

NEW YORK MORTGAGE TRUST INC  
Form 10-Q/A  
November 12, 2009

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-Q/A  
(Amendment No. 1)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2009

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 001-32216

NEW YORK MORTGAGE TRUST, INC.  
(Exact Name of Registrant as Specified in Its Charter)

Maryland  
(State or Other Jurisdiction of  
Incorporation or Organization)

47-0934168  
(I.R.S. Employer  
Identification No.)

52 Vanderbilt Avenue, Suite 403, New York, New York 10017  
(Address of Principal Executive Office) (Zip Code)

(212) 792-0107  
(Registrant's Telephone Number, Including Area Code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filers" "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one.):

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Large Accelerated Accelerated Filer Non-Accelerated Filer Smaller Reporting  
Filer      
Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).  
Yes  No

The number of shares of the registrant's common stock, par value \$.01 per share, outstanding on November 3, 2009 was 9,419,094.

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Explanatory Note

New York Mortgage Trust, Inc. (the “Registrant”) is filing this amendment no. 1 (the “Amendment”) to its Form 10-Q for the quarter ended September 30, 2009, originally filed on November 6, 2009 (the “Original Filing”), to include certain information that was inadvertently deleted from the Original Filing by the Registrant’s EDGAR filing agent. None of the corrections affect the Registrant’s financial condition, cash flows or results of operations as previously reported in the Registrant’s unaudited condensed consolidated financial statements for the three and nine months ended September 30, 2009. Except as described in this Explanatory Note, no other changes have been made to the Original Filing, and this Amendment does not amend or update any other information set forth in the Original Filing. The following summarizes the corrections made by this Amendment:

- Under “Part I. Financial Information. Item 1. Condensed Consolidated Financial Statements (unaudited)”, the Condensed Consolidated Statement of Stockholders’ Equity included herein now includes the line item “Increase in net unrealized gain on investment–available for sale securities”.
- Under “Part I. Financial Information. Item 1. Condensed Consolidated Financial Statements (unaudited)”, the Registrant corrected certain parentheticals in the Condensed Consolidated Statements of Operations and the Condensed Consolidated Statement of Stockholders’ Equity.

In addition, as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended, new certifications by the Registrant’s principal executive and financial officer are filed as exhibits to this Amendment.

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NEW YORK MORTGAGE TRUST, INC.

FORM 10-Q

|   |    |
|---|----|
| PART I. Financial Information   | 2  |
| Item 1. Condensed Consolidated<br>Financial Statements (unaudited)                                  | 2  |
| CONDENSED CONSOLIDATED<br>BALANCE SHEETS  | 2  |
| CONDENSED CONSOLIDATED<br>STATEMENTS OF OPERATIONS  | 3  |
| CONDENSED CONSOLIDATED<br>STATEMENT OF STOCKHOLDERS'<br>EQUITY                                      | 4  |
| CONDENSED CONSOLIDATED<br>STATEMENTS OF CASH FLOWS  | 5  |
| NOTES TO THE CONDENSED<br>CONSOLIDATED FINANCIAL<br>STATEMENTS                                      | 6  |
| Item 2. Management's Discussion and<br>Analysis of Financial Condition and<br>Results of Operations | 25 |
| Item 3. Quantitative and Qualitative<br>Disclosures about Market Risk                               | 41 |
| Item 4. Controls and Procedures   | 46 |
| PART II. OTHER INFORMATION  | 47 |
| Item 1A. Risk Factors   | 47 |
| Item 6. Exhibits  | 47 |
| SIGNATURES  | 48 |

## PART I. FINANCIAL INFORMATION

## Item 1. Condensed Consolidated Financial Statements (unaudited)

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED BALANCE SHEETS(amounts in thousands, except share and per share amounts)  
(unaudited)

|   | September<br>30,<br>2009 | December 31,<br>2008 |
|---|--------------------------|----------------------|
| <b>ASSETS</b>   |                          |                      |
| Cash and cash equivalents   | \$ 22,403                | \$ 9,387             |
| Restricted cash   | 3,359                    | 7,959                |
| Investment securities - available for sale, at fair value (including pledged securities of \$208,327 and \$456,506, respectively) | 282,594                  | 477,416              |
| Accounts and accrued interest receivable  | 2,623                    | 3,095                |
| Mortgage loans held in securitization trusts (net)  | 290,940                  | 348,337              |
| Derivative assets   | 15                       | 22                   |
| Prepaid and other assets  | 1,636                    | 1,230                |
| Assets related to discontinued operation  | 4,544                    | 5,854                |
| Total Assets  | \$ 608,114               | \$ 853,300           |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>   |                          |                      |
| Liabilities:  |                          |                      |
| Financing arrangements, portfolio investments   | \$ 194,745               | \$ 402,329           |
| Collateralized debt obligations   | 280,223                  | 335,646              |
| Derivative liabilities  | 3,025                    | 4,194                |
| Accounts payable and accrued expenses   | 5,095                    | 3,997                |
| Subordinated debentures (net)   | 44,823                   | 44,618               |
| Convertible preferred debentures (net)  | 19,814                   | 19,702               |
| Liabilities related to discontinued operation   | 2,240                    | 3,566                |
| Total liabilities   | 549,965                  | 814,052              |
| Commitments and Contingencies   |                          |                      |
| Stockholders' Equity:   |                          |                      |
| Common stock, \$0.01 par value, 400,000,000 authorized, 9,419,094 and 9,320,094, shares issued and outstanding, respectively      | 94                       | 93                   |
| Additional paid-in capital  | 144,838                  | 150,790              |
| Accumulated other comprehensive income/(loss)   | 8,853                    | (8,521)              |
| Accumulated deficit   | (95,636)                 | (103,114)            |
| Total stockholders' equity  | 58,149                   | 39,248               |
| Total Liabilities and Stockholders' Equity  | \$ 608,114               | \$ 853,300           |

See notes to condensed consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(amounts in thousands, except per share amounts)  
(unaudited)

|  | For the Three Months<br>Ended September 30, |                 | For the Nine Months<br>Ended September 30, |                    |
|--|---|-----------------|--|--------------------|
|  | 2009  | 2008            | 2009                                       | 2008               |
| <b>REVENUE:</b>  |   |                 |  |                    |
| Interest income-investment securities and loans held in securitization trusts          | \$ 7,994                                    | \$ 10,324       | \$ 24,200                                  | \$ 34,332          |
| Interest expense-investment securities and loans held in securitization trusts         | 1,864                                       | 6,692           | 7,041                                      | 23,997             |
| Net interest income from investment securities and loans held in securitization trusts | 6,130                                       | 3,632           | 17,159                                     | 10,335             |
| Interest expense – subordinated debentures   | (785)                                       | (913)           | (2,417)                                    | (2,768)            |
| Interest expense – convertible preferred debentures                                    | (662)                                       | (537)           | (1,807)                                    | (1,612)            |
| Net interest income  | 4,683                                       | 2,182           | 12,935                                     | 5,955              |
| <b>OTHER EXPENSE:</b>  |   |                 |  |                    |
| Provision for loan losses  | (526)                                       | (7)             | (1,414)                                    | (1,462)            |
| Impairment loss on investment securities   | —   | —               | (119)                                      | —                  |
| Realized gain (loss) on securities and related hedges                                  | 359   | 4               | 623  | (19,927)           |
| Total other expense  | (167)                                       | (3)             | (910)                                      | (21,389)           |
| <b>EXPENSE:</b>  |   |                 |  |                    |
| Salaries and benefits  | 473   | 258             | 1,486                                      | 988                |
| Professional fees  | 323   | 367             | 1,021                                      | 1,065              |
| Management fees  | 508   | 186             | 935  | 479                |
| Insurance  | 171   | 275             | 358  | 668                |
| Other  | 400   | 349             | 1,247                                      | 1,626              |
| Total expenses   | 1,875                                       | 1,435           | 5,047                                      | 4,826              |
| <b>INCOME (LOSS) FROM CONTINUING OPERATIONS</b>  | <b>2,641</b>                                | <b>744</b>      | <b>6,978</b>                               | <b>(20,260)</b>    |
| Income from discontinued operation - net of tax  | 236   | 285             | 500  | 1,294              |
| <b>NET INCOME (LOSS)</b>   | <b>\$ 2,877</b>                             | <b>\$ 1,029</b> | <b>\$ 7,478</b>                            | <b>\$ (18,966)</b> |
| Basic income (loss) per common share   | \$ 0.31                                     | \$ 0.11         | \$ 0.80                                    | \$ (2.39)          |
| Diluted income (loss) per common share   | \$ 0.30                                     | \$ 0.11         | \$ 0.78                                    | \$ (2.39)          |
| Dividends declared per common share  | \$ 0.25                                     | \$ 0.16         | \$ 0.66                                    | \$ 0.44            |
| Weighted average shares outstanding-basic  | 9,406                                       | 9,320           | 9,349                                      | 7,924              |
| Weighted average shares outstanding-diluted  | 11,906                                      | 9,320           | 11,849                                     | 7,924              |

See notes to condensed consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

For the nine months ended September 30, 2009

(dollar amounts in thousands)  
(unaudited)

|  | Common<br>Stock | Additional<br>Paid-In<br>Capital | Accumulated<br>Deficit | Accumulated<br>Other<br>Comprehensive<br>Income/(Loss) | Comprehensive<br>Income | Total    |
|--|-----------------|----------------------------------|------------------------|--|-------------------------|----------|
| Balance, January 1, 2009   | \$93            | \$ 150,790                       | \$ (103,114 )          | \$ (8,521 )  |                         | \$39,248 |
| Net income   | —               | —                                | 7,478                  | —  | \$ 7,478                | 7,478    |
| Restricted Stock issuance  | 1               | 224                              |                        |  |                         | 225      |
| Dividends declared   | —               | (6,176 )                         | —                      | —  | —                       | (6,176 ) |
| Increase in net unrealized gain on investment – available for sale securities    | —               | —                                | —                      | 15,335   | 15,335                  | 15,335   |
| Reclassification of gain for sales of investment – available for sale securities | —               | —                                | —                      | 141  | 141                     | 141      |
| Increase in fair value of derivative instruments utilized for cash flow hedges   | —               | —                                | —                      | 1,898  | 1,898                   | 1,898    |
| Comprehensive income   | —               | —                                | —                      | —  | \$ 24,852               |          |
| Balance, September 30, 2009  | \$94            | \$ 144,838                       | \$ (95,636 )           | \$ 8,853   |                         | \$58,149 |

