervention against the Defendants.

13. On February 21, 2012, the United States filed its Amended Complaint-In-Intervention (“the Amended Complaint”) against Defendants. (A true and accurate copy of the Amended Complaint is attached hereto at Exhibit A.)

14. The Amended Complaint seeks to recover treble damages and civil penalties under the False Claims Act, as amended, 31 U.S.C. §§ 3729 *et seq.*, and civil penalties under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”), 12 U.S.C. §1833a

15. The Amended Complaint alleges fraud against the Defendants on behalf of HUD in connection with Allied’s residential mortgage lending business.

16. The Amended Complaint alleges that Allied has “profited for years as one of the nation’s largest FHA lenders by engaging in reckless mortgage lending, flouting the requirements of the FHA mortgage insurance program, and repeatedly lying about its compliance.”

17. The Amended Complaint alleges that Allied Corp. is the successor entity to, and the mere continuation of, Allied Capital.

18. The Amended Complaint alleges that in late 2010 and early 2011, Allied Capital terminated nearly all of its branch offices and reopened them as branches of Allied Corp.

19. The Amended Complaint alleges that Allied has “originated loans out of hundreds of branches it never disclosed to HUD, submitted knowingly false statements to HUD concerning its branch operations and accumulating sanctions, and lied to conceal its dysfunctional operations from HUD.”

20. The Amended Complaint alleges: “By virtue of the acts described above, and *for the purpose of fraudulently obtaining HUD mortgage insurance . . .* Allied Capital and Allied Corporation *knowingly* made, used, or caused to be made or used, false and fraudulent records, statements, or certifications and submitted such false and fraudulent records, statements, and certifications to HUD.” (Emphasis added.)

21. The Amended Complaint likewise alleges that Defendants Hodge “*knowingly* caused to be made or used, false records or statements material to a false or fraudulent claim for payment or approval by the United States.” (Emphasis added.)

22. The Amended Complaint alleges that the Defendants Allied Capital, Allied Home and Stell “*knowingly* made, used, or caused to be made or used, false certifications and submitted such false certifications to HUD . . . .” (Emphasis added.)

23. The Amended Complaint alleges that Defendant Stell “made and caused to be made statements to HUD *with the intent to defraud or deceive* HUD into approving branches for the origination of FHA loans” and “*knowingly made and caused to be made false statements* for the purpose of influencing the FHA . . . .” (Emphasis added.)

24. The Amended Complaint alleges that the Defendants' intentional conduct "has resulted in tens of thousands of defaulted loans, thousands of American homeowners facing eviction, and hundreds of millions of dollars in losses to the United States."

25. The Amended Complaint alleges that "[a] fundamental rule of the HUD insurance program is that a lender must be approved by HUD to originate, purchase, hold, or sell HUD/FHA-insured mortgages. For a loan correspondent such as Allied Capital, HUD requires not only that the lender be approved generally but also that the lender obtain HUD approval for each branch office from which the lender intends to originate HUD-insured loans."

26. The Amended Complaint alleges that HUD requires lenders to enter a specific HUD ID code for the originating branch for every loan file submitted to HUD.

27. The Amended Complaint alleges that "Allied Capital originated thousands of FHA loans out of branches that were not HUD approved."

28. The Amended Complaint alleges that "Allied Capital, and later Allied Corporation, were equally deceptive about their practices at approved branches. Each time Allied sought approval for one of its branch offices, it certified that it complied with HUD requirements and that it 'paid the operating costs of the branch office.' These certifications were *knowingly false*." (Emphasis added.)

29. The Amended Complaint alleges that in 2008, "HUD conducted a second audit of five branch offices to determine whether Allied Capital was engaging in prohibited branch operations. HUD issued its audit report as to these branches on February 10, 2009, finding that Allied violated HUD guidelines on branch operations and recommending action by the Mortgagee Review Board."

30. The Amended Complaint alleges that Allied failed to implement a quality control program as required by HUD.

31. The Amended Complaint alleges that Allied, under the direction of Defendant Hodge, prepared fraudulent quality control reports, which were submitted to HUD and other third parties.

32. The Amended Complaint alleges that Allied Capital “concealed prior sanctions and convictions that could have alerted HUD to the risk that the company posed to its insurance fund.”

