

AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT
2011-SIP-2 Venture, LLC
Dated as of January 11, 2012

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**2011-SIP-2 Venture, LLC
AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT**

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT (as the same may be amended or modified from time to time in accordance with the terms hereof, this “**Agreement**”), is made and entered into as of the 11th day of January, 2012, by and among the Federal Deposit Insurance Corporation in its capacity as the Receiver (the “**Initial Member**”), SIP PO, LLC, a Delaware limited liability company (the “**Private Owner**”), and 2011-SIP-2 Venture, LLC, a Delaware limited liability company (the “**Company**”).

WHEREAS, on January 3, 2011, the Initial Member formed the Company as a Delaware limited liability company and was admitted as its initial, and sole, member (owning a 100.0% limited liability company interest), and the Initial Member and the Company entered into the Original LLC Operating Agreement;

WHEREAS, pursuant to the Contribution Agreement, the Initial Member (as the Transferor) has contributed to the Company, and the Company accepted such contribution from the Initial Member, all of the Initial Member’s right, title and interest in and to the Assets, and assumed the Obligations;

WHEREAS, following the execution of the Original LLC Operating Agreement and the closing of the transactions contemplated by the Contribution Agreement, the Initial Member agreed, pursuant to the terms of the Private Owner Interest Sale Agreement, to sell to the Private Owner, effective as of the Closing Date, an LLC Interest representing a 25% equity interest in the Company;

WHEREAS, after giving effect to the transactions contemplated by the Private Owner Interest Sale Agreement, as of the Closing Date the Initial Member and the Private Owner will own all the issued and outstanding limited liability company interests in the Company;

WHEREAS, upon the occurrence of the Incentive Threshold Event, the Private Owner will own an LLC Interest representing a 50% equity interest in the Company and the Initial Member will own an LLC Interest representing a 50% equity interest in the Company;

WHEREAS, the Manager has agreed to cause the Company to establish the Working Capital Reserve Account to provide the Company with capital to fund Working Capital Expenses, Permitted Vertical Completion Expenses and Permitted Horizontal Development Expenses, and the Private Owner and the Initial Member have agreed to initially fund the Working Capital Reserve Account; and

WHEREAS, the parties desire to amend and restate the Original LLC Operating Agreement in its entirety in order to reflect the admission of the Private Owner as a member of

the Company and to set forth the terms and conditions on which the Company shall be owned and operated;

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

ARTICLE I **Certain Definitions**

1.1. **Definitions.** This Agreement constitutes the “limited liability company agreement” (as such term is defined in the Act) of the Company. For purposes of this Agreement, all terms used in this Agreement (including in the preamble and recitals hereto), that are defined in, or by reference in, that certain Agreement of Definitions – 2011-SIP-2 Structured Transaction dated as of the date hereof among the parties hereto and certain others (as the same may be amended from time to time in accordance with the terms set forth herein for the amendment of this Agreement) (the “**Agreement of Definitions**”), and are not otherwise defined herein, shall have the meanings and definitions given, or referred to, in the Agreement of Definitions.

1.2. **Construction.** The Rules of Construction apply to this Agreement.

ARTICLE II **Organization of the Company**

2.1. **Formation; Continuation and Admission of Members.**

(a) On January 3, 2012, the Receiver caused the Certificate of Formation of the Company, in the form attached as Exhibit A hereto (the “**Certificate**”), to be filed in the office of the Secretary of State of the State of Delaware. The Certificate shall not be amended except to change the registered agent or office of the Company.

(b) The Company shall continue as a limited liability company under the Act and in accordance with the further terms and provisions of this Agreement.

(c) The Initial Member previously was, and the Private Owner hereby agrees to be, and is, admitted as a member of the Company such that, as of the Closing Date, the Initial Member and the Private Owner are the only members of the Company. Until the Company is dissolved pursuant to Section 9.1, and subject to the rights of the Initial Member under Section 13.5, the Company shall at all times have two, and only two, members.

2.2. **Name.**

(a) The name of the Company shall be 2011-SIP-2 Venture, LLC.

(b) The Business shall be conducted only under the name of the Company or such other name or names that comply with applicable Law as the Members may select from time to time.

2.3. Organizational Contributions and Related Actions.

(a) Prior to the execution of this Agreement, pursuant to, and as set forth in, the Contribution Agreement, the Initial Member (as the Transferor) made a Capital Contribution to the Company in the form of an undivided interest in each Asset (the “**Initial Member Capital Contribution**”).

(b) Contemporaneously with the execution of this Agreement, pursuant to the terms of the Private Owner Interest Sale Agreement, the Private Owner is acquiring from the Initial Member a 25% limited liability company interest in the Company for the Private Owner Interest Sale Price in accordance with the terms thereof.

(c) Upon the consummation of the transactions contemplated in Sections 2.3(a) and (b) and prior to the occurrence of the Incentive Threshold Event as described in Section 6.6(b)(iii), the Private Owner shall own a 25% limited liability company interest in the Company and the Initial Member shall own a 75% limited liability company interest in the Company. Following the occurrence of the Incentive Threshold Event, the Private Owner shall own a 50% limited liability company interest in the Company and the Initial Member shall own a 50% limited liability company interest in the Company.

2.4. Registered Office; Chief Executive Office. The Company shall maintain a registered office and registered agent in Delaware to the extent required by the Act, which office and agent shall be as determined by the Manager from time to time and which shall be set forth in the Certificate. Initially (and until otherwise determined by the Manager), the registered office in Delaware shall be, and the name and address of the Company’s registered agent in Delaware shall be, as specified in the Certificate as originally filed, which may be amended by the Manager from time to time as necessary to correctly reflect the name and address of the Company’s registered agent. The chief executive office of the Company shall be located at 4601 College Boulevard, Suite 300, Leawood, KS 66211, or such other place as shall be determined by the Manager from time to time.

2.5. Purpose; Duration.

(a) The sole purpose of the Company is to engage in and conduct the Business, directly or, to the extent specifically authorized in this Agreement, indirectly through other Persons. The Company shall not form or have any Subsidiaries other than Ownership Entities or as otherwise authorized in this Agreement. The Company shall have all powers necessary, desirable or convenient, or which the Manager deems necessary, desirable or convenient, and may engage in any and all activities necessary, desirable or convenient, or which

the Manager deems necessary, desirable or convenient, in each case to accomplish the purposes of the Company or consistent with the furtherance thereof.

(b) Subject to Section 9.1, the Company shall continue in existence perpetually.

2.6. Special Purpose Entity; Limitations on Company's Activities. Except to the extent expressly permitted by this Agreement or the other Transaction Documents, the following shall govern for so long as the Company is in existence:

(a) Subject to Section 9.1, the Manager shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises, and the Manager also shall cause the Company to:

(i) maintain financial statements separate from any Affiliate; provided, however, that each Ownership Entity shall be consolidated in the financial statements of the Company; and provided, further, that the assets, liabilities and results of operations of the Company may be included in the consolidated financial statements of its parent or ultimate parent in accordance with GAAP;

(ii) at all times hold itself out to the public as a legal entity separate from the Members and any other Person;

(iii) file its own Tax returns, as may be required under applicable Law, and pay any Taxes so required to be paid under applicable Law;

(iv) pay its own liabilities only out of its own funds;

(v) allocate, fairly and reasonably, shared expenses, including any overhead for shared office space;

(vi) use separate stationery, invoices and checks;

(vii) correct any known misunderstanding regarding its separate identity;

(viii) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities, if any; and

(ix) at all times constitute a Special Purpose Entity.

(b) Neither the Manager nor the Private Owner may cause or permit a Dissolution Event or an Insolvency Event to occur with respect to the Company or any of its Subsidiaries to which the Initial Member has not provided its prior written consent, and neither

the Manager nor the Private Owner may, without the prior written consent of the Initial Member, cause or permit the Company or any of its Subsidiaries to:

(i) except as contemplated hereby or by the other Transaction Documents, hold out its credit or assets as being available to satisfy the obligations of others, or become bound by any Guarantee of, or otherwise obligate itself with respect to, the Debts of any other Person, including any Affiliate;

(ii) except as contemplated hereby or by the other Transaction Documents, pledge its assets for the benefit of any other Person, make any loans or advances to any other Person, or encumber or permit any Lien (other than Permitted Liens) to be placed on the Assets, the Collateral, or the proceeds therefrom; provided that, the Company may (x) invest its funds in interest bearing accounts held by any bank that is not its Affiliate and otherwise in accordance with the terms of this Agreement and the Custodial and Paying Agency Agreement and (y) make advances in accordance with Article XII;

(iii) own any assets, or engage in any business, unrelated to the Business;

(iv) incur, create or assume any Debt other than any Discretionary Funding Advance, any Excess Working Capital Advance or as otherwise expressly permitted hereby or by the other Transaction Documents to which the Initial Member is a party;

(v) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person (other than an Ownership Entity), except that the Company may invest in those investments permitted under the Transaction Documents and may make any advance required or expressly permitted to be made pursuant to any provisions of Article XII or the other Transaction Documents and permit the same to remain outstanding in accordance with such provisions;

(vi) acquire any LLC Interest (or any portion of any LLC Interest);

(vii) consolidate or merge with or into any other Person, convert into any other type of Person (including into a limited liability company organized under the Laws of a jurisdiction other than the State of Delaware), transfer, domesticate or continue the Company or any Subsidiary of the Company pursuant to Section 18-213 of the Act, or take any other action for which the consent of some or all of the members of a limited liability company is (unless otherwise provided in the limited liability company agreement of such limited liability company) required by the Act;

(viii) convey or transfer its properties and assets as an entirety or substantially as an entirety to any Person, transfer its ownership interests, or engage in any dissolution or liquidation, except in each case to the extent such activities are expressly permitted

pursuant to any provision of this Agreement or the other Transaction Documents (and subject to obtaining any approvals required hereunder or thereunder, as applicable);

(ix) except as contemplated or permitted by this Agreement, form, acquire or hold any Subsidiary other than an Ownership Entity or form any trust for the purpose of holding Assets for the benefit of the Company;

(x) enter into any Modification of, or breach or violate any representation, warranty, covenant or agreement contained in, any Transaction Document; or

(xi) take or fail to take any other action under the Transaction Documents requiring written consent of the Initial Member without obtaining such prior written consent.