See notes to condensed consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(dollar amounts in thousands)  
(unaudited)

|  | For the Nine Months<br>Ended<br>September 30, |             |
|--|---|-------------|
|  | 2009  | 2008        |
| <b>Cash Flows from Operating Activities:</b>   |   |             |
| Net income (loss)  | \$ 7,478                                      | \$ (18,966) |
| Adjustments to reconcile net loss to net cash provided by operating activities:                                      |   |             |
| Depreciation and amortization  | 1,069   | 1,044       |
| Accretion/amortization of discount/premium on investment securities and mortgage loans held in securitization trusts | (126)   | 819         |
| Realized (gain) loss on securities and related hedges  | (623)   | 19,927      |
| Impairment loss on investment securities   | 119   | —           |
| Provision for loan losses  | 1,414   | 1,520       |
| Loans held for sale lower of cost or market adjustments  | 307   | —           |
| Restricted stock compensation expense  | 224   | —           |
| Changes in operating assets and liabilities:   |   |             |
| Proceeds from sales or repayments of mortgage loans held for sale  | 975   | 2,732       |
| Accounts and accrued interest receivable   | 480   | 48          |
| Prepaid and other assets   | (409)   | 207         |
| Due to loan purchasers   | (192)   | 117         |
| Accounts payable and accrued expenses  | (1,297)                                       | (1,221)     |
| Net cash provided by operating activities  | 9,419   | 6,227       |
| <b>Cash Flows from Investing Activities:</b>   |   |             |
| Decrease in restricted cash  | 4,600   | 7,237       |
| Purchases of investment securities   | (43,440)                                      | (850,609)   |
| Proceeds from sales of investment securities   | 198,494                                       | 625,986     |
| Principal repayments received on mortgage loans held in securitization trusts  | 55,473  | 70,815      |
| Principal paydowns on investment securities - available for sale   | 56,453  | 64,043      |
| Net cash provided by (used in) investing activities  | 271,580                                       | (82,528)    |
| <b>Cash Flows from Financing Activities:</b>   |   |             |
| Proceeds from common stock issued (net)  | —   | 56,544      |
| Proceeds from convertible preferred debentures (net)   | —   | 19,590      |
| Payments from termination of swaps   | —   | (8,333)     |
| (Decrease) increase in financing arrangements  | (207,584)                                     | 90,581      |
| Dividends paid   | (4,753)                                       | (2,610)     |
| Payments made on collateralized debt obligations   | (55,646)                                      | (71,672)    |
| Net cash (used in) provided by financing activities  | (267,983)                                     | 84,100      |
| Net Increase in Cash and Cash Equivalents  | 13,016  | 7,799       |
| Cash and Cash Equivalents - Beginning of Period  | 9,387   | 5,508       |
| Cash and Cash Equivalents - End of Period  | \$ 22,403                                     | \$ 13,307   |

Supplemental Disclosure:



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|  |    |        |    |        |
|--|----|--------|----|--------|
| Cash paid for interest                             | \$ | 10,092 | \$ | 28,030 |
| Non-Cash Financing Activities:                     |    |        |    |        |
| Dividends declared to be paid in subsequent period | \$ | 2,355  | \$ | 1,491  |
| Restricted stock grants                            | \$ | 523    | \$ | —      |

5

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NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES  
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
September 30, 2009  
(unaudited)

1. Organization and Summary of Significant Accounting Policies

Organization - New York Mortgage Trust, Inc. together with its consolidated subsidiaries (“NYMT”, the “Company”, “we”, “our”, and “us”) is a self-advised real estate investment trust, or REIT, in the business of acquiring and managing primarily residential adjustable rate mortgage-backed securities issued by a United States government-sponsored enterprise (“GSE” or “Agency”), such as the Federal National Mortgage Association (“Fannie Mae”) or the Federal Home Loan Mortgage Corporation (“Freddie Mac”), and prime credit quality residential adjustable-rate mortgage (“ARM”) loans, and/or prime ARM loans. We refer to residential adjustable rate mortgage-backed securities throughout this Quarterly Report on Form 10-Q as “RMBS” and RMBS issued by a GSE as “Agency RMBS”. We also invest, although to a lesser extent, in certain alternative real estate related and financial assets that present greater credit risk and less interest rate risk than our current RMBS investments and prime ARM loans which may include, among other things, non-Agency RMBS, certain non-rated residential mortgage assets, commercial mortgage-backed securities, commercial real estate loans, collateralized loan obligations and other similar investments. We refer to our investment in these alternative assets as our “alternative investment strategy.” We seek attractive long-term investment returns by investing our equity capital and borrowed funds in such securities. Our principal business objective is to generate net income for distribution to our stockholders resulting from the spread between the interest and other income we earn on our interest-earning assets and the interest expense we pay on the borrowings that we use to finance these assets, which we refer to as our net interest income.

The Company conducts its business through the parent company, NYMT, and several subsidiaries, including special purpose subsidiaries established for loan securitization purposes, a taxable REIT subsidiary (“TRS”) and a qualified REIT subsidiary (“QRS”). The Company conducts certain of its operations related to its alternative investment strategy through its wholly-owned TRS, Hypotheca Capital, LLC (“HC”), in order to utilize, to the extent permitted by law, some or all of a net operating loss carry-forward held in HC that resulted from the Company's exit from the mortgage lending business. Prior to March 31, 2007, the Company conducted substantially all of its mortgage lending business through HC. The Company's wholly-owned QRS, New York Mortgage Funding, LLC (“NYMF”), currently holds certain mortgage-related assets under our principal investment strategy for regulatory compliance purposes. The Company also may conduct certain of its operations related to its alternative investment strategy through NYMF. The Company consolidates all of its subsidiaries under generally accepted accounting principles in the United States of America (“GAAP”).

The Company is organized and conducts its operations to qualify as a REIT for federal income tax purposes. As such, the Company will generally not be subject to federal income tax on that portion of its income that is distributed to stockholders if it distributes at least 90% of its REIT taxable income to its stockholders by the due date of its federal income tax return and complies with various other requirements.

Basis of Presentation - The condensed consolidated balance sheets at September 30, 2009 and December 31, 2008, the condensed consolidated statements of operations for the three and nine months ended September 30, 2009 and 2008, the condensed consolidated statement of stockholders' equity for the nine months ended September 30, 2009 and the condensed consolidated statements of cash flows for the nine months ended September 30, 2009 and 2008 are unaudited. In our opinion, all adjustments (which include only normal recurring adjustments) necessary to present fairly the financial position, results of operations and cash flows have been made. Certain information and footnote disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted in accordance with Article 10 of Regulation S-X and the instructions to Form 10-Q. These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes

thereto included in our Annual Report on Form 10-K for the year ended December 31, 2008, as filed with the Securities and Exchange Commission (“SEC”). The results of operations for the three and nine months ended September 30, 2009 are not necessarily indicative of the operating results for the full year.

The accompanying condensed consolidated financial statements include our accounts and those of our consolidated subsidiaries. All significant intercompany amounts have been eliminated. The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ from those estimates.

New Accounting Pronouncements - In June 2009, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards (“SFAS”) No. 168, The FASB Accounting Standards Codification (Codification “ASC”) and the Hierarchy of GAAP (“SFAS No. 168”). SFAS No. 168 replaces SFAS No. 162, The Hierarchy of GAAP and establishes the Codification as the single source of authoritative U.S. GAAP recognized by the FASB to be applied by nongovernmental entities. SEC rules and interpretive releases are also sources of authoritative GAAP for SEC registrants. SFAS No. 168 modifies the GAAP hierarchy to include only two levels of GAAP: authoritative and non-authoritative. SFAS No. 168 is effective for financial statements issued for fiscal years ending after September 15, 2009 and interim periods within those fiscal years, and will therefore become effective for us as of September 30, 2009. Due to the nature of this pronouncement, we do not anticipate that the adoption of SFAS No. 168 will have a material impact on our results of operations and financial condition.

In June 2007, the Emerging Issues Task Force (“EITF”) reached consensus on Issue No. 06-11, Accounting for Income Tax Benefits of Dividends on Share-Based Payment Award. EITF Issue No. 06-11 requires that the tax benefit related to dividend equivalents paid on restricted stock units that are expected to vest, be recorded as an increase to additional paid-in capital. The Company accounts for this tax benefit as a reduction to income tax expense. EITF Issue No. 06-11 is to be applied prospectively for tax benefits on dividends declared in fiscal years beginning after December 15, 2008. The Company adopted the provisions of EITF Issue No. 06-11 during the first quarter of 2009. The adoption of EITF Issue No. 06-11 did not have a material effect on the Company’s condensed consolidated financial statements. EITF issue No. 6-11 has been incorporated into ASC 718 Accounting for Income Tax Benefits of Dividends on Share-Based Payment Awards.

In December 2007, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards (“SFAS”) No. 141, Business Combinations and issued SFAS No. 141(R) Business Combinations. SFAS No. 141(R) broadens the guidance of SFAS No. 141, extending its applicability to all transactions and other events in which one entity obtains control over one or more other businesses. It broadens the fair value measurement and recognition of assets acquired, liabilities assumed, and interests transferred as a result of business combinations; and it stipulates that acquisition related costs be generally expensed rather than included as part of the basis of the acquisition. SFAS No. 141(R) expands required disclosures to improve the ability to evaluate the nature and financial effects of business combinations. SFAS No. 141(R) is effective for all transactions the Company closes, on or after January 1, 2009. The Company adopted SFAS No. 141(R) as of January 1, 2009 and it did not have a material impact on the Company’s condensed consolidated financial statements. SFAS No. 141(R) has been incorporated into ASC 805 Business Combinations.

