

**File a
Motion:**07-10416-KJC New Century TRS Holdings. Inc.

Type: bk

Chapter: 11 v

Office: 1 (Delaware)

Assets: y

Judge: KJC

Case Flag: APPEAL, MEGA, LEAD, CLMSAGNT, Sealed Doc(s), CONFIRMED

U.S. Bankruptcy Court

District of Delaware

Notice of Electronic Filing

The following transaction was received from Elizabeth A. Sloan entered on 5/26/2010 at 1:05 PM EDT and filed on 5/26/2010

Case Name: New Century TRS Holdings, Inc.

Case Number: 07-10416-KJC

Document Number: 10114

Docket Text:

Motion to Approve Compromise under Rule 9019 *in Support of Stipulation of Global Settlement Among New Century Liquidating Trust, Carrington Securities, L.P., Carrington Mortgage Services, LLC and Carrington Capital Management, LLC Resolving Their Respective Claims* Filed by New Century Liquidating Trust. Hearing scheduled for 6/24/2010 at 11:00 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #5, Wilmington, Delaware. Objections due by 6/17/2010. (Attachments: # (1) Notice # (2) Exhibit A# (3) Exhibit 1# (4) Certificate of Service) (Sloan, Elizabeth)

The following document(s) are associated with this

transaction: Document description:Main Document

Original filename:Z:\Scanning\nc 9019 motion052610114015.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=5/26/2010] [FileNumber=8488113-0]
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Document description:Notice

Original filename:Z:\Scanning\nc 9019 notice g052610113736.pdf

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Document description:Exhibit A

Original filename:Z:\Scanning\nc 9019 EX A052610114153.pdf

Electronic document Stamp:

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In re:

NEW CENTURY TRS HOLDINGS,

INC., a Delaware corporation, et al.,¹

Chapter 11
Case No. 07-10416 (KJC)
-----i----- .1J o inHHti

Debtors.

Hearing Date: June 24, 2010 at 11:00 a.m.

Objection Deadline: June 17, 2010 at 4:00 p.m.

NOTICE OF MOTION

TO: Office of the United States Trustee, the parties to the Stipulation,
and all parties requesting notices pursuant to Bankruptcy Rule
2002.

Alan M. Jacobs, as the Bankruptcy Court appointed Liquidating Trustee of the New Century Liquidating Trust and Plan Administrator for Reorganized Access Lending has filed the attached **Motion Pursuant to Fed. R. Bankr. P. 9019 in Support of Stipulation of Global Settlement Among New Century Liquidating Trust, Carrington Securities, L.P., Carrington Mortgage Services, LLC and Carrington Capital Management, LLC Resolving Their Respective Claims** (the "*Motion*").

Any objection or response to the Motion must be filed on or before **June 17, 2010 by 4:00p.m. (Eastern Time)**.

At the same time, you must also serve a copy of the objection or response upon the undersigned counsel.

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

A hearing on the Motion will be held on **June 24, 2010 at 11:00 a.m.** before the United States Bankruptcy Court for the District of Delaware; 824 Market Street, Wilmington, Delaware 19801.

IF NO RESPONSES ARE TIMELY FILED, THE BANKRUPTCY COURT MAY GRANT THE RELIEF SOUGHT IN THE MOTION WITHOUT FURTHER NOTICE OR

Dated: May 26, 2010

BLANK ROME LLP

By:

A handwritten signature in black ink, appearing to read "DR", is written over a horizontal line.

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*Co-Counsel to the New Century Liquidating
Trust and Reorganized Access Lending*

HEARING

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

In re:

Chapter 11

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

Case No. 07-10416 (K.JC)

Jointly Administered

Debtors.

**TRUSTEE'S MOTION PURSUANT TO FED. R. BANKR. P. 9019 TO APPROVE
PROPOSED STIPULATION OF GLOBAL SETTLEMENT AMONG NEW
CENTURY LIQUIDATING TRUST, CARRINGTON SECURITIES, L.P.,
CARRINGTON MORTGAGE SERVICES, LLC AND CARRINGTON CAPITAL
MANAGEMENT, LLC RESOLVING THEIR RESPECTIVE CLAIMS**

TO THE HONORABLE KEVIN J. CAREY,
UNITED STATES BANKRUPTCY JUDGE:

The New Century Liquidating Trust (the "*Trust*"), by and through Alan M. Jacobs, as its Bankruptcy Court-appointed Liquidating Trustee (the "*Trustee*"), respectfully requests that the Court enter an Order, substantially in the form annexed hereto as Exhibit "*A*" (the "*Proposed Order*") approving the Stipulation of Global Settlement among New Century Liquidating Trust, Carrington Securities, L.P. ("*CS*"), Carrington Mortgage Services, LLC ("*CMS*") and Carrington Capital Management, LLC ("*CCM*" and collectively with CS and CMS, "*Carrington*"), dated

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

May 25, 2010, a copy of which is annexed as Exhibit "I" to the Proposed Order (the "*Stipulation*"). The Trustee submits that the Stipulation represents a reasonable settlement of the parties' disputes and that its approval is in the best interest of the Trust and its creditors and beneficiaries, and it represents and states the true and correct facts and circumstances relating to the Trust and its assets and liabilities.

Background

1. On April 2, 2007 (the "*Petition Date*"), the Debtors (other than New Century Warehouse Corporation) filed chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the District of Delaware (the "*Bankruptcy Court*"), which cases are jointly administered under Case No. 07-10416. On August 3, 2007, New Century Warehouse Corporation a/k/a Access Lending filed a chapter 11 petition with the Bankruptcy Court.
2. On September 30, 2009, the Trust filed a *Modified Second Amended Joint Chapter 11 Plan of Liquidation dated September 30, 2009* (including all modifications, settlements, releases and other provisions contained in the Modified Confirmation Order, as defined below, the "*Modified Plan*") [Docket No. 9905], and contemporaneously filed the *Disclosure Statement for the Modified Second Amended Joint Chapter 11 Plan of Liquidation dated September 30, 2009* (the "*Disclosure Statement*") [Docket No. 9904].
3. On November 20, 2009, the Bankruptcy Court entered an order confirming the Modified Plan (the "*Modified Plan Confirmation Order*") which, *inter alia*, (a) confirmed that all actions taken by the Trustee in these cases were valid and binding, and (b) adopted, ratified and confirmed the formation of the Liquidating Trust and the Liquidating Trust Agreement, and (c) adopted, ratified and confirmed the appointment of Alan M. Jacobs as Trustee.
4. The Modified Plan became effective in accordance with its terms by notice dated December 1, 2009.

5. On August 31, 2007, CS filed proof of claim no. 2640 ("*Claim 2640*") against NC Capital Corporation ("*NC Capital*") in an amount of not less than \$59,104,195.02 arising out of

alleged breaches of representations and warranties, first payment defaults, and failure to pay prepayment premiums under an Amended and Restated Master Mortgage Loan Purchase and Servicing Agreement dated May 25, 2006 (the "*MMLPSA*") and its related commitment letters.

6. On August 31, 2007, CS filed proofs of claim nos. 2477, 2478, 2892, and 2894 (collectively, the "*R&W Restatement Claims*") against New Century Mortgage Corporation ("*NCMC*") and NC Capital. The R&W Restatement Claims arose out of alleged breaches by NC Capital and NCMC of certain provisions of the MMLPSA and related commitment letters. Specifically, in the R&W Restatement Claims, CS alleges that after CS purchased certain mortgage loans from NC Capital with the intent of securitizing those loans (the "*Investor #134 Loans*"), NC Capital and NCMC were contractually obligated, but failed, to restate certain entity-level representations and warranties to CS' securitization counterparties in breach of the MMLPSA and commitment letters. CS asserts that the breach rendered CS incapable of transferring the Investor #134 Loans to a REMIC trust for securitization. Because it was unable to securitize the Investor #134 Loans, CS claims that it was ultimately forced to sell the Investor #134 loans to Sutton Funding, and as a result, CS sustained an economic loss of approximately \$32 million.

7. On February 24, 2009, the Trustee filed a substantive objection to the R&W Restatement Claims (the "*Objection*" [D.I. 9346]), on the grounds that, among other things, (a) the NC Capital and NCMC did not breach any provisions requiring them to restate representations or warranties in connection with a resale of the Investor #134 Loans; (b) the MMLPSA and commitment letters did not require that NC Capital or NCMC guarantee successful completion of any secondary sale; (c) CS failed to show what, if any, losses it incurred solely as a result of NC Capital's alleged failure to restate the representations and warranties, as opposed to a general decline in the value of subprime loans in the secondary mortgage market during the relevant time frame; (d) CS' claim to losses resulted directly from exposure to the bond

markets, not any action attributable to NC Capital or NCMC; and (e) certain R&W Restatement Claims were duplicative of claims asserted by current holders of the

mortgage loans. CS responded to the Objection (the "*Response*" [D.I. 9396]) taking issue with all of the bases of the Objection.