(c) The failure of the Company, any Member and/or the Manager to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Members.

2.7. Ratification of Certain Actions. Prior to the Closing Date, the Company previously approved (i) each of the Transaction Documents, (ii) the issuance of the LLC Interests, and (iii) the taking of all action reasonably necessary to effect the foregoing approvals, including the execution and performance of this Agreement and the other Transaction Documents (the “**Previously Approved Matters**”). The Previously Approved Matters, and all actions taken by the Company in furtherance of the Previously Approved Matters, are hereby ratified, approved and confirmed in their entirety by each Member and the Manager is hereby authorized and directed to execute and deliver, for and on behalf of the Company, any and all documents as may now or hereafter be reasonably required in order to effect the Previously Approved Matters.

ARTICLE III **Management and Operations of the Company**

3.1. Management of the Company’s Affairs.

(a) Subject to the terms and conditions of this Agreement, the management of the Company shall be vested exclusively in the Person appointed from time to time hereunder as the “Manager” of the Company (the “**Manager**”), which Manager may, but is not required to, be a Member. Effective as of the Closing Date, the Private Owner is hereby appointed as the Manager. Subject to the terms and conditions of this Agreement, the Manager shall have full and exclusive power and discretion to, and shall, manage the business and affairs of the Company in accordance with this Agreement. The Private Owner may not resign as the Manager, may not Dispose of or delegate, in whole or in part, its rights, responsibilities or duties as the Manager to any other Person, and shall serve as Manager until such time as (i) the Private Owner Interest is Disposed of in accordance with the terms of this Agreement and the transferee is admitted as a

member of the Company and Successor to the Private Owner, in which case the transferee Member shall, effective upon such Disposition, be appointed as the “Manager” to the extent the Private Owner held such role immediately prior to such Disposition; (ii) the Private Owner is removed as Manager by the Initial Member and replaced in accordance with Section 3.2 or Section 12.4 below; or (iii) the Company is dissolved, and the business and affairs of the Company are wound up, in accordance with the terms of this Agreement. The Manager shall devote such time to the affairs of the Company as is necessary to manage the Company as set forth in this Agreement. Without limitation of the foregoing, the Manager shall cooperate with the Tax Matters Member in all respects as reasonably requested by the Tax Matters Member, from time to time, in connection with the Tax Matters Member’s performance of its obligations under this Agreement. The Private Owner hereby expressly acknowledges that (x) as it relates to its role as the Manager, this Agreement constitutes a personal services contract between the Private Owner and the Company, and (y) except as may otherwise be expressly specified herein, it shall not be entitled to any salary, fees, reimbursement of costs or expenses, or other compensation with respect to its service as the Manager hereunder (including with respect to the Manager’s Servicing obligations under Article XII).

(b) Except as otherwise specifically provided in this Agreement and without limitation of the authority, duties (including fiduciary duties) and functions of the Manager expressly specified under any other provision of this Agreement, the authority, duties (including fiduciary duties) and functions of the Manager shall be identical to the authority, duties (including fiduciary duties) and functions of the board of directors and the officers of a corporation organized under the Delaware General Corporation Law (and not electing to be governed by subchapter XIV thereof). The Manager shall have no authority to take or authorize the taking of any action in contravention of any express term of this Agreement.

(c) No Person dealing with the Company or the Manager shall be required to determine, and any such Person may conclusively assume and rely upon, the authority of the Manager to execute any instrument or make any undertaking on behalf of the Company. No Person dealing with the Company or the Manager shall be required to determine any facts or circumstances bearing upon the existence of such authority. Without limitation of the foregoing, any Person dealing with the Company or the Manager is entitled to rely upon a certificate signed by the Manager as to:

- (i) the identity of the Members;
- (ii) the existence or non-existence of any fact or facts that constitute a condition precedent to acts by the Manager or are in any other manner germane to the affairs of the Company;
- (iii) the identity of Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Company; or

(iv) any act or failure to act by the Company or any other matter whatsoever involving the Company or the Members.

(d) Notwithstanding anything to the contrary contained in this Agreement, the parties hereto acknowledge and agree that:

(i) nothing contained in this Agreement creates any fiduciary duty or similar obligation owed by or on behalf of the Initial Member;

(ii) each of the Private Owner and the Company hereby expressly waives any fiduciary duties that may otherwise be deemed to be owed by the Initial Member to the Private Owner or the Company; and

(iii) the Initial Member shall be entitled to act and exercise any right of approval or consent that it has under this Agreement in its interest, in its sole and absolute discretion, without regard to and against the interests of the Private Owner or the Company.

(e) Unless and to the extent reimbursement is due under an express provision hereof or of another Transaction Document or pursuant to a Related Party Agreement permitted pursuant to Section 3.5, the Company shall not be liable for, and the Manager, the Private Owner and their respective Affiliates shall not seek reimbursement from the Company or any Member (other than, as to any such Member that is an Affiliate of the Person so seeking reimbursement, as may separately be agreed by such Member, without recourse to or reimbursement from the Company) for, any expenses or costs incurred after the formation of the Company by the Manager, the Private Owner and/or their respective Affiliates on behalf of or for the benefit of the Company.

(f) This Section 3.1 is subject to any express requirement of direct Initial Member consent set forth elsewhere in this Agreement, including in Sections 2.6, 3.4, 3.8, 5.4, 8.1, 8.2, 8.8(a), 9.1, 12.1, 12.7(b), 12.14, 12.15, 12.18, 13.5 and 13.12. Any purported action by the Company or the Manager requiring the consent of the Initial Member under this Agreement shall be null and void *ab initio* unless and until the Initial Member's prior written consent is obtained.

3.2. Removal of Manager. Upon an Event of Default (and so long as the Private Owner is then the Manager), the Initial Member may remove the Private Owner as the Manager and appoint a successor Manager in its sole discretion in accordance with Section 12.4, whereupon such successor Manager shall immediately succeed to all, or such portion as the Initial Member and successor Manager agree, of the rights, powers, duties and obligations of the "Manager" hereunder, and the predecessor Manager shall promptly take such actions as may be reasonably requested by the Initial Member to facilitate the transition to such successor Manager.

3.3. Employees and Services. After the Closing Date, the Manager shall cause to be made available to the Company, from time to time, employees, facilities and support services in

a manner and to an extent reasonably required for it to fulfill its duties and obligations as the Manager and for the day-to-day operation of the Business. If necessary to meet the foregoing requirements, the Manager shall enter into contractual arrangements to secure employees, facilities and support services from third parties (including its Affiliates); provided, however, that the Manager shall at all times provide for the Servicing (other than Asset Management retained by the Manager in accordance with Section 12.3(b)) to be conducted through the Servicer under contract with the Manager (in its individual capacity) in accordance with Article XII and the safekeeping of the Notes and other Asset Documents by a Custodian under contract with the Company in accordance with the provisions of Section 3.7 below. Notwithstanding anything to the contrary contained in this Section 3.3, (i) the Company shall not have any employees, (ii) no employees of the Manager or any third party (including any Affiliate of the Manager) shall be deemed to be employees of the Company, (iii) any contractual relationships entered into by the Manager to provide employees, facilities or support services to the Company shall be relationships between the third parties (or Affiliates and the Manager) and the Manager (and not the Company) and shall not relieve the Manager of its obligations or any liability hereunder, and (iv) no expenses incurred to secure or maintain employees (or independent contractors performing relevant services for the day-to-day operation of the Company in lieu of performance of the same by such employees), facilities or support services shall be an expense of the Company unless the same is expressly reimbursable by the Company pursuant to the provisions of Article XII below or is otherwise expressly set forth in this Agreement or in any other Transaction Documents to be an expense of the Company.

3.4. Restrictions on Manager and Private Owner. Neither the Private Owner nor, notwithstanding any delegation of authority to it hereunder, the Manager may or shall in any event (x) do, or cause the Company to do, any act or take, or cause the Company to take, any action in contravention of any Law, or (y) take any of the following actions on behalf of, or with respect to, the Company, or otherwise cause the Company to take any of the following actions (or, as to clause (xvii) below, take, or permit or suffer any other applicable Person to take, any action set forth therein), in the case of all of the foregoing without the prior written approval of the Initial Member, which approval may be withheld or conditioned in the sole and absolute discretion of the Initial Member:

- (i) admitting additional or substitute members of the Company, except in accordance with Article VIII;
- (ii) changing the legal form of the Company to other than a limited liability company;
- (iii) taking any action that would cause the Company to be treated as other than a partnership for federal tax purposes;
- (iv) taking any action that would make it impossible to carry on the ordinary business of the Company;

(v) during any of the first three successive twelve-month periods after the Closing Date, conducting Bulk Sales in an aggregate amount (for such twelve-month period) in excess of 10.0% of the aggregate Unpaid Principal Balance of all Assets as of the beginning of such twelve-month period (or, for such first twelve-month period, as at the Cut-Off Date as indicated on the Asset Schedule), it being understood that for purposes of the foregoing the sale or other disposition of an Ownership Entity (or any voting or equity interest therein) shall constitute a sale or other disposition of the Acquired Property (including any Acquired REO Property) held directly or indirectly by such Ownership Entity;

(vi) incurring any liability on behalf of the Company (other than liabilities to trade creditors in the ordinary course of the Business and such other liabilities as may be permitted by this Agreement or any other Transaction Document);

(vii) possessing or transferring Company Property for other than Company purposes;

(viii) taking any action that would require (or refusing to take any action where the result of such refusal would so require) the Company to register as an “investment company” (as defined in the Investment Company Act);