In March 2008, the FASB issued SFAS No. 161, Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133. SFAS No. 161 requires enhanced disclosures about an entity’s derivative and hedging activities, and is effective for financial statements the Company issues for fiscal years beginning after November 15, 2008, with early application encouraged. Because SFAS No. 161 requires only additional disclosures concerning derivatives and hedging activities, adoption of SFAS No. 161 did not affect the Company’s financial condition, results of operations or cash flows. The Company adopted SFAS No. 161 in the first quarter of 2009 and as a result expanded the footnote disclosure included in the condensed consolidated financial statements (see note 4). SFAS No. 161 has been incorporated into ASC 815 Derivatives and Hedging.

In May 2008, the FASB issued FSP No. APB 14-1, Accounting for Convertible Debt Instruments that may be Settled in Cash upon Conversion (Including Partial Cash Settlement). The FSP requires the initial proceeds from the sale of our convertible preferred debentures to be allocated between a liability component and an equity component. The resulting discount would be amortized using the effective interest method over the period the debt is expected to remain outstanding as additional interest expense. The FSP No. APB 14-1 is effective for our fiscal year beginning on January 1, 2009 and requires retrospective application. The Company adopted FSP as of January 1, 2009 and it had no impact on the Company’s condensed consolidated financial statements. FSP No. APB 14-1 has been incorporated into ASC 470 Debt, with Conversion and Other Options.



On October 10, 2008, the FASB issued FSP SFAS No. 157-3, Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active “FSP No. 157-3” clarifies the application of SFAS No. 157 in a market that is not active and provides an example to illustrate key consideration in determining the fair value of a financial asset when the market for that financial asset is not active. The issuance of FSP No. 157-3 did not have a significant impact on the Company’s determination of fair value for its financial assets. FSP SFAS No. 157-3 has been incorporated into ASC 820 Fair Value Measurements and Disclosures.

In April 2009, the FASB issued FSP SFAS No. 157-4, Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly (“FSP No. 157-4”), to provide additional guidance for estimating fair value in accordance with SFAS No. 157 when the volume and level of activity for the asset or liability have significantly decreased as well as on identifying circumstances that indicate that a transaction is not orderly. FSP No. 157-4 provides additional guidance on determining fair value when the volume and level of activity for the asset or liability have significantly decreased when compared with normal market activity for the asset or liability (or similar assets or liabilities). FSP No. 157-4 further amends SFAS No. 157 to require the disclosure in interim and annual periods of the inputs and valuation technique(s) used to measure fair value and a discussion of changes in valuation techniques and related inputs, if any, during the period. FSP No. 157-4 is effective for the Company’s interim and annual reporting periods ending after June 15, 2009, and should be applied prospectively. The Company adopted FSP SFAS No. 157-4 did not have a material impact on the Company’s condensed consolidated financial statements. FSP SFAS No. 157-4 has been incorporated into ASC 320 Accounting for Debt Securities After an Other-than-temporary Impairment.

In April 2009, the FASB issued FSP SFAS No. 115-2 and SFAS No. 124-2, Recognition and Presentation of Other-Than-Temporary Impairments, which provides additional guidance on the recognition, presentation and disclosure of losses in earnings for the impairment of investments in debt securities when changes in fair value of those securities are not regularly recognized in earnings (other-than-temporary impairment for debt securities). This FSP also requires additional disclosures regarding expected cash flows, credit losses, and aging of securities with unrealized losses. Under this FSP, an other than temporary impairment is taken if the Company intends or is forced to sell the related debt security before its anticipated recovery with any impairment charge recognized in the statements of operations. Realized credit losses are also recognized in the statement of operations. The FSP is effective for the Company’s interim and annual reporting periods ending after June 15, 2009, and should be applied prospectively. The Company adopted FSP SFAS No. 115-2 and FSP SFAS No. 124-2 and it did not have a material impact on the Company’s condensed consolidated financial statements. FSP SFAS No. 115-2 and SFAS No. 124-2 has been incorporated into ASC 825 Financial Instruments, Fair Value Option and ASC 270 Interim Reporting.

In June 2009, the FASB issued SFAS No. 165, Subsequent Events which is effective for interim and annual periods ending after June 15, 2009. SFAS No. 165 establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. It requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for that date. The Company adopted SFAS No. 165 in the second quarter of 2009 and has evaluated all events or transactions through November 6, 2009. During this period, we did not have any material subsequent events that impacted our consolidated financial statements. SFAS No. 165 has been incorporated into ASC 855 Subsequent Events.

In June 2009, the FASB issued SFAS No. 166, Accounting for Transfers of Financial Assets—an amendment of FASB Statement No. 140 (“SFAS No. 166”), which amends the derecognition guidance in SFAS No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities, eliminates the concept of a “qualifying special-purpose entity” (“QSPE”) and requires more information about transfers of financial assets, including securitization transactions as well as a company’s continuing exposure to the risks related to transferred financial assets. The SFAS No. 166 will update ASC 810 Consolidation. SFAS No. 166 is effective for financial asset transfers occurring after the beginning of an entity’s first fiscal year that begins after November 15, 2009 and early adoption is prohibited. Management is currently evaluating the impact on our consolidated financial statements of adopting SFAS

No. 166.

In June 2009, the FASB issued SFAS No. 167, Amendments to FASB Interpretation No. 46(R) (“SFAS No. 167”), which amends the consolidation guidance applicable to variable interest entities. The amendments will significantly affect the overall consolidation analysis under FASB ASC 810, Consolidation (“FASB ASC 810”) and changes the way entities account for securitizations and special purpose entities as a result of the elimination of the QSPE concept in SFAS No.166. SFAS No. 167 is effective as of the beginning of the first fiscal year that begins after November 15, 2009 and early adoption is prohibited. Management is currently evaluating the impact of adopting SFAS No. 167.

8

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In August 2009, the FASB issued Accounting Standards Update (“ASU”) 2009-05 Measuring Liabilities at Fair Value. The update clarifies that the unadjusted quoted price for an identical liability, when traded as an asset in an active market is a Level 1 measurement for the liability and provides guidance on the valuation techniques to estimate fair value of a liability in the absence of a Level 1 measurement. The update is effective for the first interim or annual reporting period beginning after its issuance. The update did not have a material effect on our consolidated financial statements.

## 2. Investment Securities - Available for Sale

Investment securities available for sale consist of the following as of September 30, 2009 (dollar amounts in thousands):

|                                 | Amortized<br>Cost | Unrealized<br>Gains | Unrealized<br>Losses | Carrying<br>Value |
|---------------------------------|-------------------|---------------------|----------------------|-------------------|
| Agency RMBS (1)                 | \$ 218,202        | \$ 6,687            | \$ —                 | \$ 224,889        |
| Non-Agency RMBS                 | 42,889            | 4,133               | (2,637)              | 44,385            |
| Collateralized Loan Obligations | 8,988             | 4,332               | —                    | 13,320            |
| Total                           | \$ 270,079        | \$ 15,152           | \$ (2,637)           | \$ 282,594        |

(1)- Agency RMBS only includes Fannie Mae securities at September 30, 2009.

Investment securities available for sale consist of the following as of December 31, 2008 (dollar amounts in thousands):

|                 | Amortized<br>Cost | Unrealized<br>Gains | Unrealized<br>Losses | Carrying<br>Value |
|-----------------|-------------------|---------------------|----------------------|-------------------|
| Agency RMBS (1) | \$ 454,653        | \$ 1,316            | \$ (98)              | \$ 455,871        |
| Non-Agency RMBS | 25,724            | —                   | (4,179)              | 21,545            |
| Total           | \$ 480,377        | \$ 1,316            | \$ (4,277)           | \$ 477,416        |

(1)- Agency RMBS carrying value included \$354.4 million of Fannie Mae and \$101.5 million of Freddie Mac securities.

The Company commenced its alternative investment strategy by purchasing \$46.0 million face amount of CRATOS CLO I collateralized loan obligations (“CLO”) on March 31, 2009 at a purchase price of approximately \$9.0 million. This transaction settled on April 7, 2009. This marked the Company’s first investment under its alternative investment strategy. In addition, during the second and third quarters of 2009 the Company opportunistically purchased approximately \$45.0 million current par value of non-Agency RMBS at an average cost of 60.2% of par. The \$45.0 million current par value of non-Agency RMBS purchased were previously rated AAA (at issuance) and represent the senior cashflows of the applicable deal structures.

During March 2009, the Company determined that the Agency collateralized mortgage obligations (“CMO”) floaters in its portfolio were no longer producing acceptable returns and initiated a program for the purpose of disposing of these securities. The Company disposed approximately \$159.5 million in current par value of Agency CMO floaters during March 2009, with the balance of the Agency CMO floaters, or \$34.3 million in current par value, in its portfolio being sold in April 2009, for an aggregate disposition of approximately \$193.8 million in current par value of Agency CMO floaters and a net gain of approximately \$0.1 million. As a result of this sale program, the Company incurred an additional impairment of \$0.1 million in the quarter ended March 31, 2009 as the Company intended to sell their Agency CMO floaters.