CLAIMS ASSERTED BY THE TRUST AGAINST CARRINGTON

8. NCMC asserted a claim against CS, alleging that CS owes NCMC the amount of \$2,896,537.16 in connection with unreimbursed servicing fees and advances for the cost of servicing the Investor #134 Loans prior to the sale of the Debtors' servicing platform to CMS (the "*Investor #134 Claim*"). CS disputed the amount of the Investor #134 Claim, alleging that the correct amount due for unreimbursed servicing fees and advances was \$1,959,663.05, and further asserts that it has a right of setoff or recoupment of the amounts owed under the Investor #134 Claim against the amounts it alleges it is owed under the R&W Restatement Claims. The Trustee disputed CS' claim to a right of offset or recoupment of the Investor #134 Claim against amounts CS believes it is owed under the R&W Restatement Claims.

9. In addition to the foregoing claims, NCMC and NCFC asserted claims against CMS, alleging that CMS owes NCMC and NCFC \$230,419.88 (the "*TSA Claim*"), under the Transitional Services Agreement dated June 29, 2007 (the "*TSA*") entered into as part of the Debtors' sale of their servicing platform to CMS. CMS asserted that such amount should be reduced by \$219,835.52 owed to CMS by NCFC and NCMC for unreimbursed servicing advances made by CMS in connection with NCMC whole loans that were serviced by CMS until NCMC sold the loans to third parties between July and October 2007 (the "*TSA Offset Claim*"). The Trustee argues in response that the TSA expressly provides that the amounts due for subservicing cannot be offset against amounts due under the TSA, and that CMS failed to timely file a request for this amount prior to the administrative bar date.

10. The Trustee is currently holding the sum of \$436,037.55 (the "*Escrow Account Funds*"), for which the Trustee has identified 1,581 checks totaling such sum, relating to loans where servicing rights were sold and transferred to CMS on June 30, 2007. The Trustee requested that Carrington, either in its own right or in its capacity as mortgage servicer, confirm that it has no claim or interest in and to the Escrow Account Funds.

11. The Trustee has asserted an additional claim against CMS for amounts owed by CMS to the Trust with respect to four loans that are owned by the Trust (the "*Serviced Loans*"), but continued to be serviced post-sale by CMS (the "*Serviced Loans Claim*"). With respect to the Serviced Loans, CMS acknowledges that one of the loans has been foreclosed upon and liquidated and CMS is currently holding the proceeds, one of the loans has a title defect and should be written off, and the remaining two loans continue to be serviced by CMS, but CMS is entitled to be reimbursed for certain servicing fees and unreimbursed servicer advances, as well as maintain an appropriate reserve, before releasing any funds to the Trustee.

12. The Trust holds (a) certain limited partnership interests in Carrington Investment Partners (US), LP (the "*CIP LP Interests*"), and (b) a certain unsecured promissory note of CCM in the original principal amount of \$1,316,722.92 (the "*CCM Promissory Note*").

13. The Trust and Carrington (together, the "*Parties*") have been engaged in protracted settlement discussions in an attempt to resolve their disputes without incurring further litigation costs.

THE PROPOSED SETTLEMENT

14. The salient terms of the settlement embodied in the Stipulation are as follows:

- The portion of Claim 2640 arising out of breaches of representations and warranties and first payment defaults under the MMLPSA shall be allowed as an EPD/Breach Claim (as defined in the Modified Plan) against NC Capital in the amount of \$18,449,252 ("*Claim 2640a*") in class OP6b of the Modified Plan. The

portion of Claim 2640 arising out of failure to pay prepayment premiums under the MMLPSA shall be allowed as a general unsecured claim against NC Capital in the amount of \$197,080.94 ("*Claim 2640b*") in class OP6c of the Modified

Plan;

- The R&W Restatement Claims shall be disallowed in their entirety and expunged;
- The Trustee waives any and all rights to assert the Investor#134 Claim and the TSA Claim, and Carrington waives any and all rights to assert the TSA Offset Claim;
- Carrington waives and releases any claim or right, either for itself or in its capacity as servicer, to the Escrow Account Funds; and
- CMS shall continue to service the two remaining Serviced Loans, and shall remit all monies due to the Trust with respect to the Serviced Loans after deducting certain unpaid servicing fees and unreimbursed advances due CMS, and maintaining a \$50,000 reserve for future potential servicing advances, prior to remitting all monies due to the Trust with respect to the Serviced Loans.