(ix) selling or otherwise transferring (or permitting the sale or other transfer by a Borrower or Obligor of) any Asset, Collateral or Acquired Property (or any portion thereof) to the Manager, the Private Owner, the Servicer, any Subservicer or any Affiliate (other than the Company or an Ownership Entity) of any of the foregoing or of the Company;

(x) except as expressly permitted pursuant to Section 12.22, financing the sale or other transfer of any Asset, Collateral or Acquired Property (or any portion thereof);

(xi) selling any Asset, Collateral or Acquired Property (or any portion thereof) in a transaction that provides for any recourse against the Company, the Initial Member or the FDIC, in any capacity, or against the LLC Interest held by the Initial Member or any share of the Asset Proceeds allocable to the Initial Member, other than contractual obligations solely of the Company with respect to customary post-closing purchase price adjustments and proration;

(xii) disbursing, or causing the disbursement of, funds from the Collection Account, the Distribution Account, the Working Capital Reserve Account or other accounts created under this Agreement, the Custodial and Paying Agency Agreement or any Servicing Agreement other than in accordance with (and without violation of any requirement contained in) the provisions of this Agreement, the Custodial and Paying Agency Agreement and the applicable Servicing Agreement;

(xiii) advancing additional funds that would increase the Unpaid Principal Balance of any Asset other than (A) Required Funding Draws, (B) Permitted Vertical Completion Expenses, (C) Permitted Horizontal Development Expenses, or (D) Servicing

Expenses to the extent that capitalizing such Servicing Expenses is permitted (or with respect to Acquired Property would have been permitted prior to the conversion of the Loan to Acquired Property) under the applicable Asset Documents;

(xiv) reimbursing the Manager for any expense or cost incurred by (or paid by) any Affiliate of any of the Company, the Private Owner or the Manager, the Servicer or any Subservicer (provided that this clause (xiv) does not prohibit reimbursing the Manager for Servicing Expenses or Pre-Approved Charges solely as a result of the Manager being an Affiliate of the Company, the Servicer or any Subservicer);

(xv) taking any action or omitting to take any action that causes the Company to breach any representation, warranty, covenant or other agreement contained herein or in any other Transaction Document (for avoidance of doubt, nothing in this clause (xv) shall require the Private Owner or the Manager to make any capital contribution or advances which are not otherwise required of it under the express terms of this Agreement or any other Transaction Document);

(xvi) taking any action for which the consent of some or all of the members of a limited liability company is (unless otherwise provided in the limited liability company agreement of such limited liability company) required by the Act; or

(xvii) other than through the Company (and the Ownership Entities), acquiring (or permitting or suffering any Specified Parent or any Affiliate of any of the Company, the Manager, the Private Owner or any Specified Parent to acquire) any interest whatsoever in or relating to any Asset or Collateral (including, in the case of any Loan Participation, any interest in the underlying loan or collateral with respect thereto).

3.5. Related Party Agreements. Neither the Company nor any of its Subsidiaries shall enter into any Related Party Agreement, except as may otherwise be expressly provided herein or in any other Transaction Document to which the Initial Member is a party or as may be approved by both Members.

3.6. Real Property. The Company shall not take title in its own name to any Acquired REO Property, and any acquisition or ownership of any such Acquired REO Property shall be subject to Sections 12.17 and 12.18 and the relevant terms of the Servicing Agreement.

3.7. Custodian and Paying Agent. The Manager shall cause the Company to retain and enter into and, at all times, be a party to a written custodial agreement with a Custodian (as selected by the Company in accordance herewith), and such Custodian shall at all times have custody and possession of the Notes and other Custodial Documents (subject to the applicable provisions herein and in such custodial agreement with respect to the release thereof). The Manager shall also cause the Company to retain and enter into and, at all times, be a party to a written paying agency agreement with a Paying Agent (as selected by the Company in accordance herewith), which Paying Agent shall receive and distribute Asset Proceeds in

accordance with such paying agency agreement. Such Custodian and Paying Agent shall be (and remain) a Qualified Custodian and Paying Agent acceptable to and approved by the Initial Member, such approval not to be unreasonably withheld, delayed or conditioned. Except as may be determined by the Initial Member in connection with an exercise of its rights under Section 13.5 below, the Custodian and the Paying Agent shall be a single (and the same) Person; and the custodial and paying agency functions shall be performed on the terms set forth in the Custodial and Paying Agency Agreement (which shall be in a form acceptable to the Initial Member). At no time shall the Company have more than one Custodian or one Paying Agent, who may be (and, to the extent specified in the preceding sentence, shall be) the same Person. The fees and expenses paid to the Custodian and Paying Agent shall be no more than market rates and the Custodian and Paying Agent may be terminated by the Company upon no more than thirty days' notice provided to such Custodian and Paying Agent, without cause under the Custodial and Paying Agency Agreement. For purposes of clarification, the parties acknowledge that, as of the Closing Date, the Custodial and Paying Agency Agreement delivered on the Closing Date is acceptable to the Initial Member, including as to the fees and expenses expressly set forth therein. In the event that the Manager removes, or causes the Company (or the Servicer or any Subservicer) to remove, any Notes or other Custodial Documents from the possession of the Custodian (which shall be done only in accordance with the relevant Custodial and Paying Agency Agreement), (i) any loss or destruction of or damage to such Notes or Custodial Documents shall be the personal liability of the Manager (who, along with the relevant Servicer or Subservicer(s), shall be responsible for safeguarding such Notes and Custodial Documents when not in possession of the Custodian), and (ii) such Notes shall be returned to the Custodian within the time provided under the applicable Uniform Commercial Code to maintain the perfection of the secured party's security interest therein by possession. If any Notes or other Custodial Documents are removed in connection with the modification, restructuring or foreclosure of a Loan, the modified or restructured Notes and other Custodial Documents removed in connection therewith shall be returned to the Custodian as soon as possible following the completion of the restructuring, modification or foreclosure (and, in any event, in accordance with clause (ii) of the immediately preceding sentence). Notwithstanding the foregoing, if any Notes or other Custodial Documents are retained by the applicable court, the Manager shall request that the court return (and shall cause to be so returned) such Notes and other Custodial Documents to the Custodian as soon as possible after they are released by such court. The Manager shall (i) ensure that the Initial Member receives a copy of each demand, notice or other communication given by the Manager (including by the Manager on behalf of the Company) under the Custodial and Paying Agency Agreement at the time that such notice or other communication is given thereunder and (ii) require that a copy of each demand, notice or other communication given to the Manager (including to the Manager as the manager of the Company) under the Custodial and Paying Agency Agreement is to be given to the Initial Member at the time that such notice or other communication is given thereunder.

3.8. Relationships with Borrowers, etc. Except as otherwise consented to by the Initial Member, none of the Private Owner, the Manager or any Affiliate of either shall, at any time, (i) be an Affiliate of or a partner or joint venturer with any Borrower or Obligor, (ii) be an agent

of any Borrower or Obligor, or allow any Borrower or Obligor to be an agent of the Manager or the Company, or (iii) except as is otherwise contemplated by the Company's ownership of the Assets and its right to hold Acquired Property, have any interest whatsoever in any Borrower, Obligor or other obligor with respect to any Asset or any of the Collateral.

3.9. No Conflicting Obligations. The Manager shall cause the Company to comply with the Transaction Documents in accordance with their terms, and shall not, at any time, enter into or become a party to any agreement that would conflict with the terms of this Agreement.

3.10. Compliance with Law. The Manager shall, and shall cause the Company to, at all times, (i) comply with applicable Law in connection with the performance or exercise of its rights, powers, duties or obligations under this Agreement, and (ii) without limiting the generality of clause (i) and subject to Section 4.3, be duly authorized and qualified to transact any and all business to be conducted by it in any state in which an Asset is located and comply with the doing business laws of any such state, in each case described in this clause (ii) to the extent necessary to ensure its ability to manage the Assets in accordance with the terms of this Agreement and to perform any of its other obligations under this Agreement in accordance with the terms hereof.

3.11. No Bankruptcy Filing. Neither the Manager nor the Private Owner may cause or permit the Company to: (i) file a voluntary petition for bankruptcy, (ii) file a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, receivership or similar relief under any Law, (iii) make an assignment for the benefit of creditors, (iv) seek, consent or acquiesce in the appointment of a trustee, receiver or liquidator of all or any substantial part of its properties, (v) file an answer or other pleading admitting or failing to contest the material allegations of (x) a petition filed against it in any proceeding described in clauses (i) through (iv), or (y) any order adjudging it bankrupt or insolvent or for relief against it in any bankruptcy or Insolvency Proceeding, (vi) allow itself to become unable to pay its obligations as they become due, or (vii) institute any proceedings to set aside or void any transfer of an interest in property (or to recover the value thereof) or other transaction on the grounds that such transfer or other transaction constituted a fraudulent conveyance or a preferential transfer (or on similar grounds).

3.12. No Liens. The Manager shall not (i) cause the Company to place or (ii) permit (voluntarily or involuntarily) to be placed, or to exist, any Lien on any of the Assets, the Collateral, the Asset Documents, or the Asset Proceeds, except for Permitted Liens.