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The following tables set forth the stated reset periods and weighted average yields of our investment securities at September 30, 2009 (dollar amounts in thousands):

|                           | Less than 6 Months |                              | More than 6 Months<br>to 24 Months |                              | More than 24<br>Months<br>to 60 Months |                              | Total             |                              |
|---------------------------|--------------------|------------------------------|------------------------------------|------------------------------|--|------------------------------|-------------------|------------------------------|
|                           | Carrying<br>Value  | Weighted<br>Average<br>Yield | Carrying<br>Value                  | Weighted<br>Average<br>Yield | Carrying<br>Value                      | Weighted<br>Average<br>Yield | Carrying<br>Value | Weighted<br>Average<br>Yield |
| Agency RMBS               | \$ —               | —                            | \$ 94,064                          | 3.30%                        | \$ 130,825                             | 4.50%                        | \$ 224,889        | 4.00%                        |
| Non-Agency RMBS           | 19,365             | 8.47%                        | 8,597                              | 7.47%                        | 16,423                                 | 12.52%                       | 44,385            | 9.77%                        |
| CLO                       | 13,320             | 22.25%                       | —                                  | —                            | —                                      | —                            | 13,320            | 22.25%                       |
| Total/Weighted<br>Average | \$ 32,685          | 14.09%                       | \$ 102,661                         | 3.64%                        | \$ 147,248                             | 5.39%                        | \$ 282,594        | 5.76%                        |

The following table sets forth the stated reset periods and weighted average yields of our investment securities at December 31, 2008 (dollar amounts in thousands):

|                           | Less than 6 Months |                              | More than 6<br>Months<br>to 24 Months |                              | More than 24<br>Months<br>to 60 Months |                              | Total             |                              |
|---------------------------|--------------------|------------------------------|---------------------------------------|------------------------------|--|------------------------------|-------------------|------------------------------|
|                           | Carrying<br>Value  | Weighted<br>Average<br>Yield | Carrying<br>Value                     | Weighted<br>Average<br>Yield | Carrying<br>Value                      | Weighted<br>Average<br>Yield | Carrying<br>Value | Weighted<br>Average<br>Yield |
| Agency RMBS               | \$ 197,675         | 8.54%                        | \$ 66,910                             | 3.69%                        | \$ 191,286                             | 4.02%                        | \$ 455,871        | 5.99%                        |
| Non-Agency<br>RMBS (1)    | 21,476             | 14.11%                       | —                                     | —                            | 69                                     | 16.99%                       | 21,545            | 14.35%                       |
| Total/Weighted<br>Average | \$ 219,151         | 9.21%                        | \$ 66,910                             | 3.69%                        | \$ 191,355                             | 4.19%                        | \$ 477,416        | 6.51%                        |

(1) The NYMT retained securities includes \$0.1 million of residual interests related to the NYMT 2006-1 transaction.

The following table presents the Company's investment securities available for sale in an unrealized loss position, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position at September 30, 2009. (dollar amounts in thousands):

|                 | Less than 12 Months |                      | Greater than 12 Months |                      | Total             |                      |
|-----------------|---------------------|----------------------|------------------------|----------------------|-------------------|----------------------|
|                 | Carrying<br>Value   | Unrealized<br>Losses | Carrying<br>Value      | Unrealized<br>Losses | Carrying<br>Value | Unrealized<br>Losses |
| Non-Agency RMBS | \$ 2,134            | \$ 128               | \$ 13,492              | \$ 2,509             | \$ 15,626         | \$ 2,637             |
| Total           | \$ 2,134            | \$ 128               | \$ 13,492              | \$ 2,509             | \$ 15,626         | \$ 2,637             |

The following table presents the Company's investment securities available for sale in an unrealized loss position, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position at December 31, 2008.

|  | Less than 12 Months |                      | Greater than 12 Months |                      | Total             |                      |
|--|---------------------|----------------------|------------------------|----------------------|-------------------|----------------------|
|  | Carrying<br>Value   | Unrealized<br>Losses | Carrying<br>Value      | Unrealized<br>Losses | Carrying<br>Value | Unrealized<br>Losses |

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|                 |    |        |    |       |    |   |    |   |        |       |
|-----------------|----|--------|----|-------|----|---|----|---|--------|-------|
| Agency RMBS     | \$ | 9,406  | \$ | 98    | \$ | — | \$ | — | 9,406  | 98    |
| Non-Agency RMBS |    | 18,649 |    | 4,179 |    | — |    | — | 18,649 | 4,179 |
| Total           | \$ | 28,055 | \$ | 4,277 | \$ | — | \$ | — | 28,055 | 4,277 |

10

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As of September 30, 2009 and the date of this filing, we either do not have the intent to sell or we believe that it is more likely than not that we will not have to sell our portfolio of securities which are currently in unrealized loss positions for the foreseeable future. In assessing the Company's ability to hold its securities, it considers the significance of each investment and the amount of impairment, as well as the Company's current and anticipated leverage capacity and liquidity position. In addition, the Company anticipates collecting principal repayments in amounts sufficient to recover the amortized cost of the related non-Agency RMBS and anticipates that credit losses will not exceed the purchased discount. Should conditions change that would require us to sell securities at a loss or for liquidity reasons, we may no longer be able to assert that we will not have to sell our portfolio of securities which are currently in an unrealized loss position for the foreseeable future, in which case we would then be required to record impairment charges related to these securities.

The majority of the Company's Agency RMBS that are classified as investment securities available for sale are pledged as collateral for borrowings under financing arrangements (see note 5).

### 3. Mortgage Loans Held in Securitization Trusts (net)

Mortgage loans held in securitization trusts (net) consist of the following as of September 30, 2009 and December 31, 2008 (dollar amounts in thousands):

|                                     | September<br>30,<br>2009 | December<br>31,<br>2008 |
|-------------------------------------|--------------------------|-------------------------|
| Mortgage loans principal amount (1) | \$ 291,423               | \$ 347,546              |
| Deferred origination costs – net    | 1,840                    | 2,197                   |
| Reserve for loan losses             | (2,323)                  | (1,406)                 |
| Total                               | \$ 290,940               | \$ 348,337              |

(1) Includes \$1.3 million and \$1.9 million in real estate owned through foreclosure as of September 30, 2009 and December 31, 2008, respectively.

Reserve for Loan losses - The following table presents the activity in the Company's reserve for loan losses on mortgage loans held in securitization trusts for the nine months ended September 30, 2009 and 2008 (dollar amounts in thousands).

|                                | September 30,<br>2009 | September 30,<br>2008 |
|--------------------------------|-----------------------|-----------------------|
| Balance at beginning of period | \$ 1,406              | \$ 1,647              |
| Provisions for loan losses     | 1,414                 | 1,433                 |
| Charge-offs                    | (497)                 | (1,674)               |
| Balance at the end of period   | \$ 2,323              | \$ 1,406              |

On an ongoing basis, the Company evaluates the adequacy of its reserve for loan losses. The Company's reserve for loan losses at September 30, 2009 was \$2.3 million, representing 80 basis points of the outstanding principal balance of loans held in securitization trusts as compared to 40 basis points as of December 31, 2008. As part of the Company's reserve adequacy analysis, management will assess an overall level of reserves while also assessing credit losses inherent in each non-performing mortgage loan held in securitization trusts. These estimates involve the consideration of various credit related factors, including but not limited to, current housing market conditions, current loan to value ratios, collateral value, delinquency status, borrower's current economic and credit status and other relevant factors.

All of the Company's mortgage loans held in securitization trusts are pledged as collateral for the collateralized debt obligations ("CDO") issued by the Company (see note 6). As of September 30, 2009, the Company's net investment in the securitization trusts, which is the maximum amount of the Company's investment that is at risk to loss and represents the difference between the carrying amount of the loans and the amount of CDO's outstanding, was \$10.7 million.

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The following tables set forth delinquent mortgage loans in our securitization trusts as of September 30, 2009 and December 31, 2008 (dollar amounts in thousands):

September 30, 2009

| Days Late                             | Number of Delinquent Loans | Total Dollar Amount | % of Loan Portfolio |
|---------------------------------------|----------------------------|---------------------|---------------------|
| 30-60                                 | 1                          | \$ 76               | 0.03%               |
| 61-90                                 | 5                          | 3,219               | 1.10%               |
| 90+                                   | 26                         | 13,145              | 4.51%               |
| Real estate owned through foreclosure | 3                          | 1,260               | 0.43%               |

December 31, 2008

| Days Late                             | Number of Delinquent Loans | Total Dollar Amount | % of Loan Portfolio |
|---------------------------------------|----------------------------|---------------------|---------------------|
| 30-60                                 | 3                          | \$ 1,363            | 0.39%               |
| 61-90                                 | 1                          | 263                 | 0.08%               |
| 90+                                   | 13                         | 5,734               | 1.65%               |
| Real estate owned through foreclosure | 4                          | 1,927               | 0.55%               |

#### 4. Derivative Instruments and Hedging Activities

The Company enters into derivatives instruments to manage its interest rate risk exposure. These derivative instruments include interest rate swaps and caps entered into to reduce interest expense costs related to our repurchase agreements, CDO's and our subordinated debentures. The Company's interest rate swaps are designated as cash flow hedges against the benchmark interest rate risk associated with its short term repurchase agreements. There were no costs incurred at the inception of our interest rate swaps, under which the Company agrees to pay a fixed rate of interest and receive a variable interest rate based on one month LIBOR, on the notional amount of the interest rate swaps. The Company's interest rate swap notional amounts are based on an amortizing schedule fixed at the start date of the transaction. The Company's interest rate cap transactions are designated as cashflow hedges against the benchmark interest rate risk associated with the CDO's and the subordinated debentures. The interest rate cap transactions were initiated with an upfront premium that is being amortized over the life of the contract.

The Company documents its risk-management policies, including objectives and strategies, as they relate to its hedging activities, and upon entering into hedging transactions, documents the relationship between the hedging instrument and the hedged liability contemporaneously. The Company assesses, both at inception of a hedge and on an on-going basis, whether or not the hedge is "highly effective" when using the matched term basis.

The Company discontinues hedge accounting on a prospective basis and recognizes changes in the fair value through earnings when: (i) it is determined that the derivative is no longer effective in offsetting cash flows of a hedged item (including forecasted transactions); (ii) it is no longer probable that the forecasted transaction will occur; or (iii) it is determined that designating the derivative as a hedge is no longer appropriate. The Company's derivative instruments are carried on the Company's balance sheet at fair value, as assets, if their fair value is positive, or as liabilities, if their fair value is negative. The Company's derivative instruments are designated as "cash flow hedges," changes in their fair value are recorded in accumulated other comprehensive income/(loss), provided that the hedges are effective. A change in fair value for any ineffective amount of the Company's derivative instruments would be recognized in earnings. The Company has not recognized any change in the value of its existing derivative instruments through earnings as a result of ineffectiveness of any of its hedges.