Jurisdiction

15. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these cases and this motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Proposed Settlement is Fair and Reasonable

16. Rule 9019 of the Federal Rules of Bankruptcy Procedure provides, in relevant part, that, "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement."

17. The Trustee has considered the claims and defenses available to the Trust and has determined that the settlement embodied by the Stipulation is fair and reasonable under the circumstances. The proposed settlement will result in the Trust's settlement of multiple Claims without the need for costly and time-consuming litigation. ~~no. _____~~
18. The standard for approval of a proposed compromise is well established. The Delaware District Court has held that a Court should approve a compromise where it "is fair, reasonable, and in the interest of the estate." In re Marvel Entertainment Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (quoting In re Louise's, Inc., 211 B.R. 798, 801 (D. Del. 1997)); see also Myers v. Martin (In re Martin), 91 F.3d 389, 394 (3d Cir. 1996).
19. In fact, a Court should reject a proposed settlement only where it falls below the lowest point in the range of reasonableness. In re Exide Techs., et al., 303 B.R. 48, 68 (D. Del. 2003); see also Cosoff v. Rodman (In re W. T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983) (citing Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972)). Specifically, this standard includes consideration of the following factors: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." In re Marvel Entertainment Group, Inc., 222 B.R. at 249.
20. Both sides have raised potentially meritorious arguments that would likely require extensive fact discovery and a trial on the merits before resolution. The Trustee believes that the proposed settlement is in the best interests of the Trust, and its creditors and beneficiaries, as it provides for a settlement of several substantial claims without the need for expensive and extensive litigation.

21. In applying the legal standards enunciated above to the proposed Stipulation, it is clear that the proposed Stipulation (a) will avoid lengthy, burdensome and expensive litigation; (b) represents a reasonable compromise of the claims against the Debtors' estates; (c) is well within the range of litigation possibilities; and (d) is in the best interests of the Debtors' estates.

Notice

22. Notice of this Motion has been provided to the Office of the United States Trustee and other parties entitled to notice. The Trustee submits that no other or further notice is required.
23. The Trustee submits that this Motion does not present any novel issues of law requiring briefing. Therefore, pursuant to Rule 7.1.2 of the Local Rules of Civil Practice of the United States District Court for the District of Delaware, incorporated by reference into Local Rule 1001-1(b), the Trustee respectfully requests that the Court set aside the briefing schedule set forth in Rule 7.1.2(a).

WHEREFORE, the Trustee respectfully requests that the Court (i) enter the annexed Order Approving the Stipulation, and (ii) grant such other relief as the Court deems just and proper consistent with the foregoing.

[Signature page to follow]

Wilmington, Delaware

Dated: May 26, 2010

Respectfully submitted,

BLANK ROME LLP

A handwritten signature in black ink, appearing to read 'B. Grant', is written over a horizontal line.

Bonnie Grant (No. 3809)

David W. Carickhoff (No. 3715)

Elizabeth A. Sloan (No. 5045)

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-and- .

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Counsel to the New Century Liquidating Trust

EXHIBIT A
PROPOSED ORDER

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

In re:

Chapter 11

NEW CENTURY TRS HOLDINGS, INC., a
Delaware corporation, *et al.*,¹

Case No. 07-10416 (KJC)

Debtors.

Jointly Administered

Re: Docket No. ____

**ORDER PURSUANT TO FED. R. BANKR. P. 9019 APPROVING STIPULATION OF
GLOBAL SETTLEMENT AMONG NEW CENTURY LIQUIDATING TRUST,
CARRINGTON SECURITIES, L.P., CARRINGTON MORTGAGE SERVICES, LLC
AND CARRINGTON CAPITAL MANAGEMENT, LLC RESOLVING THEIR
RESPECTIVE CLAIMS .**

Upon the motion (the "Motion") of the New Century Liquidating Trust (the "Trust"), by and through Alan M. Jacobs, as the Bankruptcy Court-appointed Liquidating Trustee (the "Trustee"), for entry of an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving the Stipulation of Global Settlement among the New Century Liquidating Trust, and Carrington Securities, L.P. ("CS"), Carrington Mortgage Services, LLC ("CMS") and Carrington Capital Management, LLC ("CCM" and collectively with CS and CMS,