3.13. Remedies Upon an Event of Default; Security Interest.

(a) Upon the occurrence of an Event of Default, in addition to all other remedies available hereunder or under the other Transaction Documents upon such an Event of Default, the Initial Member shall be entitled to:

- (i) remove the Private Owner as the Manager or Servicer pursuant to Sections 3.2 and 12.4;
- (ii) remove the Private Owner as a Member;
- (iii) purchase (or cause a designee to purchase) the Private Owner Interest pursuant to Section 3.14;
- (iv) designate itself or any applicable transferee Member as the Manager hereunder; and/or
- (v) with or without notice to or demand upon the Private Owner (except as may be required by Law), exercise any or all rights and remedies with respect to the Secured Assets and any Qualifying Letter of Credit, specifically including the right (A) to foreclose on the Private Owner Interest and transfer such Private Owner Interest to a third party (it being agreed that none of the Private Owner, the Manager or any of their Affiliates shall participate in any sale of the Private Owner Interest without the prior written consent of the Initial Member), (B) to draw upon any Qualifying Letter of Credit, by presenting to the applicable Issuing Bank one or more drafts or demands and any other necessary documents, and to receive (in a lump sum or in several sums from time to time at the sole discretion of the Initial Member) any or all amounts available for drawing under such Qualifying Letter of Credit, and/or (C) to exercise any rights under the Private Owner Pledged Account Control Agreement (or otherwise) with respect to the Private Owner Pledged Account, including the right to assume exclusive control over the Private Owner Pledged Account and to cause the funds therein to be remitted (in a lump sum or in several sums from time to time at the sole discretion of the Initial Member) to or at the direction of the Initial Member. The Initial Member shall have the right to apply any or all proceeds of the Secured Assets or any Qualifying Letter of Credit to payment of the Private Owner Obligations in such order, and with such priority as among any such Private Owner Obligations, as the Initial Member may determine in its sole discretion.

The removal of the Private Owner as a Member shall be subject to Section 8.4.

(b) For the avoidance of doubt, in the event that the Initial Member determines to exercise its remedies against any Secured Assets or any Qualifying Letter of Credit, it shall have the absolute right to deduct from the proceeds of such exercise of remedies (including proceeds of any foreclosure sale with respect to the Private Owner Interest, any drawing on a Qualifying Letter of Credit and any receipt of funds from the Private Owner Pledged Account), (i) any Losses arising out of or resulting from such Event of Default incurred by the Indemnified Parties, together with all costs and expenses (including attorneys' fees and disbursements) incurred by the Initial Member in connection with enforcing its rights and remedies hereunder and under the other Transaction Documents, and (ii) any Private Owner Obligations then due and payable (all of the foregoing in each case in such order as the Initial Member may determine in its sole discretion); provided that the Initial Member may, in its sole

discretion, hold any such proceeds as additional security for any existing or future (including contingent) Private Owner Obligations. Without limitation of the foregoing, in no event shall the Initial Member have any obligation (but it shall at all times have the right in its sole discretion) to use or apply any proceeds of the Secured Assets toward payment of any Private Owner Obligations owing to the Company or any Indemnified Party other than the Initial Member (whether or not the same are due and payable), and the Private Owner shall remain fully obligated to pay and perform all such Private Owner Obligations owing to the Company and each such Indemnified Party notwithstanding any such election by the Initial Member to so refrain from applying such proceeds toward payment of the same; and, in the event that, for any reasons any such proceeds of the Secured Assets are used for payment of any Private Owner Obligations owing to the Company, any and all rights of the Private Owner to payments, reimbursements or distributions from the Company on account of any such payment to the Company (including rights to any repayment of any deemed Excess Working Capital Advances, to the extent any such proceeds are used to fund the same), shall be considered as part of the Secured Assets and shall, to the extent paid or payable by the Company, be paid directly to the Initial Member (and the Initial Member shall have the right to direct the Paying Agent to so remit to the Initial Member any applicable distributions or payments by the Paying Agent with respect thereto) to be held and applied by the Initial Member as part of the proceeds of the Secured Assets (as collateral for the Private Owner Obligations). Any Secured Assets or proceeds thereof as held by the Initial Member may be commingled with the Initial Member's own funds, without any need to pay interest or income thereon. Upon indefeasible payment and performance in full of all of the Private Owner Obligations (following the dissolution of the Company), any remaining unapplied proceeds (from an exercise of remedies by the Initial Member against the rights of the Private Owner to the Secured Assets or any Qualifying Letter of Credit) so held by the Initial Member, shall be released to the Private Owner (or such other Person as may have applicable rights therein in accordance with applicable Law). In any event, the Private Owner shall remain liable for any deficiency in payment of the Private Owner Obligations.

(c) This Agreement shall constitute a security agreement under applicable Law for the benefit of the Initial Member and, in furtherance thereof, the Private Owner (in all of its capacities) and the Company (as applicable) shall be deemed to have granted, and each does hereby grant, to the Initial Member, for itself (and its assignees) and for the further benefit of the Indemnified Parties, a valid and continuing first priority Lien on and security interest in all of the Private Owner's right, title and interest, whether now owned or existing, or hereafter acquired or arising, in, to or under the Secured Assets, as security for the payment and performance (when due) by the Private Owner (including in its roles as the Manager and the Tax Matters Member) of the Private Owner Obligations. For the avoidance of doubt, the parties acknowledge that the Secured Assets are not, pursuant to the foregoing, collateral for the separate payment obligations of the Company except to the extent that, pursuant to this Agreement or the other Transaction Documents, the Private Owner, in any capacity, is required to pay (or advance applicable funds to pay) or otherwise bear such obligations (and in such case, such Secured Assets secure such separate obligations of the Private Owner). The Private Owner represents, warrants and covenants that it owns, and shall at all times own, the Secured Assets free and clear of any Liens

(other than the Lien created hereby), and, upon the filing of a UCC financing statement with respect thereto, as applicable, the Initial Member shall have a perfected and continuing first priority Lien on and security interest in the Secured Assets (whether now owned or existing, or hereafter acquired or arising), as security for the payment and performance (when due) by the Private Owner (including in its roles as the Manager and the Tax Matters Member) of the Private Owner Obligations.

(d) As additional security for the Private Owner Obligations (and, as applicable, as part of the Secured Assets), the Private Owner shall deliver on the Closing Date, and at all times thereafter cause to be maintained, the Additional Security. In the event that the Private Owner determines to fulfill its obligation to provide the Additional Security by issuance of a Qualifying Letter of Credit, the Private Owner shall cause the issuance and delivery to the Initial Member, on the Closing Date, of a single Qualifying Letter of Credit in the full amount of such Additional Security. The Private Owner may, on one occasion (and only on one occasion, except as otherwise expressly permitted in the definition of LC Reissuance/Extension Failure under the circumstances specified therein), make a one-time substitution of the form of the Additional Security by substituting, as the case may be, either (x) a Qualifying Letter of Credit for Qualifying Cash Collateral, or (y) Qualifying Cash Collateral for a Qualifying Letter of Credit; provided, however, that at all times the amount of the Additional Security is equal to or greater than the Private Owner Pledged Amount; and provided, further, however, the Private Owner shall pay to the Initial Member the Additional Security Substitution Fee (as a condition to the exercise of such right to make such substitution) and shall further solely be responsible for any incurred costs of the Initial Member or the Company associated with any such substitution of the form of the Additional Security as referenced in this sentence. The Initial Member shall have the unilateral right to draw on any such Qualifying Letter of Credit and to provide instructions to the Paying Agent for the disposition of any Qualifying Cash Collateral, in each case without any requirement for any further consent, confirmation or instructions from the Private Owner; provided, however, that as between the Initial Member and the Private Owner (and without creating any right or obligation of the Paying Agent or any Issuing Bank to refuse to honor, or inquire as to the accuracy or sufficiency of, any applicable instructions from the Initial Member), the Initial Member agrees that (i) it shall not exercise such rights to so draw on any such Qualifying Letter of Credit unless there shall have occurred an Event of Default (whether or not relating to any Qualifying Letter of Credit) or an LC Reissuance/Extension Failure (with respect to such Qualifying Letter of Credit), and (ii) it shall not exercise such rights to so unilaterally direct the disposition of the Qualifying Cash Collateral from the Private Owner Pledged Account unless there shall have occurred an Event of Default.

(e) On the Closing Date (and whether or not the Private Owner has elected to provide the Additional Security in the form of Qualifying Cash Collateral), the Private Owner shall establish the Private Owner Pledged Account with the Paying Agent for the exclusive purpose of holding Qualifying Cash Collateral (including in the form of any proceeds from a drawing on a Qualifying Letter of Credit at any time deposited in the Private Owner Pledged Account in accordance herewith). The Private Owner Pledged Account (and all funds and

financial assets therein) shall be subject to the security interest granted herein for the benefit of the Initial Member pursuant to the terms of this Agreement, the Custodial and Paying Agency Agreement and the Private Owner Pledged Account Control Agreement. Funds in the Private Owner Pledged Account may be invested at the direction of the Private Owner from time to time in Permitted Investments in accordance with the Custodial and Paying Agency Agreement; provided, however, that the Private Owner is authorized to instruct the Custodian and Paying Agent to release to the Private Owner that portion of the proceeds in the Private Owner Pledged Account which exceeds the required Private Owner Pledged Amount, all in accordance with Section 3.9(b) of the Custodial and Paying Agency Agreement. Conversely, it is understood and agreed that, pursuant to the first sentence of Section 3.13(d), if, at any time, the sum of (x) the aggregate undrawn (and available) amounts under the Qualifying Letter of Credit, if any, plus (y) the balance, if any, of the Qualifying Cash Collateral, is less than the Private Owner Pledged Amount, an Event of Default shall exist and (without limitation of the foregoing) the Private Owner immediately shall cure such Event of Default by depositing with the Paying Agent Qualifying Cash Collateral in the amount of the difference between the Private Owner Pledged Amount and the sum of (x) and (y).

(f) Upon the occurrence of any LC Reissuance/Extension Failure, the Initial Member shall have the right (but not the obligation) to draw on all or any part of the undrawn amount of the Qualifying Letter of Credit subject to such LC Reissuance/Extension Failure; and the funds received by the Initial Member as a result of any such draw shall be deposited in the Private Owner Pledged Account (and thereby will become Qualifying Cash Collateral) and such LC Reissuance/Extension Failure shall not be deemed an Event of Default hereunder, in each case only so long as (i) there shall not have occurred any Event of Default (other than such LC Reissuance/Extension Failure), (ii) the Private Owner Pledged Account shall then be and remain open and subject to the Private Owner Pledged Account Control Agreement, (iii) upon such deposit in the Private Owner Pledged Account (of the funds received by the Initial Member from such draw), the aggregate amount of the Additional Security (disregarding such Qualifying Letter of Credit) shall be in an amount not less than the Private Owner Pledged Amount, and (iv) the Private Owner shall have paid to the Initial Member the Additional Security Substitution Fee in connection with the resulting substitution of such Qualifying Letter of Credit (or applicable undrawn amounts thereunder) with Qualifying Cash Collateral (which Additional Security Substitution Fee shall be deemed due and payable upon the occurrence of such LC Reissuance/Extension Failure), it being understood that, in the event the foregoing conditions are not satisfied, the Initial Member shall have the right to hold and apply such funds pursuant to Section 3.13(b) above.