33. The Amended Complaint alleges, for example, that in June 2004, Allied Capital entered into a consent agreement with the Rhode Island Department of Business Regulation “acknowledging that an Allied Capital branch manager was using his Rhode Island license to operate an unlicensed branch across state lines in Milford, Massachusetts.”

34. Defendants have requested that Underwriters provide defense and indemnity with respect to the Underlying Litigation under the Policy.

35. Underwriters have agreed to fund a defense to Defendants pursuant to a full reservation of all of Underwriters’ rights, including the right to seek a declaration to deny or limit coverage.

36. Accordingly, this case presents a controversy to be decided by this Court.

### **THE POLICY**

37. The Policy was issued effective December 31, 2010, at 12:01 AM, to December 31, 2011, at 12:01 AM. The Policy has a retroactive date of August 12, 1999, for the first \$2 million of limit, and December 31, 2006, for the next \$1 million of limit. (A true and accurate copy of the Policy is attached hereto at Exhibit B.)

38. The Policy is subject to the applicable limits and sublimits of liability as set forth in the Declarations.

39. The Policy includes the following insuring agreement:

**1. INSURING AGREEMENTS**

**COVERAGE A: PROFESSIONAL SERVICES LIABILITY  
COVERAGE**

We shall pay amounts, in excess of the applicable Retention amount stated in Item 4(a) or Item 4(b) of the Declarations, **you** are legally obligated to pay as **damages** and **claim expenses** arising from any **claim(s)**, except for any **mortgagee's errors and omissions claim(s)** involving any **recourse event**, first made against **you** and reported to **us** in writing during the **policy period** or any applicable **extended reporting period** and reported to us in writing as required by Section 10., for **your wrongful act(s)** in rendering or failing to render **professional services**. Such **wrongful act(s)** must occur on or after the **retroactive date** and prior to the end of the **policy period**.

**COVERAGE B: MORTGAGEE'S ERRORS AND OMISSIONS  
CLAIM COVERAGE WITH DIRECT LOSS PAYEE PROVISIONS**

1. We shall pay amounts, in excess of the Retention amount stated in Item 4(c) of the Declarations, for **your damages** with respect to **your mortgage interest claim** discovered by you during the **policy period** or any applicable **extended reporting period**, and reported to us in writing as required by Section 10.

**Mortgagee interest claim** means **your damages** with respect to your **mortgagee interest** in **real property**, and resulting from **your mortgage interest act**, committed, omitted or attempted on or after the **mortgagee's errors and omissions retroactive date**, in failing to obtain or maintain:

- (i) Fire and Extended Coverage Insurance;
- (ii) Homeowner's Insurance; or
- (iii) Flood insurance covering **real property** located in special flood hazard areas . . . .

2. We shall pay amounts in excess of the Retention amount stated in Item 4 (c) of the Declarations, you are legally obligated to pay as **damages and claim expenses** arising from any **mortgagee's errors and omissions claim(s)**, first made against you during the **policy period** or any applicable **extended reporting period** and reported to us in writing as required by Section 10., for **your wrongful act(s)** in rendering or failing to render **professional services**. Such **wrongful act(s)** must occur on or after the **mortgagee's errors and omissions retroactive date** and prior to the end of the **policy period**.

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## 2. DEFENSE OF INSURED FOR COVERAGE A AND COVERAGE B

*Our Duty To Defend Insureds:* We have the right and duty to defend a **claim**, except a **disciplinary proceeding claim**, brought against any **insured** for covered **wrongful acts**, even if the **claim** is groundless, false or fraudulent.

*Claim Expenses:* You shall not incur **claim expenses** in the defense of a **claim** for covered **wrongful acts**, except a **disciplinary proceeding claim**, without our prior written consent. Any **claim expenses** incurred without our prior written consent shall not reduce the applicable Retention amount stated in Item 4 of the Declarations, or the applicable **policy limits of liability, single claim limit of liability** or **sublimits of liability** stated in Item 3(a) and 3(b) of the Declarations.

*Our Right To Investigate and Settle Claims:* We have the right to investigate any **mortgagee interest claim**, and any **claim** against any **insured**, and, with your consent, settle any **claim**, except a **disciplinary proceeding claim**, against you.