The pre-petition Debtors were the following entities: New Century Financial Corporation (f/k/a New Century REIT, Inc.), a Maryland corporation; New Century TRS Holdings, Inc. (f/k/a New Century Financial Corporation), a Delaware corporation; New Century Mortgage Corporation (f/k/a JBE Mortgage) (d/b/a NCMC Mortgage Corporation ("NCMC"), New Century Corporation, New Century Mortgage Ventures, LLC), a California corporation; NC Capital Corporation, a California corporation; Homel23 Corporation (f/k/a The Anyloan Corporation, 1800anyloan.com, Anyloan.com), a California corporation; New Century Credit Corporation (f/k/a Worth Funding Incorporated), a California corporation; NC Asset Holding, L.P. (f/k/a NC Residual II Corporation), a Delaware limited partnership; NC Residual III Corporation, a Delaware corporation; NC Residual IV Corporation, a Delaware corporation; New Century R.E.O. Corp., a California corporation; New Century R.E.O. II Corp., a California corporation; New Century R.E.O. III Corp., a California corporation; New Century Mortgage Ventures, LLC (d/b/a Summit Resort Lending, Total Mortgage Resource, Select Mortgage Group, Monticello Mortgage Services, Ad Astra Mortgage, Midwest Home Mortgage, TRATS Financial Services, Elite Financial Services, Buyers Advantage Mortgage), a Delaware limited liability company; NC Deltex, LLC, a Delaware limited liability company; NCoral, L.P., a Delaware limited partnership; and New Century Warehouse Corporation, a California corporation ("Access Lending").

"Carrington"), dated May 25, 2010, a copy of which is annexed hereto as Exhibit"]" (the *"Stipulation"*), and notice of the Motion having been sufficient; and this Court possessing jurisdiction to consider the Motion; and venue being proper; and it appearing that no other or further notice is required; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED, that the Stipulation annexed hereto as "Exhibit 1" is approved; and it is further

ORDERED, that this Court shall retain jurisdiction over all matters related to the interpretation or implementation of this Order.

Dated: _____'2010

The Honorable Kevin J. Carey
CHIEF UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

STIPULATION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

Chapter 11

NEW CENTURY TRS HOLDINGS,
INC.,
a Delaware corporation, *et al.*,¹

Case No. 07-10416 (KJC)

Jointly Administered

Debtors.

STIPULATION OF GLOBAL SETTLEMENT
AMONG NEW CENTURY LIQUIDATING TRUST,
CARRINGTON SECURITIES, L.P., CARRINGTON MORTGAGE
SERVICES, LLC AND CARRINGTON CAPITAL MANAGEMENT, LLC
RESOLVING THEIR RESPECTIVE CLAIMS

This *Stipulation of Global Settlement* (the "Stipulation") is entered into by and among the New Century Liquidating Trust (the "NC Liquidating Trust"), by and through Alan M. Jacobs, its Bankruptcy Court-appointed Liquidating Trustee (the "Trustee"), on behalf of New Century Mortgage Corporation, a California corporation ("NCMC") and NC Capital Corporation, a California corporation ("NC Capital"), both debtors in the above-captioned chapter 11 cases, on one hand, and Carrington Securities, L.P. ("CS"), Carrington Mortgage Services, LLC ("CMS"), and Carrington Capital Management, LLC ("CCM", and collectively

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

with CS and CMS, "Carrington "), on the other hand, by and through their respective counsel (each a "Party" and collectively, the "Parties"), based on the following recitals of fact:

RECITALS

- A. On April 2, 2007 (the "Petition Date"), the Debtors (other than New Century Warehouse Corporation) filed chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), which cases are jointly administered as Case No. 07-10416 (the "Case"). On August 3, 2007, New Century Warehouse Corporation a/k/a Access Lending ("Access Lending") filed a chapter 11 petition with the Bankruptcy Court.
- B. On September 30, 2009, the NC Liquidating Trust filed a *Modified Second Amended Joint Chapter 11 Plan of Liquidation dated September 30, 2009* (including all modifications, settlements, releases and other provisions contained in the Modified Confirmation Order, as defined below, the "*Modified Plan*") [Docket No. 9905], and contemporaneously filed the *Disclosure Statement for the Modified Second Amended Joint Chapter 11 Plan of Liquidation dated September 30, 2009* (the "*Disclosure Statement*") [Docket No. 9904].
- C. On November 20, 2009, the Bankruptcy Court entered an order confirming the Modified Plan (the "*Modified Plan Confirmation Order*") which, *inter alia*, (a) confirmed that all actions taken by the Liquidating Trustee in the Case were valid and binding, and (b) adopted, ratified and confirmed the formation of the Liquidating Trust, the Liquidating Trust Agreement, and the appointment of Alan M. Jacobs as Liquidating Trustee in the Case.
- D. The Modified Plan became effective in accordance with its terms by

company; NC Deltex, LLC, a Delaware limited liability company; NCoral, L.P., a Delaware limited partnership; and New Century Warehouse Corporation, a California corporation .

notice dated December 1, 2009.