The following table presents the fair value of derivative instruments and their location in the Company's condensed consolidated balance sheets at September 30, 2009 and December 31, 2008, respectively (amounts in thousands):

| Derivative Designated as Hedging | Balance Sheet Location | September 30,<br>2009 | December 31,<br>2008 |
|----------------------------------|------------------------|-----------------------|----------------------|
| Interest Rate Caps               | Derivative Assets      | \$ 15                 | \$ 22                |
| Interest Rate Swaps              | Derivative Liabilities | 3,025                 | 4,194                |

The following table presents the impact of the Company's derivative instruments on the Company's accumulated other comprehensive income/(loss) for the nine months ended September 30, 2009 and 2008 (amounts in thousands):

| Derivative Designated as Hedging Instruments                                       | Nine Months Ended<br>September 30 |            |
|--|-----------------------------------|------------|
|  | 2009                              | 2008       |
| Accumulated other comprehensive income/(loss) for derivative instruments:          |                                   |            |
| Balance at beginning of the period   | \$ (5,560)                        | \$ (1,951) |
| Unrealized gain on interest rate caps  | 729                               | 602        |
| Unrealized gain on interest rate swaps   | 1,169                             | 1,481      |
| Reclassification adjustment for net gains/losses included in net income for hedges | —                                 | —          |
| Balance at the end of the period   | \$ (3,662)                        | \$ 132     |

The Company estimates that over the next 12 months, approximately \$2.5 million of the net unrealized losses on the interest rate swaps will be reclassified from accumulated other comprehensive income/(loss) into earnings.

The following table details the impact of the Company's interest rate swaps and interest rate caps included in interest expense for the three and nine months ended September 30, 2009 and 2008 (amounts in thousands):

|  | Three Months ended<br>September 30, |        | Nine Months Ended<br>September 30, |        |
|--|-------------------------------------|--------|------------------------------------|--------|
|  | 2009                                | 2008   | 2009                               | 2008   |
| <b>Interest Rate Caps:</b>   |                                     |        |                                    |        |
| Interest expense-investment securities and loans held in securitization trusts | \$ 157                              | \$ 171 | \$ 485                             | \$ 528 |
| Interest expense-subordinated debentures                                       | 90                                  | 77     | 252                                | 218    |
| <b>Interest Rate Swaps:</b>  |                                     |        |                                    |        |
| Interest expense-investment securities and loans held in securitization trusts | 799                                 | 167    | 2,464                              | 285    |

**Interest Rate Swaps** - The Company is required to pledge assets under a bi-lateral margin arrangement, including either cash or Agency RMBS, as collateral for its interest rate swaps, whose collateral requirements vary by counterparty and change over time based on the market value, notional amount, and remaining term of the interest rate swap ("Swap"). In the event the Company is unable to meet a margin call under one of its Swap agreements, thereby causing an event of default or triggering an early termination event under one of its Swap agreements, the counterparty to such agreement may have the option to terminate all of such counterparty's outstanding Swap transactions with the Company. In addition, under this scenario, any close-out amount due to the counterparty upon termination of the counterparty's transactions would be immediately payable by the Company pursuant to the applicable agreement. The Company believes it was in compliance with all margin requirements under its Swap agreements as of September 30, 2009 and December 31, 2008. The Company had \$3.2 million and \$4.2 million of restricted cash related to margin posted for Swaps as of September 30, 2009 and December 31, 2008, respectively.



The use of interest rate swaps exposes the Company to counterparty credit risks in the event of a default by a Swap counterparty. If a counterparty defaults under the applicable Swap agreement the Company may be unable to collect payments to which it is entitled under its Swap agreements, and may have difficulty collecting the assets it pledged as collateral against such Swaps. The Company currently has in place with all outstanding Swap counterparties bi-lateral margin agreements thereby requiring a party to post collateral to the Company for any valuation deficit. This arrangement is intended to limit the Company's exposure to losses in the event of a counterparty default.

The following table presents information about the Company's interest rate swaps as of September 30, 2009 and December 31, 2008 (amounts in thousands):

| Maturity (1)                | September 30, 2009 |  | December 31, 2008 |  |
|-----------------------------|--------------------|--|-------------------|--|
|                             | Notional Amount    | Weighted Average Fixed Pay Interest Rate | Notional Amount   | Weighted Average Fixed Pay Interest Rate |
| Within 30 Days              | \$ 2,260           | 2.99%                                    | \$ 2,960          | 3.00%                                    |
| Over 30 days to 3 months    | 4,180              | 2.99                                     | 5,220             | 3.00                                     |
| Over 3 months to 6 months   | 5,770              | 2.99                                     | 7,770             | 2.99                                     |
| Over 6 months to 12 months  | 19,100             | 2.98                                     | 13,850            | 2.99                                     |
| Over 12 months to 24 months | 54,700             | 3.01                                     | 48,640            | 2.99                                     |
| Over 24 months to 36 months | 10,140             | 3.01                                     | 34,070            | 3.03                                     |
| Over 36 months to 48 months | 17,760             | 3.08                                     | 7,560             | 3.01                                     |
| Over 48 months              | —                  | —  | 17,200            | 3.08                                     |
| Total                       | \$ 113,910         | 3.01%                                    | \$ 137,270        | 3.01%                                    |

(1)The Company enters into scheduled amortizing interest rate swap transactions whereby the Company pays a fixed rate of interest and receives one month LIBOR.

**Interest Rate Caps** – Interest rate caps are designated by the Company as cash flow hedges against interest rate risk associated with the Company's CDO's and the subordinated debentures. The interest rate caps associated with the CDO's are amortizing contractual notional schedules determined at origination and had \$411.4 million and \$456.9 million outstanding as of September 30, 2009 and December 31, 2008, respectively. These interest rate caps are utilized to cap the interest rate on the CDO's at a fixed-rate when one month LIBOR exceeds a predetermined rate. In addition, the Company has an interest rate cap contract on \$25.0 million of subordinated debentures that effectively caps three month LIBOR at 3.75% until March 31, 2010.

## 5. Financing Arrangements, Portfolio Investments

The Company has entered into repurchase agreements with third party financial institutions to finance its agency RMBS portfolio. The repurchase agreements are short-term borrowings that bear interest rates typically based on a spread to LIBOR, and are secured by the securities which they finance. At September 30, 2009, the Company had repurchase agreements with an outstanding balance of \$194.7 million and a weighted average interest rate of 0.39%. As of December 31, 2008, the Company had repurchase agreements with an outstanding balance of \$402.3 million and a weighted average interest rate of 2.62%. At September 30, 2009 and December 31, 2008, securities pledged by the Company as collateral for repurchase agreements had estimated fair values of \$208.3 million and \$456.5 million, respectively. All outstanding borrowings under our repurchase agreements mature within 30 days. As of September 30, 2009, the average days to maturity for all repurchase agreements are 25 days. The Company had outstanding repurchase agreements with five different financial institutions as of September 30, 2009 and six as of December 31, 2008.

As of September 30, 2009, our Agency RMBS are financed with \$194.7 million of repurchase agreement funding with an advance rate of 93.6% that implies an overall haircut of 6.4%.

As of September 30, 2009, the Company had \$22.4 million in cash and \$74.3 million in unencumbered investment securities to meet additional haircut or market valuation requirements including \$60.9 million of RMBS, of which \$16.6 million are Agency RMBS.

## 6. Collateralized Debt Obligations

The Company's CDOs, which are recorded as liabilities on the Company's balance sheet, are secured by ARM loans pledged as collateral, which are recorded as assets of the Company. As of September 30, 2009 and December 31, 2008, the Company had CDOs outstanding of \$280.2 million and \$335.6 million, respectively. As of September 30, 2009 and December 31, 2008, the current weighted average interest rate on these CDOs was 0.63% and 0.85%, respectively. The CDOs are collateralized by ARM loans with a principal balance of \$291.4 million and \$347.5 million at September 30, 2009 and December 31, 2008, respectively. The Company retained the owner trust certificates, or residual interest, for three securitizations, and, as of September 30, 2009 and December 31, 2008, had a net investment in the securitizations trusts after loan loss reserves of \$10.7 million and \$12.7 million, respectively.

The CDO transactions include amortizing interest rate cap contracts with an aggregate notional amount of \$411.4 million as of September 30, 2009 and an aggregate notional amount of \$456.9 million as of December 31, 2008, which are recorded as derivative assets of the Company. The interest rate caps are carried at fair value and totaled \$14,535 as of September 30, 2009 and \$18,575 as of December 31, 2008, respectively. The interest rate cap reduces interest rate risk exposure on these transactions.

## 7. Discontinued Operation

In connection with the sale of our mortgage origination platform assets during the quarter ended March 31, 2007, we classified our mortgage lending segment as a discontinued operation. As a result, we have reported revenues and expenses related to the segment as a discontinued operation and the related assets and liabilities as assets and liabilities related to a discontinued operation for all periods presented in the accompanying condensed consolidated financial statements. Certain assets, such as the deferred tax asset, and certain liabilities, such as subordinated debt and liabilities related to lease facilities not sold, are part of our ongoing operations and accordingly, we have not included these items as part of the discontinued operation.