*Your Right To Settle:* You may settle any **claim** to which this insurance applies, provided that you do so (i) on behalf of all **insureds**, and (ii) without incurring **loss** in excess of all applicable Retentions.

*When Our Duty To Defend Ends:* Our duty to defend ends upon the exhaustion of the applicable **policy limit of liability, single claim limit of liability** (if elected) or **sublimit of liability** by payment of **loss**, including **claim expenses**. If you refuse to consent to any settlement recommended by us which the claimant will accept, our liability shall not exceed: (1) the amount for which we could have settled such **claim** had you consented, plus **claim expenses** incurred prior to the time we made such recommendation ("**Settlement Opportunity Amount**") plus (2) 50% of any covered **loss** in excess of the **Settlement Opportunity Amount**. We shall not indemnify the **insured** for the remaining 50% of any covered **loss** in excess of the **Settlement Opportunity Amount**.

40. The Policy includes the following definitions:

### 3. DEFINITIONS

(c) **Claim** means:

- (1) a written demand for money or services;
- (2) a **suit**;
- (3) a **mortgagee errors and omissions claim**;
- (4) a **mortgage fee claim**;
- (5) a **Fair Housing Act or Equal Credit Opportunity Act discrimination claim**; or
- (6) a **disciplinary proceeding claim**,

received by an **insured**. Claim, except for a **mortgagee errors and omissions claim**, shall not mean a **recourse event**.

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(g) **Damages** means any judgments, awards and settlements, provided that any settlement is with our consent.

**Damages** also means your loss with respect to **your mortgagee interest in real property**.

**Damages** also means with respect to a covered judgment: ....

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(i) **Disciplinary proceeding claim** means any administrative action or other proceeding commenced before, or brought by on or behalf of, a regulatory or disciplinary official, board, agency or equivalent State entity, including any investigation initiated by such disciplinary official, board, agency or equivalent State entity based upon or arising out of or in connection with **professional services** performed by **you** after the **retroactive date** set forth as such in Item 5(a) of the Declarations.

(j) **Disciplinary proceedings claim sublimit of liability** means the aggregate sublimit of liability applicable to all **disciplinary proceedings claims** first made against **you** during the **policy period**, or **extended reporting period**, if applicable, as set forth as such in Item 3(b) of the Declarations, and reported to us in writing as required herein.

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(n) **Interrelated wrongful acts** means all **wrongful acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

(o) **Loss** means the total sum of **damages** and **claim expenses**. **Claim expenses** and **damages** shall not mean and this policy shall not cover:  
(1) compensation, fees, benefits, overhead, charges or expenses of any

**insured** or such **insured's** employees; (2) civil or criminal fines or penalties; (3) the return or restitution of fees, expenses or costs, or other disgorgement; (4) taxes owed by any party; (5) any amounts for which an **insured** is not financially liable or which are without legal recourse against an **insured**; (6) the costs and expenses of complying with any injunctive or other form of equitable relief; (7) the monetary value of any electronic fund transfer or transaction by an **insured** or on an **insured's** behalf, which is lost or diminished during transfer into, out of or between an **insured's** account(s); (8) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed; or (9) punitive or exemplary damages or the multiplied portion of a multiple damages award.

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- (ii) **Professional services** means those services conducted on behalf of others in the ordinary course of the **insured's** activities as a mortgage banker or mortgage broker with respect to mortgage loans secured by real property, which service constitute **origination, counseling, underwriting, processing, marketing, warehousing, closing, selling or servicing**.

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- (ww) **Wrongful act** means any actual or alleged negligent act, negligent error, or negligent omission, committed, omitted, or attempted on or after the **retroactive date** or **mortgagee's errors and omissions retroactive date**, as applicable, solely in **your** performance of **professional services**.

41. The Policy includes the following exclusions:

#### 4. EXCLUSIONS

This policy does not cover any **claim** or **mortgagee interest claim**:

- (a) arising out of or resulting, directly or indirectly, from any (1) dishonest, fraudulent, criminal or malicious act or omission, (2) intentional or knowing violation of the law, (3) profit, remuneration or pecuniary advantage to which an insured was not legally entitled (except a **mortgage fee claim**), or (4) any local, state or federal consumer protection or privacy laws . . . .