E. On August 31, 2007, CS filed proof of claim no. 2640 ("Claim 2640") claim against NC Capital in an amount of not less than \$59,104,195.02 arising out of alleged breaches of representations and warranties, first payment defaults, and failure to pay prepayment premiums under an Amended and Restated Master Mortgage Loan Purchase and Servicing Agreement dated May 25, 2006 (the "MMLPSA") and its related commitment letters.

F. On August 31, 2007, CS filed proofs of claim nos. 2477, 2478, 2892, and 2894 (collectively, the "R&W Restatement Claims") against NCMC and NC Capital. The R&W Restatement Claims arose out of alleged breaches by NC Capital and NCMC of certain provisions of the MMLPSA and related commitment letters. Specifically, in the R&W Restatement Claims, CS alleges that after CS purchased certain mortgage loans from NC Capital with the intent of securitizing those loans (the "Investor #134 Loans"), NC Capital and NCMC were contractually obligated, but failed, to restate certain entity-level representations and warranties to CS' securitization counterparties in breach of the MMLPSA and commitment letters. CS asserts that the breach rendered CS incapable of transferring the Investor# 134 Loans to a REMIC trust for securitization. Because it was unable to securitize the Investor #134 Loans, CS claims that it was ultimately forced to sell the Investor #134 loans to Sutton Funding, and as a result, CS sustained an economic loss of approximately \$32 million.

G. On February 24, 2009, the Trustee filed a substantive objection to the R&W Restatement Claims (the "Objection" [D.I. 9346]), on the grounds that, among other things, (a) the NC Capital and NCMC did not breach any provisions requiring them to restate representations or warranties in connection with a resale of the Investor # 134 Loans; (b) the MMLPSA and commitment letters did not require that NC Capital or NCMC guarantee successful completion of any secondary sale; (c) CS failed to show what, if any, losses it incurred solely as a result of NC Capital's alleged failure to restate the representations and warranties, as opposed to a general decline in the value of subprime loans in the secondary mortgage market during the relevant time frame; (d) CS' claim to losses resulted directly from

exposure to the bond markets, not any action attributable to NC Capital or NCMC; and (e) certain R&W Restatement Claims were duplicative of claims asserted by current holders of the mortgage loans. CS responded to the Objection (the "Response" [D.I. 9396]) taking issue with all of the bases of the Objection.

H. NCMC asserted a claim against CS, alleging that CS owes NCMC the amount of \$2,896,537.16 in connection with unreimbursed servicing fees and advances for the cost of servicing the Investor #134 Loans prior to the sale of the servicing platform to CMS (the "Investor #134 Claim"). CS disputed the amount of the Investor #134 Claim, alleging that the correct amount due for unreimbursed servicing fees and advances was \$1,959,663.05, and further asserts that it has a right of setoff or recoupment of the amounts owed under the Investor #134 Claim against the amounts it alleges it is owed under the R&W Restatement Claims. The Trustee disputed CS' claim to a right of offset or recoupment of the Investor #134 Claim against amounts CS believes it is owed under the R&W Restatement Claims.

I. In addition to the foregoing claims, NCMC and NCFC asserted claims against CMS, alleging that CMS owes NCMC and NCFC \$230,419.88 (the "TSA Claim"), under the Transitional Services Agreement dated June 29, 2007 (the "TSA") entered into as part of the Debtors' sale of their servicing platform to CMS. CMS asserted that such amount should be reduced by \$219,835.52 owed to CMS by NCFC and NCMC for unreimbursed servicing advances made by CMS in connection with NCMC whole loans that were serviced by CMS until NCMS sold the loans to third parties between July and October 2007 (the "TSA Offset Claim"). The Trustee asserts that the TSA expressly provides that the amounts due for subservicing cannot be offset against amounts due under the TSA, and that CMS failed to timely file a request for this amount prior to the administrative bar date.

J. The Trustee is currently holding the sum of \$436,037.55 (the "Escrow Account Funds"), for which the Trustee has identified 1,581 checks totaling such sum, relating to loans where servicing rights were sold and transferred to CMS on June 30, 2007. The Trustee has requested that Carrington, either in its own right or in its capacity as mortgage servicer, confirm that it has no claim or interest in and to the Escrow Account Funds.