### Balance Sheet Data

The components of assets related to the discontinued operation as of September 30, 2009 and December 31, 2008 are as follows (dollar amounts in thousands):

|  | September 30,<br>2009 | December 31,<br>2008 |
|--|-----------------------|----------------------|
| Accounts and accrued interest receivable | \$ 20                 | \$ 26                |
| Mortgage loans held for sale (net)       | 4,096                 | 5,377                |
| Prepaid and other assets                 | 428                   | 451                  |
| Total assets                             | \$ 4,544              | \$ 5,854             |

The components of liabilities related to the discontinued operation as of September 30, 2009 and December 31, 2008 are as follows (dollar amounts in thousands):

|                                       | September 30,<br>2009 | December 31,<br>2008 |
|---------------------------------------|-----------------------|----------------------|
| Due to loan purchasers                | \$ 354                | \$ 708               |
| Accounts payable and accrued expenses | 1,886                 | 2,858                |

|                   |    |       |    |       |
|-------------------|----|-------|----|-------|
| Total liabilities | \$ | 2,240 | \$ | 3,566 |
|-------------------|----|-------|----|-------|

15

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## Statements of Operations Data

The statements of operations of the discontinued operation for the three and nine months ended September 30, 2009 and 2008 are as follows (dollar amounts in thousands):

|   | Three Months        |        | Nine Months         |          |
|---|---------------------|--------|---------------------|----------|
|   | Ended September 30, |        | Ended September 30, |          |
|   | 2009                | 2008   | 2009                | 2008     |
| Revenues                                      | \$ 395              | \$ 203 | \$ 905              | \$ 1,136 |
| Expenses                                      | 159                 | (82)   | 405                 | (158)    |
| Income from discontinued operation-net of tax | \$ 236              | \$ 285 | \$ 500              | \$ 1,294 |

## 8. Commitments and Contingencies

**Loans Sold to Investors** - For loans originated and sold by our discontinued mortgage lending business, the Company is not exposed to long term credit risk. In the normal course of business, however, the Company is obligated to repurchase loans based on violations of representations and warranties in the sale agreement, or early payment defaults. The Company did not repurchase any loans during the nine months ended September 30, 2009.

The Company periodically receives repurchase requests based on alleged violations of representations and warranties, each of which management reviews to determine, based on management's experience, whether such requests may reasonably be deemed to have merit. As of September 30, 2009, we had a total of \$1.5 million of unresolved repurchase requests that management concluded may reasonably be deemed to have merit against which the Company has a reserve of approximately \$0.3 million. The reserve is based on one or more of the following factors; historical settlement rates, property value securing the loan in question and specific settlement discussions with third parties.

**Outstanding Litigation** - The Company is at times subject to various legal proceedings arising in the ordinary course of business. As of September 30, 2009, the Company does not believe that any of its current legal proceedings, individually or in the aggregate, will have a material adverse effect on its operations, financial condition or cash flows.

**Leases** - The Company leases its corporate office and equipment under short-term lease agreements expiring at various dates through 2013. All such leases are accounted for as operating leases. Total lease expense for property and equipment amounted to \$0.1 million and \$0.2 million for the three and nine months ended September 30, 2009.

**Letters of Credit** - The Company maintains a letter of credit in the amount of \$0.2 million in lieu of a cash security deposit for its current corporate headquarters, located at 52 Vanderbilt Avenue in New York City, for its landlord, Vanderbilt Associates I, L.L.C, as beneficiary. This letter of credit is secured by cash deposited in a bank account maintained at JP Morgan Chase bank.

## 9. Concentrations of Credit Risk

At September 30, 2009, there were geographic concentrations of credit risk exceeding 5% of the total loan balances within mortgage loans held in the securitization trusts. At December 31, 2008, there were geographic concentrations of credit risk exceeding 5% of the total loan balances within mortgage loans held in the securitization trusts and retained interests in our REMIC securitization, NYMT 2006-1, The Company sold all the retained interests related to NYMT 2006-1 during the quarter ended September 30, 2009. At September 30, 2009 and December 31, 2008, the geographic concentrations of credit risk exceeding 5% are as follows:

|               | September<br>30,<br>2009 | December<br>31,<br>2008 |
|---------------|--------------------------|-------------------------|
| New York      | 39.4%                    | 30.7%                   |
| Massachusetts | 23.7%                    | 17.2%                   |
| New Jersey    | 8.3%                     | 6.0%                    |
| Florida       | 5.8%                     | 7.8%                    |

## 10. Fair Value of Financial Instruments

The Company has established and documented processes for determining fair values. Fair value is based upon quoted market prices, where available. If listed prices or quotes are not available, then fair value is based upon internally developed models that primarily use inputs that are market-based or independently-sourced market parameters, including interest rate yield curves.

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. The three levels of valuation hierarchy are defined as follows:

Level 1 - inputs to the valuation methodology are quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2 - inputs to the valuation methodology include quoted prices for similar assets and liabilities in active markets, and inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.

Level 3 - inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The following describes the valuation methodologies used for the Company's financial instruments measured at fair value, as well as the general classification of such instruments pursuant to the valuation hierarchy.

a. Investment Securities Available for Sale (RMBS) - Fair value for the RMBS in our portfolio is based on quoted prices provided by dealers who make markets in similar financial instruments. The dealers will incorporate common market pricing methods, including a spread measurement to the Treasury curve or interest rate swap curve as well as underlying characteristics of the particular security including coupon, periodic and life caps, collateral type, rate reset period and seasoning or age of the security. If quoted prices for a security are not reasonably available from a dealer, the security will be re-classified as a Level 3 security and, as a result, management will determine the fair value based on characteristics of the security that the Company receives from the issuer and based on available market information. Management reviews all prices used in determining valuation to ensure they represent current market conditions. This review includes surveying similar market transactions, comparisons to interest pricing models as well as offerings of like securities by dealers. The Company's investment securities that are comprised of RMBS are valued

based upon readily observable market parameters and are classified as Level 2 fair values.

b. Investment Securities Available for Sale (CLO) - The fair value of the CLO notes, as of September 30, 2009, was based on management's valuation determined by using a discounted future cash flows model that management believes would be used by market participants to value similar financial instruments. If a reliable market for these assets develops in the future, management will consider quoted prices provided by dealers who make markets in similar financial instruments in determining the fair value of the CLO notes. The CLO notes are classified as Level 3 fair values.

c. Interest Rate Swaps and Caps - The fair value of interest rate swaps and caps are based on using market accepted financial models as well as dealer quotes. The model utilizes readily observable market parameters, including treasury rates, interest rate swap spreads and swaption volatility curves. The Company's interest rate caps and swaps are classified as Level 2 fair values.

The following table presents the Company's financial instruments measured at fair value on a recurring basis as of September 30, 2009 and December 31, 2008 on the condensed consolidated balance sheets (dollar amounts in thousands):

|  | Assets Measured at Fair Value on a Recurring Basis<br>at September 30, 2009 |                    |                  |                   |
|--|---|--------------------|------------------|-------------------|
|  | Level 1   | Level 2            | Level 3          | Total             |
| <b>Assets carried at fair value:</b>         |   |                    |                  |                   |
| Investment securities available for sale     | \$  | —\$ 269,274        | \$ 13,320        | \$ 282,594        |
| Derivative assets (interest rate caps)       |   | — 15               | —                | 15                |
| <b>Total</b>                                 | <b>\$</b>   | <b>—\$ 269,289</b> | <b>\$ 13,320</b> | <b>\$ 282,609</b> |
| <b>Liabilities carried at fair value:</b>    |   |                    |                  |                   |
| Derivative liabilities (interest rate swaps) | \$  | —\$ 3,025          | \$ —             | \$ 3,025          |
| <b>Total</b>                                 | <b>\$</b>   | <b>—\$ 3,025</b>   | <b>\$ —</b>      | <b>\$ 3,025</b>   |

|  | Assets Measured at Fair Value on a Recurring Basis<br>at December 31, 2008 |                    |             |                   |
|--|--|--------------------|-------------|-------------------|
|  | Level 1  | Level 2            | Level 3     | Total             |
| <b>Assets carried at fair value:</b>         |  |                    |             |                   |
| Investment securities available for sale     | \$   | —\$ 477,416        | \$ —        | \$ 477,416        |
| Derivative assets (interest rate caps)       |  | — 22               | —           | 22                |
| <b>Total</b>                                 | <b>\$</b>  | <b>—\$ 477,438</b> | <b>\$ —</b> | <b>\$ 477,438</b> |
| <b>Liabilities carried at fair value:</b>    |  |                    |             |                   |
| Derivative liabilities (interest rate swaps) | \$   | —\$ 4,194          | \$ —        | \$ 4,194          |
| <b>Total</b>                                 | <b>\$</b>  | <b>—\$ 4,194</b>   | <b>\$ —</b> | <b>\$ 4,194</b>   |

The following table details changes in valuation for the Level 3 assets for the three and nine months ended September 30, 2009 (amounts in thousands):

Investment securities available for sale

|   | Three<br>Months<br>Ended<br>September<br>30, 2009 | Nine<br>Months<br>Ended<br>September<br>30, 2009 |
|---|---|--|
| Beginning Balance                             | \$ 8,988  | \$ —   |
| Total gains (realized/unrealized)             |   |  |
| Included in earnings (1)                      | 155   | 260  |
| Included in other comprehensive income/(loss) | 4,177   | 4,332  |
| Purchases                                     | —   | 8,728  |
| Ending Balance                                | \$ 13,320   | \$ 13,320  |



(1) - Amounts included in interest income-investment securities and loans held in securitizations trusts.

18

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Any changes to the valuation methodology are reviewed by management to ensure the changes are appropriate. As markets and products develop and the pricing for certain products becomes more transparent, the Company continues to refine its valuation methodologies. The methods described above may produce a fair value calculation that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Company believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies, or assumptions, to determine the fair value of certain financial instruments could result in a different estimate of fair value at the reporting date. The Company uses inputs that are current as of each reporting date, which may include periods of market dislocation, during which time price transparency may be reduced. This condition could cause the Company's financial instruments to be reclassified from Level 2 to Level 3 in future periods.

The following table presents assets measured at fair value on a non-recurring basis as of September 30, 2009 and December 31, 2008 on the condensed consolidated balance sheet (dollar amounts in thousands):

|   | Assets Measured at Fair Value on a Non-Recurring Basis |         |          |          |
|---|--|---------|----------|----------|
|   | at September 30, 2009                                  |         |          |          |
|   | Level 1  | Level 2 | Level 3  | Total    |
| Mortgage loans held for sale (Net)                                      | \$ —   | \$ —    | \$ 4,096 | \$ 4,096 |
| Mortgage loans held in securitization trusts (net) – impaired loans (1) | \$ —   | \$ —    | \$ 6,068 | \$ 6,068 |

(1) Includes \$0.4 million in real estate owned through foreclosure.

|   | Assets Measured at Fair Value on a Non-Recurring Basis |         |          |          |
|---|--|---------|----------|----------|
|   | at December 31, 2008                                   |         |          |          |
|   | Level 1  | Level 2 | Level 3  | Total    |
| Mortgage loans held for sale (net)                                      | \$ —   | \$ —    | \$ 5,377 | \$ 5,377 |
| Mortgage loans held in securitization trusts (net) – impaired loans (1) | \$ —   | \$ —    | \$ 2,958 | \$ 2,958 |

(1) Includes \$0.5 million in real estate owned through foreclosure.