\*\*\*

- (g) arising out of or resulting, directly or indirectly, from the same **wrongful act** or mortgagee interest act, or interrelated wrongful acts or interrelated mortgagee interest acts, or alleging or involving the same or similar facts alleged or involved in any claim or mortgagee interest claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time, whether or not such policy affords coverage for such wrongful acts or mortgagee interest acts;

(h) arising out of or resulting, directly or indirectly, from any **claim, mortgagee interest claim**, arbitration, mediation, litigation, administrative proceeding (including disciplinary and licensing), bankruptcy or regulatory proceeding or investigation, pending as of or commenced, or discovered in the case of a **mortgagee interest claim**, prior to the inception of this policy, or alleging or involving the same or essentially the same facts as alleged or involved in such pending prior **claim, mortgagee interest claim**, arbitration, mediation, litigation or administrative, bankruptcy or regulatory proceeding or investigation;

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(l) made against you that is brought by or on behalf of any: federal, state or local government or agency thereof; quasi-governmental agency, entity or authority; or professional or trade licensing organization or entity; provided, however, that this exclusion shall not apply to the extent an **insured** is alleged to have provided **professional services** directly to any of the foregoing as a customer or client; and provided further, that this exclusion shall not apply to any **claim expenses** arising out of or resulting from a **disciplinary proceeding claim**, subject to the **disciplinary proceeding claim sublimit of liability**;

(m) arising out of or resulting, directly or indirectly, from any **wrongful act** or **mortgagee interest act** which occurred, is alleged to have occurred, been committed, been omitted or been attempted prior to the **retroactive date** or **mortgagee's errors and omissions retroactive date**, as applicable;

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(nn) arising out of or resulting, directly or indirectly, from any **mortgagee's errors and omissions claim(s)**, except when covered under Coverage B, sub-paragraph 2.;

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(oo) arising out of or resulting, directly or indirectly, from any **mortgagee interest claim(s)**, except when covered under Coverage B, sub-paragraph 1;

\*\*\*

(pp) arising out of or resulting, directly or indirectly, from any **mortgagee interest act**, giving rise to a **mortgagee interest claim** and occurring, committed, omitted or attempted prior to the **mortgagee's errors and omissions retroactive date**;

(qq) arising out of or resulting, directly or indirectly, from any actual or alleged: (1) unfair competition; (2) interference with contract; (3) restraint of trade; (4) deceptive trade practices; or (5) anti-trust violations;

\*\*\*

(ss) arising out of or resulting, directly or indirectly, from the insolvency or bankruptcy of any **insured** or of any other entity or person; provided, however, that this exclusion shall not apply to any **claim**, arising out of the insolvency or bankruptcy of a mortgagor, for a **wrongful act** in the performance of **servicing**.

42. The Policy includes the following conditions:

#### 5. LIMIT OF LIABILITY

There is a separate **policy limit of liability** for **COVERAGE A** as set forth in Item 3(a)(i) of the Declarations, and a separate **policy limit of liability** for **COVERAGE B** as set forth in Item 3(a)(iii) of the Declarations, which are applied according to subparagraphs (a) through (h) of this Section 5. The **policy limits of liability, single claim limits of liability and sublimits of liability** as set forth in this Section 5 shall apply to all **claims** made during the **policy period**, and **extended reporting period**, if applicable. ...

#### 7. RETENTION

For each **claim** (other than a **disciplinary proceeding claim**, or a **claim** under **COVERAGE B**, sub-paragraph 2.), the **insurer** shall only be liable for the amount of **loss**, including **claim expenses**, arising from such **claim** that exceeds the Retention amount set forth in Item 4(a) of the Declarations.  
...

#### 17. OTHER INSURANCE

Such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance available to any **insured** unless such other insurance is written only as specific excess insurance over the **policy limits of liability** provided by this policy.

#### 22. APPLICATION

All the statements and representations in the **application** are deemed to be material to the risk assumed by the **insurer**, form the basis of this policy, and are incorporated into and have become a part of this policy. Any misrepresentation, omission, concealment or incorrect statement of a material fact, in the **application** or otherwise, shall render this policy void in its entirety.