K. The Trustee has asserted an additional claim against CMS for amounts owed by CMS to the Trust with respect to two loans that are owned by the Trust (the "Serviced Loans"), but continue to be serviced by CMS (the "Serviced Loans Claim"). CMS acknowledges the Trustee's Serviced Loans Claim but asserts a right to be reimbursed certain servicing fees and unreimbursed servicer advances, as well as maintaining an appropriate reserve, before releasing such funds to the Trustee.

L. The NC Liquidating Trust holds (a) certain limited partnership interests in Carrington Investment Partners (US), LP (the "CIP LP Interests"), and (b) a certain unsecured promissory note of CCM in the original principal amount of \$1,316,722.92 (the "CCM Promissory Note").

M. The Modified Plan provides that distributions to creditors in Class OP6b are to be determined pursuant to the EPD/Breach Claim Protocol.² In addition, pursuant to the Modified Plan, the Liquidating Trustee is authorized to compromise and/or settle any disputed claim, the allowed amount of which is more than \$100,000 with consent of the Plan Advisory Committee (the "PAC" as defined in the Plan), and such consent has been obtained.

N. The Parties hereto have entered into extensive global settlement negotiations to resolve and reconcile Claim 2640, the R&W Restatement Claims, the Investor #134 Claim, the TSA Claim, the Escrow Account Funds, and the Serviced Loans Claim (collectively, the "Carrington Claims"), without the need for time consuming and costly

² "EPD/Breach Claim" is defined in the Modified Plan as a "a Claim arising under an agreement between one or more of the Debtors and a loan buyer or securitization party for (i) breach of a representation or warranty under such agreement made by one or more of the Debtors or (ii) a right under such an agreement to resell a loan to one or more of the Debtors based on a payment default by the borrower on such loan."

litigation, culminating in the Parties entering into this Stipulation.

NOW, THEREFORE, THE PARTIES STIPULATE AND AGREE AS
FOLLOWS:

AGREEMENT

1. The recitals set forth in Paragraphs A through N above are incorporated herein by this reference.
2. This Stipulation and all of the provisions and compromises contained herein are subject to and conditioned upon the entry of a final, non-appealable order by the Bankruptcy Court approving this Stipulation (the "Stipulation Effective Date"). In the event that the Stipulation Effective Date does not occur, this Stipulation shall be deemed null and void and of no force or effect. In such event, nothing (including Recitals) contained in this Stipulation, any motion or motions filed seeking an order from the Bankruptcy Court approving this Stipulation, or any correspondence or other communications related to the negotiation, drafting or approval of this Stipulation, shall be argued nor deemed to be an admission against any party's interest in any litigation by and between any parties, and the Parties shall be automatically returned to respective positions *status quo ante*.
3. For purposes of allowance and distributions under the Modified Plan, the portion of Claim 2640 arising out of breaches of representations and warranties and first payment defaults under the MMLPSA shall be allowed as an EPD/Breach Claim against NC Capital ("Claim 2640a" or the "Allowed EPD/Breach Claim") in the amount of \$18,449,252 (the "EPD/Breach Allowed Amount") in class OP6b of the Modified Plan. The Determined Distribution Amount for Claim 2640a shall be determined as set forth in Article 4 Section J of

the Modified Plan (*i.e.*, the Determined Distribution Amount of each Allowed EPD/Breach

Claim in Class OP6b shall be 100% of the EPD/Breach Allowed Amount for such Allowed EPD/Breach Claim for purposes of receiving a Pro Rata share of the NC Capital EPD/Breach Claimant Portion of the Litigation Proceeds and shall be 50% of the EPD/Breach Allowed

Amount for such Claim for purposes of receiving a distribution of its Pro Rata share of the Operating Debtor Net Distributable Assets). The portion of Claim 2640 arising out of failure to pay prepayment premiums under the MMLPSA shall be allowed as a general unsecured claim against NC Capital ("Claim 2640b" or the "Allowed Premium Recapture Claim" and together with the Allowed EPD/Breach Claim, the "Allowed Claims") in the amount of \$197,080.94 (the "Premium Recapture Allowed Amount") in Class OP6c of the Modified Plan. The balance of Claim 2640 shall be disallowed and expunged.