(g) The Private Owner hereby authorizes the filing by the Initial Member and its assignees of such UCC financing or continuation statements in such jurisdictions as the Initial Member or its assignees deem appropriate (in their sole and absolute discretion) to perfect and continue their first priority Lien and security interest with respect to the Secured Assets. The Private Owner shall deliver to the Initial Member an assignment and assumption agreement with respect to the Private Owner

Interest, in the form attached hereto as Exhibit C, endorsed in blank, and executed by the Private Owner. The Initial Member may use the assignment and assumption agreement to effect the assignment of the Private Owner Interest at any time if an Event of Default occurs and is continuing.

(h) After all of the obligations secured by the Secured Assets have been indefeasibly paid and performed in full (following the dissolution of the Company), the Initial Member shall, upon the request of the Private Owner, release any then outstanding Qualifying Letter of Credit and consent to the termination of the Private Owner Pledged Account Control Agreement.

(i) The Initial Member's rights and remedies under this Agreement, any other Transaction Document or otherwise are cumulative and may be exercised singularly (and in such order as the Initial Member may determine in its sole discretion) or concurrently. Neither any failure nor delay on the part of the Initial Member to exercise any other right or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or of any other right or remedy howsoever arising. In no event shall the Initial Member have any obligation to seek or exhaust any particular remedy prior to exercising any other remedy, and the Private Owner hereby waives any and all right to require the marshaling of assets in connection with any exercise by the Initial Member of its remedies hereunder or under any other Transaction Document. Under no circumstances shall the Initial Member be deemed or construed to have waived its right to draw upon any Qualifying Letter of Credit, to proceed against the Private Owner Pledged Account, to foreclose upon the Private Owner Interest or to exercise any of its other rights or remedies unless such waiver is in writing and executed by a duly authorized representative of the Initial Member. A waiver of any right or remedy on any one occasion shall not operate as a waiver of such right or remedy on any future occasion or as a waiver of any other right or remedy.

(j) As used herein, "Event of Default" shall mean any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of Law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) intentionally omitted;

(ii) (x) the occurrence of any Insolvency Event (without any cure period other than as may be provided for in the definition of Insolvency Event): (A) with respect to the Company, the Private Owner, any Specified Parent of the Private Owner or any Person that Controls, or any Person directly or indirectly holding any Ownership Interest in (or otherwise Controlling) the Private Owner that is Controlled by, any Specified Parent of the Private Owner; or (B) with respect to the Servicer (or any Subservicer); provided (for the avoidance of doubt, solely with respect to this clause (x)(B)) that, if such Servicer (or Subservicer) is not an Affiliate of the Private Owner, then such Insolvency Event pursuant to this

clause (x)(B) shall not be an Event of Default hereunder (but shall in all events be a default under the applicable Servicing Agreement (or Subservicing Agreement)) so long as the Manager shall have fully replaced (or caused the replacement of) such affected Servicer or Subservicer within thirty days after the occurrence of such Insolvency Event; or (y) the occurrence of any Dissolution Event with respect to (A) the Private Owner or (B) with respect to the Servicer (or any Subservicer); provided (for the avoidance of doubt, solely with respect to this clause (y)(B)), that, if such Servicer (or Subservicer) is not an Affiliate of the Private Owner, then such Dissolution Event under this clause (y)(B), shall not be an Event of Default hereunder (but shall in all events be a default under the applicable Servicing Agreement (or Subservicing Agreement)) so long as the Manager shall have fully replaced (or caused the replacement of) such affected Servicer (or Subservicer) within thirty days after the occurrence of such Dissolution Event; or

(iii) any failure of the Company to pay any Working Capital Expense when due in accordance with Section 12.6 of this Agreement, which failure continues unremedied for a period of thirty days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Initial Member to the Company; or

(iv) any failure in any material respect of the Company or the Private Owner (for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) to perform any of its obligations under, or otherwise to comply with and observe any provision of, this Agreement, which continues unremedied for a period of thirty days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Initial Member to the Private Owner; or

(v) the occurrence of either (x) any failure in any material respect by the Servicer to perform any of its obligations under, or otherwise to comply with and observe any provision of, the Servicing Agreement, which continues unremedied for a period of thirty days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Manager (in its individual capacity) or the Initial Member to the Servicer, or (y) a failure by the Manager (in its individual capacity) to replace the Servicer upon the occurrence of a material breach by the Servicer of, or an occurrence of a "Default" under (and as defined in) the Servicing Agreement, which continues unremedied for a period of thirty days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Initial Member to the Manager (in any capacity); or

(vi) any failure in any material respect of (x) the Manager (in any capacity) to perform any of its obligations under, or otherwise to comply with and observe any provision of, the Servicing Agreement or (y) the Company to perform any of its obligations under, or otherwise to comply with and observe any provision of, the Custodial and Paying Agency Agreement (including any failure to pay fees or expenses when due thereunder) which, in the case of (x) or (y), remains unremedied for a period of thirty days after the date on which

written notice of such failure requiring the same to be remedied shall have been given by the Initial Member or, as applicable, the Custodian or the Paying Agent, to the Manager (in any capacity) or the Company, as applicable; or

(vii) there shall be any breach (or, for the avoidance of doubt, any attempted or purported Disposition that, but for Section 8.5 of this Agreement, would have constituted a breach) of Section 8.1 or 8.2 or any Restricted Servicer Change of Control; provided, that, if the applicable Servicer (or Subservicer) is not an Affiliate of the Private Owner, then such Restricted Servicer Change of Control shall not be an Event of Default hereunder (but shall in all events be an event of default under the applicable Servicing Agreement (or Subservicing Agreement)) so long as the Manager shall have fully replaced (or caused the replacement of) such affected Servicer (or Subservicer) within thirty days after the occurrence of such Restricted Servicer Change of Control; or

(viii) any failure of the Company to remit or cause to be remitted all Asset Proceeds to the Paying Agent (or to the applicable Company Account maintained with the Paying Agent) as and when required; or

(ix) at any time, there shall exist any PO Owner that has not executed and delivered (to each of the “Beneficiaries” named therein) a PO Owner Undertaking; or

(x) any failure of the Manager to cause the Company to repay (or remit available funds for the repayment of) Discretionary Funding Advances to the full extent Asset Proceeds from the applicable Asset are available for such repayment; or

(xi) (A) the failure, of the Private Owner, at any time, for any reason or to any extent, to maintain in full the Additional Security (other than the as a result of the Issuing Bank ceasing to be a Qualified Issuer), (B) the occurrence of any LC Reissuance/Extension Failure or (C) if applicable, any failure, at any time, for any reason or to any extent, by an Issuing Bank to comply with any terms, agreements or conditions of any Qualifying Letter of Credit; or

(xii) any breach of Section 10.1(s) of this Agreement, which breach continues unremedied for a period of thirty days or more after the date on which written notice of such breach requiring the same to be remedied shall have been given by the Initial Member to the Private Owner or otherwise shall have been given to the Private Owner.

3.14. Purchase Right of Initial Member. Without prejudice to the rights of the Initial Member to foreclose on the Private Owner Interest in accordance with Section 3.13:

(a) Upon the occurrence and during the continuance of an Event of Default, the Initial Member may at any time, by notice (a “**Buy-Out Notice**”) to the Private Owner, elect to purchase (or cause one or more designees to purchase) the Private Owner Interest for an amount, payable in cash, equal to (x) the fair market value of such Private Owner Interest

(determined, if necessary, in accordance with Section 3.14(b)(iv)) as of a date (the “**Buy-Out Valuation Date**”) selected by the Initial Member in its discretion between the date of the Buy-Out Notice and the closing of such purchase (the “**Buy-Out Closing**”), less (y) any amounts owed by the Private Owner pursuant to Section 3.14(b)(v), and less (or plus) (z) the excess (or deficiency), for the period between the date of the Buy-Out Valuation Date and the consummation of the Buy-Out Closing, of (i) all distributions paid by the Company to or for the account of the Private Owner, including distributions pursuant to Section 6.6 and principal payments received by or on behalf of the Private Owner in respect of Excess Working Capital Advances or Discretionary Funding Advances, over (or below) (ii) all Excess Working Capital Advances and Discretionary Funding Advances made by or on behalf of the Private Owner.

(b) If the Private Owner receives a Buy-Out Notice, the Buy-Out Closing shall be consummated as follows:

(i) The Buy-Out Closing shall be held at the principal offices of the Company on a day selected by the Initial Member, which day shall, subject to Section 3.14(b)(iv), be no later than six months after the Buy-Out Notice was delivered to the Private Owner or at such other place or on such other date as the Members may agree (the “**Buy-Out Closing Date**”).

(ii) The Initial Member shall purchase (and/or cause one or more designees to purchase in the aggregate) all but not less than all of the of the Private Owner Interest for the consideration set forth in Section 3.14(a), and against delivery of such consideration, the Private Owner shall deliver all such documents and instruments as are necessary to transfer to the Initial Member (and/or its designee(s)), and in any event shall be deemed to have transferred, and to have represented and warranted to the Initial Member (and/or its designee(s)) that it has transferred, to the Initial Member (and/or its designee(s)), good title to (and, in any event, all right, title and interest of the Private Owner in and to) the entire Private Owner Interest, free and clear of all Liens other than those created by this Agreement and the Transaction Documents.