The following table presents losses incurred for assets measured at fair value on a non-recurring basis for the three and nine months ended September 30, 2009 and September 30, 2008 on the condensed statements of operations (dollar amounts in thousands):

|   | Three Months Ended |                    | Nine Months Ended  |                    |
|---|--------------------|--------------------|--------------------|--------------------|
|   | September 30, 2009 | September 30, 2008 | September 30, 2009 | September 30, 2008 |
| Mortgage loans held for sale (net)                                  | \$ —               | \$ 34              | \$ 245             | \$ 433             |
| Mortgage loans held in securitization trusts (net) – impaired loans | \$ 525             | \$ 7               | \$ 1,414           | \$ 1,440           |

Mortgage Loans Held in Securitization Trusts (net) – Impaired Loans – Impaired mortgage loans held in the securitization trusts are recorded at amortized cost less specific loan loss reserves. Impaired loan value is based on management's estimate of the net realizable value taking into consideration local market conditions of the distressed property, updated appraisal values of the property and estimated expenses required to remediate the impaired loan.

Mortgage Loans Held for Sale (net) –The fair value of mortgage loans held for sale (net) are estimated by the Company based on the price that would be received if the loans were sold as whole loans taking into consideration the aggregated characteristics of the loans such as, but not limited to, collateral type, index, interest rate, margin, length of fixed interest rate period, life cap, periodic cap, underwriting standards, age and credit.

The following table presents the carrying value and estimated fair value of the Company's financial instruments, at September 30, 2009 and December 31, 2008 (dollar amounts in thousands):

|   | September 30, 2009 |                      | December 31, 2008 |                      |
|---|--------------------|----------------------|-------------------|----------------------|
|   | Carrying Value     | Estimated Fair Value | Carrying Value    | Estimated Fair Value |
| <b>Financial assets:</b>  |                    |                      |                   |                      |
| Cash and cash equivalents   | \$ 22,403          | \$ 22,403            | \$ 9,387          | \$ 9,387             |
| Restricted cash   | 3,359              | 3,359                | 7,959             | 7,959                |
| Investment securities – available for sale                                  | 282,594            | 282,594              | 477,416           | 477,416              |
| Mortgage loans held in securitization trusts (net)                          | 290,940            | 266,189              | 348,337           | 343,028              |
| Derivative assets   | 15                 | 15                   | 22                | 22                   |
| Assets related to discontinued operation-Mortgage loans held for sale (net) | 4,096              | 4,096                | 5,377             | 5,377                |
| <b>Financial Liabilities:</b>   |                    |                      |                   |                      |
| Financing arrangements, portfolio investments                               | 194,745            | 194,745              | 402,329           | 402,329              |
| Collateralized debt obligations   | 280,223            | 183,090              | 335,646           | 199,503              |
| Derivative liabilities  | 3,025              | 3,025                | 4,194             | 4,194                |
| Subordinated debentures (net)   | 44,823             | 24,067               | 44,618            | 10,049               |
| Convertible preferred debentures (net)                                      | 19,814             | 18,981               | 19,702            | 16,363               |

In addition to the methodology to determine the fair value of the Company's financial assets and liabilities reported at fair value on a recurring basis and non-recurring basis, as previously described, the following methods and assumptions were used by the Company in arriving at the fair value of the Company's other financial instruments in the following table:

- a. Cash and cash equivalents and restricted cash: Estimated fair value approximates the carrying value of such assets.
- b. Mortgage Loans Held in Securitization Trusts - Mortgage loans held in the securitization trusts are recorded at amortized cost. Fair value is estimated using pricing models and taking into consideration the aggregated characteristics of groups of loans such as, but not limited to, collateral type, index, interest rate, margin, length of fixed-rate period, life cap, periodic cap, underwriting standards, age and credit estimated using the estimated market prices for similar types of loans.
- c. Financing arrangements, portfolio investments – The fair value of these financing arrangements approximates cost as they are short term in nature and mature in 30 days.
- d. Collateralized debt obligations – The fair value of these collateralized debt obligations is based on discounted cashflows as well as market pricing on comparable obligations.
- e. Subordinated debentures (net) – The fair value of these subordinated debentures (net) is based on discounted cashflows using management's estimate for market yields.
- f. Convertible preferred debentures (net) – The fair value of the convertible preferred debentures (net) is based on discounted cashflows using management's estimate for market yields.

## 11. Capital Stock and Earnings per Share

The Company had 400,000,000 shares of common stock, par value \$0.01 per share, authorized with 9,419,094 and 9,320,094 shares issued and outstanding as of September 30, 2009 and December 31, 2008, respectively. The Company had 200,000,000 shares of preferred stock, par value \$0.01 per share, authorized, including 2,000,000 shares of Series A Cumulative Convertible Redeemable Preferred Stock ("Series A Preferred Stock") authorized. As of September 30, 2009 and December 31, 2008, the Company had issued and outstanding 1,000,000 shares, of Series A Preferred Stock. Of the common stock authorized at September 30, 2009, 4,111 shares were reserved for issuance as Restricted Stock awards to employees, officers and directors pursuant to the 2005 Stock Incentive Plan.

On February 21, 2008, the Company completed the issuance and sale of 7.5 million shares of its common stock in a private placement at a price of \$8.00 per share. This private offering of the Company's common stock generated net proceeds to the Company of \$56.5 million after payment of private placement fees and expenses. The Company filed a resale shelf registration statement on Form S-3 on April 4, 2008, registering for resale the 7.5 million shares issued in February 2008, which became effective on April 18, 2008.

The Board of Directors declared a one-for-two reverse stock split of the Company's common stock, effective on May 27, 2008, decreasing the number of shares then outstanding to approximately 9.3 million shares. All per share and share amounts provided in the quarterly report have been restated to give to effect the reverse stock split.

The following table presents cash dividends declared by the Company on its common stock from January 1, 2008 through September 30, 2009.

| Period              | Declaration Date   | Record Date      | Payment Date     | Cash Dividend Per Share |
|---------------------|--------------------|------------------|------------------|-------------------------|
| Third Quarter 2009  | September 29, 2009 | October 13, 2009 | October 26, 2009 | \$ 0.25                 |
| Second Quarter 2009 | June 15, 2009      | June 26, 2009    | July 27, 2009    | 0.23                    |
| First Quarter 2009  | March 25, 2009     | April 6, 2009    | April 27, 2009   | 0.18                    |
| Fourth Quarter 2008 | December 23, 2008  | January 7, 2009  | January 26, 2009 | \$ 0.10                 |
| Third Quarter 2008  | September 26, 2008 | October 10, 2008 | October 27, 2008 | 0.16                    |
| Second Quarter 2008 | June 30, 2008      | July 10, 2008    | July 25, 2008    | 0.16                    |
| First Quarter 2008  | April 21, 2008     | April 30, 2008   | May 15, 2008     | 0.12                    |

The following table presents cash dividends declared by the Company on its Series A Preferred Stock from January 1, 2008 through September 30, 2009.

| Period              | Declaration Date   | Record Date        | Payment Date     | Cash Dividend Per Share |
|---------------------|--------------------|--------------------|------------------|-------------------------|
| Third Quarter 2009  | September 29, 2009 | September 30, 2009 | October 30, 2009 | \$ 0.63                 |
| Second Quarter 2009 | June 15, 2009      | June 30, 2009      | July 30, 2009    | 0.58                    |
| First Quarter 2009  | March 25, 2009     | March 31, 2009     | April 30, 2009   | 0.50                    |
| Fourth Quarter 2008 | December 23, 2008  | December 31, 2008  | January 30, 2009 | \$ 0.50                 |
| Third Quarter 2008  | September 29, 2008 | September 30, 2008 | October 30, 2008 | 0.50                    |
| Second Quarter 2008 | June 30, 2008      | June 30, 2008      | July 30, 2008    | 0.50                    |
| First Quarter 2008  | April 21, 2008     | March 31, 2008     | April 30, 2008   | 0.50                    |

The Company calculates basic net income (loss) per share by dividing net income (loss) for the period by the weighted-average shares of common stock outstanding for that period. Diluted net income (loss) per share takes into account the effect of dilutive instruments, such as convertible preferred stock, stock options and unvested restricted or performance stock, but uses the average share price for the period in determining the number of incremental shares that are to be added to the weighted-average number of shares outstanding.

The following table presents the computation of basic and diluted net income (loss) per share for the periods indicated (in thousands, except per share amounts):

|  | For the Three Months Ended<br>September 30, |          | For the Nine Months Ended<br>September 30, |             |
|--|---|----------|--|-------------|
|  | 2009  | 2008     | 2009                                       | 2008        |
| <b>Numerator:</b>                                    |   |          |  |             |
| Net income (loss) – Basic                            | \$ 2,877                                    | \$ 1,029 | \$ 7,478                                   | \$ (18,966) |
| Net income (loss) from continuing operations         | 2,641                                       | 744      | 6,978                                      | (20,260)    |
| Net income from discontinued operations (net of tax) | 236   | 285      | 500  | 1,294       |
| <b>Effect of dilutive instruments:</b>               |   |          |  |             |
| Convertible preferred debentures (1)                 | 662   | 537      | 1,807                                      | 1,612       |
| Net income (loss) – Dilutive                         | 3,539                                       | 1,029    | 9,285                                      | (18,966)    |
| Net income (loss) from continuing operations         | 3,303                                       | 744      | 8,785                                      | (20,260)    |
| Net income from discontinued operations (net of tax) | \$ 236                                      | \$ 285   | \$ 500                                     | \$ 1,294    |
| <b>Denominator:</b>                                  |   |          |  |             |
| Weighted average basis shares outstanding            | 9,406                                       | 9,320    | 9,349                                      | 7,919       |
| <b>Effect of dilutive instruments:</b>               |   |          |  |             |
| Convertible preferred debentures (1)                 | 2,500                                       | 2,500    | 2,500                                      | 2,344       |
| Weighted average dilutive shares outstanding         | 11,906                                      | 9,320    | 11,849                                     | 7,919       |
| <b>EPS:</b>  |   |          |  |             |
| Basic EPS  | \$ 0.31                                     | \$ 0.11  | \$ 0.80                                    | \$ (2.39)   |
| Basic EPS from continuing operations                 | 0.28  | 0.08     | 0.75                                       | (2.55)      |
| Basic EPS from discontinued operations (net of tax)  | 0.03  | 0.03     | 0.05                                       | 0.16        |
| Dilutive EPS   | \$ 0.30                                     | \$ 0.11  | \$ 0.78                                    | \$ (2.39)   |
| Dilutive EPS from continuing operations              | 0.28  | 0.08     | 0.74                                       | (2.55)      |
| Basic EPS from discontinued operations (net of tax)  | 0.02  | 0.03     | 0.04                                       | 0.16        |

(1) – Amount excluded from dilutive calculation in 2008 as it is anti-dilutive.