### COUNT I DECLARATORY JUDGMENT

43. Underwriters re-allege and re-state paragraphs 1 through 42 above and incorporate said paragraphs herein, as if said allegations were more fully set forth herein.

44. Underwriters owe no duty to defend or indemnify the Defendants with respect to the Underlying Litigation because the matters presented in the Amended Complaint, which are in the nature of fraudulent operations of a mortgage lending business, do not fall within the insuring agreements of the Policy.

45. Underwriters owe no duty to defend or indemnify the Defendants with respect to the Underlying Litigation because the alleged damages do not arise out of a “wrongful act,” which is defined in the Policy as a “negligent act, negligent error or negligent omission.”

46. Underwriters owe no duty to defend or indemnify the Defendants because the Amended Complaint does not seek “damages” for a “loss,” as those terms are defined in the Policy.

47. Underwriters owe no duty to defend or indemnify the Defendants because the Policy excludes from the definition of “loss” any civil or criminal fines or penalties, matters deemed uninsurable under applicable law, punitive or exemplary damages or the multiplied portion of a multiple damages award as well as the cost and expenses of complying with any injunctive relief or other form of equitable relief as well as the return or restitution of fees, expenses or costs, or other disgorgement.

48. Underwriters owe no duty to defend or indemnify the Defendants with respect to the Underlying Litigation because the conduct alleged in the Amended Complaint does not constitute “professional services,” which is defined in the Policy as “those services conducted on behalf of others in the ordinary course of the insured’s activities as a mortgage banker or mortgage broker with respect to mortgage loans secured by real property, which services constitute origination, counseling, underwriting, processing, marketing, warehousing, closing, selling or servicing.”

49. The Amended Complaint does not contain allegations regarding the Defendants' activities in "origination," "counseling," "underwriting," "processing," "marketing," "warehousing," "closing," "selling" or "servicing" of mortgage loans. Rather, the Amended Complaint alleges that Defendants circumvented HUD's rules and regulations in running the mortgage lending business and allegedly committed fraud on HUD.

50. Underwriters owe no duty to defend or indemnify the Defendants under Coverage B of the Policy because the Underlying Litigation does not involve a "mortgagee interest claim," which is defined in the Policy as "your damages with respect to your mortgage interest in real property, and resulting from your mortgagee interest act . . . in failing to maintain: (i) Fire and Extended Coverage Insurance; (ii) Homeowner's Insurance; or (iii) Flood insurance . . ."

51. Underwriters owe no duty to defend or indemnify the Defendants under Coverage B of the Policy because the Underlying Litigation does not involve a "mortgagee's errors and omissions claim," as defined by the Policy.

52. Underwriters owe no duty to defend or indemnify the Defendants under Coverage B of the Policy because the Amended Complaint does not seek damages with respect to a mortgage owner's interest in real property.

53. The Amended Complaint does not seek damages with respect to a mortgagor for its direct financial loss resulting from the Defendants' "wrongful acts" while acting as a mortgagee or servicing agent.

54. Underwriters owe no duty to indemnify Defendants with respect to the Underlying Litigation based on the application of Exclusion "4(a)(1)," which precludes

indemnity for any claim or mortgagee interest claim arising out of, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act or omission.

55. Underwriters owe no duty to indemnify Defendants with respect to the Underlying Litigation based on the application of Exclusion “4(a)(2),” which precludes indemnity for any claim or mortgagee interest claim arising out of, directly or indirectly, from any intentional or knowing violation of the law.

56. Underwriters owe no duty to indemnify Defendants with respect to the Underlying Litigation pursuant to Exclusion “4(a)(3),” which precludes indemnity for any claim or mortgagee interest claim arising out of, directly or indirectly, from any profit, remuneration or pecuniary advantage to which an insured was not legally entitled (except a mortgage fee claim).

57. Underwriters owe no duty to indemnify Defendants with respect to the Underlying Litigation pursuant to Exclusion “4(a)(4),” which precludes indemnity for any claim or mortgagee interest claim arising out of, directly or indirectly, from any local, state or federal consumer protection or privacy laws.

58. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(g),” which precludes coverage arising out of or resulting, directly or indirectly, from the same wrongful act or mortgagee interest act, or interrelated wrongful acts or interrelated mortgagee interest acts, or alleging or involving the same or similar facts alleged or involved in any claim or mortgagee interest claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this Policy is a renewal or replacement or which it may succeed in time, whether or not such policy affords coverage for such wrongful acts or mortgagee interest acts.

59. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(h),” which precludes coverage arising out of or resulting, directly or indirectly, from any claim, mortgagee interest claim, arbitration, mediation, litigation, administrative proceeding (including disciplinary and licensing), bankruptcy or regulatory proceeding or investigation, pending as of or commenced, or discovered in the case of a mortgagee interest claim, prior to the inception of the Policy, or alleging or involving the same or essentially the same facts as alleged or involved in such pending prior claim, mortgagee interest claim, arbitration, mediation, litigation or administrative, bankruptcy or regulatory proceeding or investigation.

60. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(i),” which precludes coverage arising out of or resulting, directly or indirectly, from any wrongful act, mortgagee interest act, circumstance or event committed, omitted or occurring prior to the inception of this policy if, on or before the inception of this policy, the Insured knew or could have reasonably foreseen that such wrongful act, mortgagee interest act, circumstance or event could give rise to a claim or mortgagee interest claim.

61. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(l),” which precludes coverage for any claim brought by or on behalf of any federal, state or local government.

62. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(m),” which precludes coverage for any claim arising out of or resulting, directly or indirectly from any wrongful act or mortgagee interest act which occurred, is alleged to have occurred, been committed, been omitted or been attempted prior to the retroactive date or mortgagee’s errors and omissions retroactive date, as applicable.

63. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(nn),” which precludes coverage arising out of or resulting, directly or indirectly, from any mortgagee’s errors and omissions claims, except when covered under Coverage B, sub-paragraph 2.

64. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(oo),” which precludes coverage arising out of or resulting, directly or indirectly, from any mortgagee interest claims, except when covered under Coverage B, sub-paragraph 1.

65. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(pp),” which precludes coverage arising out of or resulting, directly or indirectly, from any mortgagee interest act, giving rise to a mortgagee interest claim and occurring, committed, omitted or attempted prior to the mortgagee’s errors and omissions retroactive date, which is December 31, 2004.

66. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(qq)(4),” which precludes coverage arising out of or resulting, directly or indirectly, from any actual or alleged deceptive trade practices.

67. Underwriters owe no duty to defend or indemnify Defendants pursuant to Exclusion “4(ss),” which precludes coverage arising out of or resulting, directly or indirectly, from the insolvency or bankruptcy of any insured or of any other entity or person.

68. There are additional terms and conditions that may limit or preclude coverage for this matter.

**WHEREFORE**, Plaintiffs, THOSE CERTAIN UNDERWRITERS AT LLOYD'S, LONDON, SUBSCRIBING TO CERTIFICATE NO. MB10854, pray that this Honorable Court enter judgment in favor of Underwriters, and against the Defendants:

A. Declaring that Underwriters owe no obligation to defend ALLIED HOME MORTGAGE CAPITAL CORPORATION, ALLIED HOME MORTGAGE CORPORATION, JIM C. HODGE and JEANNE L. STELL for the Underlying Litigation or any matters arising out of the alleged conduct described therein;

B. Declaring that Underwriters owe no obligation to indemnify ALLIED HOME MORTGAGE CAPITAL CORPORATION, ALLIED HOME MORTGAGE CORPORATION, JIM C. HODGE and JEANNE L. STELL under the Policy for the Underlying Litigation or any matters arising out of the alleged conduct described therein;

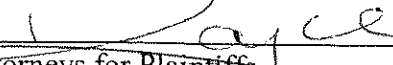
C. Awarding Underwriters recovery of any and all amounts that they expended in the defense of uncovered claims with respect to the Underlying Litigation; and

D. For such other relief the Court deems just and proper.

Dated: Purchase, New York  
May 10, 2012

Respectfully submitted,

THOSE CERTAIN UNDERWRITERS AT  
LLOYD'S, LONDON, SUBSCRIBING TO  
CERTIFICATE NOS. MB10854

By:   
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