(iii) The Private Owner shall obtain all material consents, approvals or waivers (including expiration or termination of a specified waiting period) of any Governmental Authority or Person that may be required in connection with the purchase and sale of the Private Owner Interest (other than any such consent, approval or waiver which has, if permitted by Law, been waived by the Initial Member).

(iv) In the event of the delivery of a Buy-Out Notice, the Members shall attempt to agree on the fair market value of the Private Owner Interest as of the Buy-Out Valuation Date. If the Members are unable to agree on such value within fifteen days after the date of delivery of the Buy-Out Notice (or, if sooner, by the Buy-Out Closing Date), then such value shall be determined immediately thereafter in accordance with the Dispute Resolution Procedure, and, if applicable, the Buy-Out Closing Date shall be delayed until such date (after

completion of the applicable valuation) as may be selected by the Initial Member. For the avoidance of doubt, in no event shall the right of the Initial Member to purchase the Private Owner Interest under this Section 3.14 or any valuation resulting from a Dispute Resolution Procedure create any obligation with respect to, or otherwise limit the rights of the Initial Member in connection with, any concurrent or subsequent foreclosure (or sale) of the Private Owner Interest pursuant to Section 3.13 and/or exercise of relevant rights under the Uniform Commercial Code or otherwise, and the Private Owner acknowledges and agrees that any foreclosure and sale pursuant to Section 3.13 and relevant rights under the Uniform Commercial Code or otherwise may result in a sale price for the Private Owner Interest that is significantly lower than the fair market value of the Private Owner Interest potentially (or having actually been) determined pursuant to this Section or other price set out in any Buy-Out Notice.

(v) All out-of-pocket costs and expenses incurred by the Initial Member and the Company in connection with the exercise of the Initial Member's rights under this Section 3.14 and the sale of the Private Owner Interest by the Private Owner (including fees of any investment banking firm retained in connection with the Dispute Resolution Procedure and legal fees and expenses incurred in connection with obtaining any necessary consents, approvals or waivers (including expiration or termination of a specified waiting period) of Governmental Authorities) shall be borne by the Private Owner and may be deducted from the purchase price otherwise payable by the Initial Member (or its designee(s)) for the Private Owner Interest.

(c) The failure of the Initial Member to exercise its rights under this Section 3.14 in connection with any Event of Default shall in no way affect or limit the exercise of such rights in connection with any other Event of Default by the Private Owner.

(d) At any time prior to the Buy-Out Closing, the Initial Member may elect not to proceed with the Buy-Out Closing (without any liability or further obligation with respect thereto), and the Private Owner shall remain responsible for amounts owed under Section 3.14(b)(v) notwithstanding any such election by the Initial Member.

(e) Any distributions payable by the Company to the Private Owner after the Buy-Out Valuation Date (and prior to the consummation of the Buy-Out Closing) shall, at the option of the Initial Member, be paid to and held by the Initial Member (or, if permitted by the Paying Agent, held by the Paying Agent in the Distribution Account) and, at the Buy-Out Closing or a reasonable time thereafter, be released to the Private Owner less, without duplication, any amounts owed by the Private Owner pursuant to this Agreement (including costs and expenses pursuant to Section 3.14(b)(v)). For the avoidance of doubt, neither the Initial Member nor the Paying Agent shall have any obligation to segregate, or pay interest or other income in respect of, any sums held pursuant to this Section 3.14(e).

3.15. No ERISA Plan Assets. The Manager shall use its best efforts to ensure that the Company's assets are not deemed to be ERISA Plan Assets.

ARTICLE IV

Membership Interests; Rights and Duties of, and Restrictions on, Members

4.1. **General.** The membership of the Company shall consist of the Members listed from time to time in the schedule attached hereto as Annex I (which is hereby incorporated in this Agreement), as amended, restated, supplemented or otherwise modified from time to time as in accordance herewith (the “**Member Schedule**”). The Manager shall cause the Member Schedule to be amended from time to time to reflect (to the extent relevant, in accordance with the terms hereof) the admission of any additional or substitute Members, additional Capital Contributions of the Members, the issuance of additional limited liability company interests, transfers of limited liability company interests in the Company, repurchases, redemptions or cancellations of limited liability company interests in the Company, the cessation or withdrawal of a Member for any reason or the receipt by the Company of notice of any change of name or address of a Member.

4.2. **LLC Interests.**

(a) **Creation and Issuance.** The Company is only authorized to issue the limited liability company interests that exist as of the date hereof, and the Company may not hereafter create or issue any additional limited liability company interest; **provided**, that nothing in this sentence restricts the Disposition of any outstanding LLC Interest by any Member (which matter is governed by Article VIII). The Company’s LLC Interests shall be uncertificated. As of the Closing Date, the limited liability company interests in the Company are owned by the Initial Member and the Private Owner, as set forth in the Member Schedule.

(b) **Distributions.** Subject to Sections 6.6, distributions to the holders of limited liability company interests in the Company shall be made as provided in Section 6.6(b) and Section 9.2.

(c) **No Retirement Fund or Conversion.** The limited liability company interests in the Company shall not be subject to the operation of a retirement or sinking fund to be applied to the purchase or redemption thereof for retirement and shall not be convertible into any other class of limited liability company interests.

(d) **Voting Rights.** Except to the extent otherwise required by the Act or expressly provided in this Agreement, the holders of the limited liability company interests in the Company shall be entitled to vote on all matters upon which the Members have the right to vote as set forth in this Agreement or provided in the Act. Except as expressly set forth elsewhere in this Agreement (including Section 3.1 and Section 3.4), the voting rights of each holder of a limited liability company interest in the Company shall be based on such holder’s Percentage Interest.

4.3. **Filings; Duty of Members to Cooperate.** The Manager shall promptly cause to be executed, delivered, filed, recorded or published, as appropriate, and the Private Owner will, as

requested by the Manager from time to time, execute and deliver, (i) all certificates, documents and other instruments that the Manager deems necessary or appropriate to form, qualify or continue the existence or qualification of the Company as a limited liability company in the State of Delaware or as a foreign limited liability company in all other jurisdictions in which the Company may, or may desire to, conduct business or own Company Property, and to form, qualify or continue the existence or qualification of each Ownership Entity in each applicable jurisdiction where it so may, or may desire to, conduct business or own its applicable Acquired Property, (ii) any amendment to the Certificate or any instrument described in clause (i) required because of, or in order to effectuate, an amendment to this Agreement, or any change in the membership of the Company or any Ownership Entity, in accordance with the terms hereof, (iii) all certificates, documents and other instruments (including conveyances and a certificate of cancellation) that the Manager deems necessary or appropriate to reflect the dissolution and liquidation of the Company and the Ownership Entities pursuant to the terms of this Agreement, and (iv) such other certificates, documents and other instruments as are required by Law or by any Governmental Authority to be executed by them in connection with the Business as conducted or proposed to be conducted by the Company and any Ownership Entity from time to time. As soon as reasonably practical after the date hereof (and as to any applicable Ownership Entity, as soon as reasonably practical following formation thereof, and in all events in accordance with applicable Law), the Manager shall cause the Company and each Ownership Entity to apply for, and thereafter use its best efforts to obtain, as quickly as possible, and maintain, all such licenses as are required to conduct the Business as conducted by the Company or such Ownership Entity, including qualifications to conduct business in jurisdictions other than Delaware and licenses to purchase, own or manage the Assets (so purchased, owned or managed by the Company or such Ownership Entity), if the failure to so obtain such licenses would reasonably be expected to (a) result in the imposition of fines, penalties or other liabilities on the Company or any such Ownership Entity, (b) result in claims and defenses being asserted against the Company or any such Ownership Entity (including counterclaims and defenses asserted by any Borrower under the Assets), or (c) materially adversely affect the Company or any such Ownership Entity, the ability of the Company or any such Ownership Entity to foreclose on the Collateral securing any Loan or the ability of the Company or any such Ownership Entity to otherwise realize the full value of any Asset or Acquired Property.

4.4. Certain Restrictions and Requirements.

(a) No Member may use or possess Company Property other than for a Company purpose, except as provided under license or other contractual arrangements. No Member shall have authority to bind, or otherwise to act on behalf of, the Company except pursuant to authority expressly granted herein or pursuant to authority granted by the Manager in accordance with the terms hereof.

(b) From and after the Closing Date, no Person may or shall be admitted as a member of the Company except pursuant to and in accordance with Article VIII hereof.

(c) Each Member, other than the Initial Member (and its Related Persons), shall at all times meet the qualifications of a Qualified Transferee.

4.5. No Fiduciary Duties or Liability of Initial Member. Nothing in this Agreement is intended to create, or creates, any fiduciary duty of the Initial Member (or any other Initial Member Related Person) to the Company or the Private Owner (and, without limitation of the foregoing, to the extent that, but for this sentence, any such fiduciary duty otherwise would exist (including by operation of Law), the Company and the Private Owner irrevocably and unconditionally waive any such fiduciary duty). In furtherance and not in limitation of the preceding sentence, neither the Initial Member nor any other Initial Member Related Person shall be liable, responsible or accountable, whether directly or indirectly, in contract or tort or otherwise, to the Company, any other Person in which the Company has a direct or indirect interest or any Member (or any Affiliate of any of the foregoing), for any Losses asserted against, suffered or incurred by the Company, any Person in which the Company has a direct or indirect interest or any Member (or any Affiliate of any of the foregoing) arising out of, relating to or in connection with this Agreement or any act or failure to act pursuant to this Agreement, or otherwise with respect to:

(i) the management or conduct of the business and affairs of the Company or any Person in which the Company has a direct or indirect interest or any of their respective Affiliates (including actions taken or not taken by any Initial Member Related Person as an officer or director of any Person in which the Company has a direct or indirect interest or any Affiliates of such Person);

(ii) the offer and sale of limited liability company interests in the Company (including the LLC Interests); or

(iii) the management or conduct of the business and affairs of any Initial Member Related Person insofar as such business or affairs relate to the Company or any Person in which the Company has a direct or indirect interest or to any Member (or any of its Affiliates), including all:

(x) activities in the conduct of the Business, and

(y) activities in the conduct of other business engaged in by any Initial Member Related Person which might involve a conflict of interest vis-à-vis the Company or any Person in which the Company has a direct or indirect interest or any Member (or any of their respective Affiliates) or in which any Initial Member Related Person realizes a profit or has an interest;

except, in each case, that this sentence does not apply to Losses resulting from acts or omissions of such Initial Member Related Person which were taken or omitted which constituted fraud, gross negligence, willful misconduct, or an intentional material breach of this Agreement or any other Transaction Document.