## 12. Convertible Preferred Debentures (net)

As of September 30, 2009, there were 1.0 million shares of our Series A Preferred Stock outstanding, with an aggregate redemption value of \$20.0 million. The Series A Preferred Stock matures on December 31, 2010, at which time any outstanding shares must be redeemed by the Company at the \$20.00 per share liquidation preference. Because of this mandatory redemption feature, the Company classifies these securities as a liability on its balance sheet, and accordingly, the corresponding dividend as an interest expense.

We issued these shares of Series A Preferred Stock to JPM Group Inc. and certain of its affiliates for an aggregate purchase price of \$20.0 million. The Series A Preferred Stock entitles the holders to receive a cumulative dividend of 10% per year, subject to an increase to the extent any future quarterly common stock dividends exceed \$0.20 per share. The Company paid a third quarter 2009 common stock dividend of \$0.25, resulting in an increase in the dividend rate for the Series A Preferred Stock in the 2009 third quarter to 12.5% (per annum). The Series A Preferred Stock is convertible into shares of the Company's common stock based on a conversion price of \$8.00 per share of common stock, which represents a conversion rate of two and one-half (2 ½) shares of common stock for each share of Series A Preferred Stock.

### 13. Related Party Transactions

On January 18, 2008, the Company entered into an advisory agreement with Harvest Capital Strategies LLC (“HCS”) (formerly known as JMP Asset Management LLC), pursuant to which HCS is responsible for implementing and managing the Company’s investments in alternative real estate-related and financial assets, which is referred to in this report to as the “alternative investment strategy.” The Company entered into the advisory agreement concurrent and in connection with its private placement of Series A Preferred Stock to JMP Group Inc. and certain of its affiliates. HCS is a wholly-owned subsidiary of JMP Group Inc. Pursuant to Schedule 13D’s filed with the SEC, as of December 31, 2008, HCS and JMP Group Inc. beneficially owned approximately 16.8% and 12.2%, respectively, of the Company’s common stock, and 100%, collectively, of its Series A Preferred Stock.



Pursuant to the advisory agreement, HCS is responsible for managing investments made by HC and NYMF (other than certain RMBS that are held in these entities for regulatory compliance purposes) as well as any additional subsidiaries acquired or formed in the future to hold investments made on the Company's behalf by HCS. The Company refers to these subsidiaries in its periodic reports filed with the Securities and Exchange Commission as the "Managed Subsidiaries." On March 31, 2009, the Company commenced its alternative investment strategy by purchasing approximately \$9.0 million in collateralized loan obligations. The Company's investment in these assets was completed in connection with the acquisition by JMP Group Inc. of the investment adviser of the collateralized loan obligations. The Company expects that, from time to time in the future, certain of its alternative investments will take the form of a co-investment alongside or in conjunction with JMP Group Inc. or certain of its affiliates. In accordance with investment guidelines adopted by the Company's Board of Directors, any subsequent alternative investments by the Managed Subsidiaries must be approved by the Board of Directors and must adhere to investment guidelines adopted by the Board of Directors. The advisory agreement provides that HCS will be paid a base advisory fee that is a percentage of the "equity capital" (as defined in the advisory agreement) of the Managed Subsidiaries, which may include the net asset value of assets held by the Managed Subsidiaries as of any fiscal quarter end, and an incentive fee upon the Managed Subsidiaries achieving certain investment hurdles. For the three and nine months ended September 30, 2009, HCS earned a base advisory fee of approximately \$0.2 million and \$0.6 million, respectively. For the three and nine months ended September 30, 2008, HCS earned a base advisory fee of approximately \$0.2 million and \$0.5 million, respectively. In addition, in the three months and nine months ended September 30, 2009, HCS earned an incentive fee of approximately \$0.3 million and \$0.3 million, respectively. There was no incentive fee earned in the nine months ended September 30, 2008. As of September 30, 2009, HCS was managing approximately \$41.3 million of assets on the Company's behalf.

#### 14. Income Taxes

At September 30, 2009, the Company had approximately \$62.9 million of net operating loss carryforwards which may be used to offset future taxable income. The carryforwards will expire in 2024 through 2028. The Internal Revenue Code places certain limitations on the annual amount of net operating loss carryforwards that can be utilized if certain changes in the Company's ownership occur. The Company may have undergone an ownership change within the meaning of IRC section 382 that would impose such a limitation, but a final conclusion has not been made. At this time, based on management's initial assessment of the limitations, management does not believe that the limitation would cause a significant amount of the Company's net operating losses to expire unused. The Company continues to maintain a reserve for 100% of the deferred tax benefits.

#### 15. Stock Incentive Plan

Pursuant to the 2005 Stock Incentive Plan (the "Plan"), eligible employees, officers and directors of the Company are offered the opportunity to acquire the Company's common stock through the award of Restricted Stock under the Plan. The maximum number of Restricted Stock awards that may be granted under the Plan is 103,111.

The Company awarded 99,000 shares of Restricted Stock under the Plan on July 13, 2009, of which 34,335 shares have fully vested. As of September 30, 2009, 4,111 shares remain available for issuance under the Plan. During the three and nine months ended September 30, 2009, the Company recognized non-cash compensation expense of \$0.2 million and \$0.2 million, respectively. Dividends are paid on all Restricted Stock issued, whether those shares are vested or not. In general, unvested Restricted Stock is forfeited upon the recipient's termination of employment.

A summary of the status of the Company's non-vested Restricted Stock as of September 30, 2009 and changes during the nine months then ended is presented below:

|   | Number of<br>Non-vested<br>Restricted<br>Shares | Weighted<br>Average<br>Grant Date<br>Fair Value |
|---|---|---|
| Non-vested shares at beginning of year, January 1, 2009                   | -   | \$ -  |
| Granted   | 99,000  | 5.28  |
| Forfeited   | -   | -   |
| Vested  | (34,335)  | 5.28  |
| Non-vested shares as of September 30, 2009                                | 64,665  | \$ 5.28   |
| Weighted-average fair value of Restricted Stock granted during the period | 99,000  | \$ 5.28   |

There was no outstanding non-vested Restricted Stock for the previous period.

PART II. OTHER INFORMATION

Item 6. Exhibits

The information set forth under “Exhibit Index” below is incorporated herein by reference.

47

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SIGNATURES

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 thereunto duly authorized.

NEW YORK MORTGAGE TRUST, INC.

Date: November 12, 2009

By: /s/ Steven R. Mumma  
Steven R. Mumma  
Chief Executive Officer, President and Chief Financial Officer  
(Principal Executive Officer and Principal Financial Officer)

EXHIBIT INDEX

| Exhibit | Description  |
|---------|--|
| 3.1(a)  | Articles of Amendment and Restatement of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).  |
| 3.1(b)  | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on October 4, 2007).   |
| 3.1(c)  | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on October 4, 2007).   |
| 3.1(d)  | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1(d) to the Company's Current Report on Form 8-K filed on May 16, 2008).   |
| 3.1(e)  | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1(e) to the Company's Current Report on Form 8-K filed on May 16, 2008).   |
| 3.1(f)  | Articles of Amendment of the Registrant (Incorporated by reference to Exhibit 3.1(f) to the Company's Current Report on Form 8-K filed on June 15, 2009).  |
| 3.2(a)  | Bylaws of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).   |
| 3.2(b)  | Amendment No. 1 to Bylaws of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.2(b) to Registrant's Annual Report on Form 10-K filed on March 16, 2006).   |
| 4.1     | Form of Common Stock Certificate. (Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).   |
| 4.2(a)  | Junior Subordinated Indenture between The New York Mortgage Company, LLC and JPMorgan Chase Bank, National Association, as trustee, dated September 1, 2005. (Incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005).   |
| 4.2(b)  | Amended and Restated Trust Agreement among The New York Mortgage Company, LLC, JPMorgan Chase Bank, National Association, Chase Bank USA, National Association and the Administrative Trustees named therein, dated September 1, 2005. (Incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on September 6, 2005). |
| 4.3(a)  | Articles Supplementary Establishing and Fixing the Rights and Preferences of Series A Cumulative Redeemable Convertible Preferred Stock of the Company (Incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed on January 25, 2008).   |
| 4.3(b)  |  |

Form of Series A Cumulative Redeemable Convertible Preferred Stock Certificate  
(Incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed on  
January 25, 2008).

- 10.1 Form of Restricted Stock Award Agreement for Officers (Incorporated by reference to Exhibit 10-1 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on July 14, 2009.)
- 10.2 Form of Restricted Stock Award Agreement for Directors (Incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K as filed with the Securities and Exchange Commission on July 14, 2009).
- 31.1 Section 302 Certification of Chief Executive Officer and Chief Financial Officer.\*
- 32.1 Section 906 Certification of Chief Executive Officer and Chief Financial Officer.\*

\* Filed herewith.

50