4. The R&W Restatement Claims shall be disallowed in their entirety and expunged.
5. The Trustee waives any and all rights to assert the Investor #134 Claim and the TSA Claim and Carrington waives any and all rights to assert the TSA Offset Claim.
6. Carrington hereby acknowledges and agrees that it has no claim or interest, either in its own right or in its capacity as mortgage loan servicer, in and to any portion of the Escrow Account Funds. Carrington hereby waives and releases any claim or right, either for itself or in its capacity as servicer, to the Escrow Account Funds.
7. CMS shall continue to service the Serviced Loans, and shall be entitled to net out any reasonable, unpaid servicing fees and unreimbursed advances due CMS, as well as maintain a \$50,000 reserve for future potential servicing advances, prior to remitting to the Trustee all monies due to the NC Liquidating Trust with respect to the Serviced Loans.

Carrington agrees to remit such monies due within ten (10) days of the Stipulation Effective Date. Carrington shall continue to service the Serviced Loans in accordance with customary servicing standards in the industry and shall provide the Trustee with customary reporting as to the status of the Serviced Loans.

8. Carrington hereby releases, acquits and discharges the Debtors, the Liquidating Trust, the Trustee, the PAC or the Plan Advisory Committee (the "*PAC*" as defined in the Plan), their respective retained professionals, and their respective successors and assigns, of and from any claims, damages, actions, suits, causes of action, rights, liens, demands, obligations and/or liabilities, of whatever kind or nature, in law, equity or otherwise, whether now known or unknown, vested or contingent, which exist now or may exist in the future, including, but not limited to, any interest or claim *in* the Escrow Account Funds, the R&W Restatement Claims and the TSA Offset Claim; *provided, however*, that this release shall not release or otherwise affect the Allowed Claims or Carrington's right to be reimbursed for any servicing fees or unreimbursed advances due with respect to the Serviced Loans, and nothing contained herein shall be deemed to release any obligations the Trustee has under this Stipulation.
9. The Trustee, on behalf of himself, the PAC, the Liquidating Trust, and the Debtors' estates, (a) hereby releases, acquits and discharges Carrington, their respective retained professionals and their successors and assigns from and against any claims, damages, actions, suits, causes of action, rights, liens, demands, obligations and/or liabilities, of whatever kind or nature, in law, equity or otherwise, whether now known or unknown, vested or contingent, which exist now or may exist in the future, including, but not limited to, the Investor #134 Claim, the TSA Claim and any claims retained or reserved under the Modified Plan; *provided, however*, that

nothing contained herein shall be affect, impair or release the NC Liquidating Trust's rights in and to the CIP LP Interests, under the CCM Promissory Note or with respect to any obligations that Carrington has under this Stipulation, including, but not limited to any obligations related to the Serviced Loans.

10. This Stipulation is the entire agreement between the Parties with respect of the subject matter hereof. This Stipulation supersedes any and all agreements, whether written or oral, that may have previously existed between the Parties with respect to the matters set forth herein. No statements, promises, or representations have been made by any Party to any other, or relied upon, and no consideration has been offered, promised'. expected or held out other than as may be expressly provided herein.
11. Carrington represents that (i) it is the sole owner of Claim 2640, the R&W Restatement Claims and the TSA Offset Claim, and (ii) it has not assigned or otherwise transferred ownership of such Claims or portion of such claim to any other party and (iii) other than the Allowed Claims, it has no other outstanding claims to be allowed against the Debtors estates.
12. Any ambiguities are not to be construed against any Party solely due to the identity of the drafter.
13. This Stipulation shall not be modified, altered or amended without the proper written consent of the Parties hereto.
14. Each person signing this Stipulation represents and warrants thats/he has been duly authorized and has the requisite authority to execute and deliver this Stipulation on

behalf of such party and to bind her/his respective Party to the terms and conditions of the Stipulation.

5. In the event of any conflict or inconsistencies between the terms of the Motion, this Stipulation or the proposed order, the terms of this Stipulation shall govern. The Bankruptcy Court shall retain jurisdiction of all disputes concerning the subject matter of this Stipulation.

16. This Stipulation may be executed in counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page of this Stipulation by telecopy or e-mail transmission of a PDF version shall be as effective as delivery of a manually executed copy of this Stipulation.

**IT IS SO
STIPULATED.**

Dated: JS '2010

HAHN & / -JL..

HE SS /E LLP

By: / -

Mark T. Power, Esq.
Zahir Virani, Esq

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*Co-Counsel to the New Century
Liquidating Trust and Reorganized
Access Lending*

CARRINGTON CAPITAL
MANAGEMENT, .LLC, CARRINGTON
MOR;TOAG:E SERVICES LLC, AND



Chief Executive Officer