4.6. Indemnification.

(a) The Private Owner shall indemnify and hold harmless the Initial Member, the Transferor and the FDIC, and their respective Related Persons (all of the foregoing, collectively, the “**Indemnified Parties**”), from and against any and all Losses whatsoever directly or indirectly resulting from, connected with, arising out of or related to (i) any breach of or inaccuracy in any of the representations or warranties of the Private Owner (in any capacity, including as the Manager) contained in this Agreement, (ii) any failure, by (x) the Company (during any period when the Private Owner is the Manager, and subject to the clarification set forth below in this Section 4.6(a)), the Private Owner (in any capacity, including as the Manager) or any of their respective Affiliates or (y) any Related Person of any Person described in sub-clause (x), to perform the obligations of the Company or the Private Owner (in any capacity, including as the Manager) under, and otherwise to comply with and observe the provisions of, this Agreement or any other Transaction Document (including Losses relating to (1) the Company’s obligations with respect to litigation referred to in Section 4.5 of the Contribution Agreement to the extent provided therein, (2) the Company’s obligations under Sections 3.1 and 3.2 of the Contribution Agreement (including all costs and expenses of the Receiver in completing any applicable transfers pursuant to exercise of rights under such section), or (3) any claim asserted by the Initial Member against the Company or the Private Owner (in any capacity, including as the Manager) to enforce its rights hereunder), or any third-party allegation or claim based upon facts alleged that, if true, would constitute such a breach, (iii) any gross negligence, bad faith or willful misconduct (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law) on the part of any Person listed or described in sub-clause (ii)(x) or (ii)(y), (iv) any Losses with respect to which the Receiver was released, or with respect to which the Company should have obtained a release from the applicable Borrowers or other Obligors, in accordance with Section 4.17(b) of the Contribution Agreement, (v) with respect to any period when the Private Owner is the Manager, the events and circumstances (and Losses) described in clauses (iii) and (iv) of Section 8.13(a) of the Contribution Agreement, or (vi) any Obligations attributable to acts or omissions of the Private Owner (or any of its Related Persons) occurring prior to the Closing Date to the extent such actions or omissions would have subjected the Private Owner to the indemnification provisions herein had the same occurred on or after the Closing Date. The Private Owner’s obligation under this Section 4.6(a) shall, with respect to any third-party beneficiary of this Agreement (and its Related Persons), survive the termination of this Agreement or such third party beneficiary otherwise ceasing generally to constitute such a third party beneficiary. Each Indemnified Party shall deliver notice, of any claim or demand made by any Person against such Indemnified Party for which such Indemnified Party may seek indemnification under this Section 4.6(a) (a “**Third Party Claim**”), to the Private Owner promptly after receipt by such Indemnified Party of written notice of the Third Party Claim, describing such Third Party Claim in reasonable detail. The failure or delay to provide such notice, however, shall not release the Private Owner from any of its obligations under this Section 4.6 except to the extent that it is materially prejudiced by such failure or delay.

The Private Owner acknowledges and agrees that it shall have no recourse (including on account of the provisions of Section 8.13 of the Contribution Agreement) against the Company for any amounts the Private Owner is required to pay pursuant to this Section 4.6. For the purposes of this Section 4.6, the term “Initial Member” shall be deemed to include any Person at any time constituting the “Initial Member” under this Agreement (even if such Person has ceased to be the “Initial Member” under this Agreement) and (without limitation of the foregoing) any Person at any time holding all or any portion of the LLC Interest initially held by the Initial Member immediately after the Closing, in each case even if such Person has since ceased to be a member of the Company or to hold any limited liability company interest in the Company.

For purposes of clarification, with respect solely to the obligations of the Private Owner under this Section 4.6(a) in connection with a breach by the Company (during any period when the Private Owner is the Manager), the Private Owner shall not be responsible for any Losses arising out of or resulting from any failure by the Company to pay its separate payment obligations, to the extent that all of the following are satisfied: (1) such failure is the result of the Company having insufficient available funds notwithstanding the Servicing and the management of the Company by the Manager (and, as applicable, the Servicer and any Subservicers) in accordance with this Agreement and the other Transaction Documents (including through exercise of any discretionary authority with respect to incurrence of payment obligations and maintenance and application of applicable reserves in a manner so as to reasonably avoid any such breach), (2) such failure and resulting Losses are not attributable in whole or in part to any breach (or other action or omission in violation of the Servicing Standard or any provision of this Agreement or any other Transaction Document) by the Private Owner (in any capacity, including as Manager) or any of its Affiliates (other than the Company), or by any of the respective Related Persons of any of the foregoing, and (3) the Private Owner (in any capacity) is not required to pay (or advance applicable funds to the Company for payment of) or otherwise bear such payment obligations pursuant to the terms of this Agreement or any other Transaction Document.

(b) If for any reason the indemnification provided for herein is unavailable or insufficient to hold harmless the Indemnified Parties, the Private Owner shall contribute to the amount paid or payable by the Indemnified Parties as a result of the Losses of the Indemnified Parties in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties, on the one hand, and the Private Owner (in any capacity, including as the Manager) and its Related Persons, on the other hand, in connection with the matters that are the subject of such Losses.

(c) If the Private Owner confirms in writing to the Indemnified Party within fifteen days after receipt of a Third Party Claim the Private Owner’s responsibility to indemnify and hold harmless the Indemnified Party therefor, the Private Owner may elect to assume control over the compromise or defense of such Third Party Claim at the Private Owner’s sole expense and with counsel selected by the Private Owner, which counsel must be reasonably satisfactory to the Indemnified Party, provided that (i) the Indemnified Party may, if such Indemnified Party

so desires, employ counsel at such Indemnified Party's own expense to assist in the handling (but not control the defense) of any Third Party Claim; (ii) the Private Owner shall keep the Indemnified Party advised of all material events with respect to any Third Party Claim; (iii) the Private Owner shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any Third Party Claim or entering into any settlement, adjustment or compromise of such Third Party Claim involving injunctive or similar equitable relief being imposed upon the Indemnified Party or any of its Affiliates; and (iv) the Private Owner will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened action in respect of which indemnification may be sought hereunder (whether or not any such Indemnified Party is a party to such action), unless such settlement, compromise or consent by its terms obligates the Private Owner to satisfy the full amount of the liability in connection with such Third Party Claim and includes an unconditional release of such Indemnified Party from all liability arising out of such Third Party Claim.

(d) Notwithstanding anything contained herein to the contrary, the Private Owner shall not be entitled to control (and if the Indemnified Party so desires, it shall have sole control over) the defense, settlement, adjustment or compromise of (but the Private Owner shall nevertheless be required to pay all Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise): (i) any Third Party Claim that seeks an order, injunction or other equitable relief against the Indemnified Party or any of its Affiliates; (ii) any action in which both the Private Owner (in any capacity, including as the Manager) or any Affiliate of the Private Owner, on one hand, and the Indemnified Party, on the other hand, are named as parties and either the Private Owner (or such Affiliate) or the Indemnified Party determines with advice of counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the other party or that a conflict of interest between such parties may exist in respect of such action; and (iii) any matter that raises or implicates any issue relating to any power, right or obligation of the FDIC under any Law. In addition to the foregoing, if the Private Owner elects not to assume the compromise or defense of any Third Party Claim, fails to timely and properly notify the Indemnified Party of its election as herein provided, or, at any time after assuming such defense, fails to diligently defend against such Third Party Claim in good faith, the Indemnified Party may pay, settle, compromise or defend against such Third Party Claim (but the Private Owner shall nevertheless be required to pay all Losses incurred by the Indemnified Party in connection with such payment, settlement, compromise or defense). In connection with any defense of a Third Party Claim (whether by the Private Owner or the Indemnified Party), all of the parties hereto shall, and shall cause their respective Affiliates to, cooperate in the defense or prosecution thereof and to in good faith retain and furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested by a party hereto in connection therewith.

(e) In the event the Company is reimbursed for or uses the Working Capital Reserve or Excess Working Capital Advances to pay costs or expenses of the type referred to in clause (iv) or (v) of the definition of Servicing Expenses and it is subsequently determined that

the Company was not entitled to reimbursement for (or to use the Working Capital Reserve or Excess Working Capital Advances to pay) all or any portion of such costs and expenses because the Company did not satisfy the requirements of such clause (iv) or clause (v), as applicable, of the definition of Servicing Expenses (such costs and expenses, the “**Unreimbursable Expenses**”), the Manager shall, in addition to any other Losses for which the Manager may be liable with respect to the claim to which such costs and expenses relate, reimburse the cost of such Unreimbursable Expenses to each Member based on such Member’s Percentage Interest as set forth below, except to the extent such Unreimbursable Expenses were funded through Excess Working Capital Advances that remain outstanding (in which case the portion of any such outstanding Excess Working Capital Advance that was so used for Unreimbursable Expenses shall itself become unreimbursable and be deemed forgiven with no further right of the Manager to collect or receive the same). Any such reimbursement by the Manager pursuant to the foregoing shall be as follows: within ten Business Days after written demand therefor from either Member, the Manager shall pay each Member by wire transfer of immediately available funds to an account specified by each Member an amount equal to such Member’s Percentage Interest (as of the later of (x) the date of such demand or (y) the date of such payment) multiplied by the amount of all such Unreimbursable Expenses.

(f) The Company shall indemnify and hold harmless each Member and each Member’s respective officers, directors, employees and members (all of the foregoing collectively, the “**Covered Persons**”) for any Losses incurred by such Covered Person by reason of a third-party claim against such Covered Person (other than, for the avoidance of doubt, a claim by a Related Person of such Covered Person (or, if such Covered Person is other than a Member, by a Related Person of the Member in respect of which such Covered Person constitutes a Covered Person)) relating to any act or omission by or of such Covered Person in connection with the exercise or performance of the rights, powers, responsibilities and obligations of such Covered Person (or, if such Covered Person is other than a Member, of the Member in respect of which such Covered Person so constitutes a Covered Person) regarding the Company except for (i) any such third-party claim, or Loss, resulting from fraud, gross negligence, willful misconduct or an intentional breach of this Agreement or any other Transaction Document by such Covered Person (or if such Covered Person is other than a Member, by the Member in respect of which such Covered Person so constitutes a Covered Person), and (ii) in the case of the Private Owner (in any capacity, including as the Manager), (x) any claim or demand by the Servicer or Subservicer (or, for the avoidance of doubt, any Losses arising out of or related to such claim or demand) and (y) any such third-party claim, or Loss, that, in whole or in part and directly or indirectly, results from, is connected with, arises out of or relates to any of the matters described in clauses (i) through (vi) of Section 4.6(a).

(g) Tax Liability of Ownership Entity. Notwithstanding anything to the contrary contained herein, if any Ownership Entity is not a pass-through entity with no entity-level income tax obligations, distributions to the Initial Member pursuant to Section 6.6 (including for the purposes of Section 9.2(c)) shall be allocated before accrual or payment of any income tax payable by such Ownership Entity, and the Private Owner (or its successors or

assigns) shall indemnify and hold harmless the Initial Member from and against any liability for any income taxes payable by the Ownership Entity; provided, however, that the foregoing special allocation and indemnity shall not apply if (i) the Private Owner (and each of its successors and assigns) has taken all steps necessary to secure pass-through treatment of the Ownership Entity and (ii) the liability for income taxes payable by the Ownership Entity arises solely as a result of a change in Law applicable to pass-through entities occurring after the date hereof and not as a result of action (or inaction) by the Private Owner (or its successors or assigns).

(h) Offsets. Without limiting any other rights of the Initial Member hereunder, in the event the Initial Member exercises any rights or remedies as a result of or in connection with a breach hereunder or the occurrence of an Event of Default (including relating to a breach of Section 4.6), all costs and expenses (including reasonable attorneys' fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating, defending, asserting or preparing the defense or assertion of any claim) incurred by the Initial Member with respect thereto may be recovered by the Initial Member by the turnover to the Initial Member of an equal amount of any payment or distribution otherwise payable to the Private Owner (including any Interim Management Fee or the Management Fee), whether in its capacity as a Member or as the Manager (in each case except to the extent such breach or Event of Default is attributable exclusively to a Manager having been appointed by the Initial Member following removal of the Private Owner in such capacity, or to any applicable Servicer (and any of its Subservicers) having been engaged by the Initial Member, the Company or the applicable replacement Manager following such removal of the Private Owner as the Manager, in each case that is not an Affiliate of the Private Owner). The Private Owner and the Company shall cooperate with the Initial Member to effect any such turnover. For the avoidance of doubt, the effects of any of this Section 4.6(h) and Section 4.6(g) above shall be disregarded for purposes of calculations with respect to the Incentive Threshold Event.

ARTICLE V

Capital Contributions; Discretionary Funding Advances; Excess Working Capital Advances

5.1. Initial Capital Contributions. Pursuant to the Contribution Agreement, the Initial Member (as the Transferor) made a Capital Contribution to the Company in an amount equal to the Initial Member Capital Contribution. In connection with the Private Owner Interest Sale Agreement, the Private Owner acquired from the Initial Member the Private Owner Interest representing a 25% equity interest in the Company in exchange for the Private Owner Interest Sale Price. After giving effect to the foregoing transactions, (and to the Capital Contributions referenced in Section 5.2 below), the respective Capital Accounts of the Initial Member and the Private Owner as of the Closing Date are as set forth in Annex I (the Member Schedule). From and after the Closing Date (and except as provided in Section 5.2 below), the Members shall have no obligation to make any additional Capital Contributions to the Company.

5.2. Capital Contributions for Working Capital Reserve Account. On the Closing Date, the Initial Member and the Private Owner shall fund, as Capital Contributions to the Company, the Working Capital Reserve Account in accordance with the provisions of Section 12.11 hereof and Section 1 of the Private Owner Interest Sale Agreement, which funds shall be used for payment of Working Capital Expenses, Permitted Vertical Completion Expenses and Permitted Horizontal Development Expenses in accordance with such Section 12.11 and as otherwise permitted pursuant to the Custodial and Paying Agency Agreement. Such Capital Contributions to fund the Working Capital Reserve Account on the Closing Date shall not affect the relative percentage LLC Interests of the Initial Member and the Private Owner (which will only change upon the occurrence of the Incentive Threshold Event).

5.3. Permitted Horizontal Development. Horizontal Development (and related expenses) with respect to Acquired REO Property shall be performed and/or funded in accordance with, and to the extent expressly set forth in, an Horizontal Development Plan approved by the Initial Member in accordance herewith (such approved Horizontal Development pursuant to such Horizontal Development Plan, “**Permitted Horizontal Development**”).

5.4. Discretionary Funding Advances.

(a) In the event there are insufficient funds in the Collection Account and no funds in the Working Capital Reserve Account in excess of the Working Capital Reserve Floor (after use of all available funds from each such source) to fund Permitted Vertical Completion Expenses or Permitted Horizontal Development Expenses, each with respect to specific Assets, the Manager may, in its discretion, make an advance to the Company (a “**Discretionary Funding Advance**”), which Discretionary Funding Advance shall be reimbursable (and shall accrue interest as set forth herein) only to the extent used exclusively for the applicable Permitted Vertical Completion Expenses and Permitted Horizontal Development Expenses for such specified Assets. In no event may Discretionary Funding Advances be used for payment of any Working Capital Expenses. The proceeds of Discretionary Funding Advances shall be deposited into the Collection Account for disbursement therefrom for the payment of the applicable Permitted Vertical Completion Expenses and Permitted Horizontal Completion Expenses. All Discretionary Funding Advances, together with a detailed statement of the sources and uses thereof (which shall be broken out by the reimbursable and unreimbursable portions thereof) and description of the allocation to the Assets for which such Discretionary Funding Advance was made, shall be reflected in the Monthly Report with respect to the calendar month during which the relevant Discretionary Funding Advance was made. Notwithstanding anything to the contrary herein or in any other Transaction Document, any amounts disbursed or advanced by the Company in respect of Discretionary Funding Advances made by the Manager to the Company shall be disbursed or advanced in accordance herewith on behalf of the Company and not on behalf of the Manager in its individual capacity. The Manager agrees and acknowledges that the making of a Discretionary Funding Advance to the Company, and the advancing or disbursing of such amount by the Company in respect of an Asset, shall not create (i) a Lien in favor of, or for the benefit of, the Manager in respect of such Asset, or (ii) a

participation interest or other rights in favor of, or for the benefit of, the Manager in respect of any existing Lien held by or on behalf of the Company relating to such Asset. Discretionary Funding Advances shall not be regarded as additional Capital Contributions.

(b) Discretionary Funding Advances shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the LIBOR Rate in effect from time to time, plus 3.0%. Interest shall be calculated on the basis of a 360 day year and actual days elapsed. Interest shall accrue on each Discretionary Funding Advance for the day on which the Discretionary Funding Advance is made, and shall not accrue on a Discretionary Funding Advance, or any portion thereof, for the day on which the Discretionary Funding Advance or such portion is paid. Each Discretionary Funding Advance, including interest accrued with respect thereto, shall be repaid in accordance with Section 3.1 of the Custodial and Paying Agency Agreement (and subject to Section 3.13 hereof), only out of the Asset Proceeds from the Asset in respect of which such Discretionary Funding Advance was made, it being agreed that, as to any specific amounts to be so applied to the repayment of one or more Discretionary Funding Advances relating to the same Asset, such amounts shall be applied first to outstanding interest on such Discretionary Funding Advances (on a pro rata basis as among such Discretionary Funding Advances, if applicable) and then to the principal amount (on a pro rata basis as among such Discretionary Funding Advances, if applicable). The Manager may not Dispose, in whole or in part, of its interest in any Discretionary Funding Advances without the consent of the Initial Member.

5.5. Excess Working Capital Advances. In the event that there are insufficient funds in the Collection Account, and insufficient available funds in the Working Capital Reserve Account (including, as applicable, by a permitted release of such funds to the Collection Account or as otherwise permitted in the Custodial and Paying Agency Agreement) to pay any Working Capital Expenses, then the Manager shall, except as otherwise provided in Section 12.6, make an advance of its own funds to the Company to be used by the Company for payment of such permitted (or required, as applicable) Working Capital Expenses (any such advance to the Company, an “Excess Working Capital Advance”). In no event may Excess Working Capital Advances be made or used for the payment of Permitted Vertical Completion Expenses or Permitted Horizontal Development Expenses. No Excess Working Capital Advance shall accrue any interest thereon. Excess Working Capital Advances shall be repaid in accordance with Section 5.1 of the Custodial and Paying Agency Agreement. To the extent multiple Working Capital Expenses (payment of which is permitted to be made using such Excess Working Capital Advance) are outstanding, any funding or use by the Manager of Excess Working Capital Advances for payment of all or any of the same shall follow the relevant priorities (as among such Working Capital Expenses) as set forth, first, in Section 3.1(b)(i) of the Custodial and Paying Agency Agreement, and, second, in the Priority of Payments, as applicable. All Excess Working Capital Advances, together with a detailed statement of the sources and uses thereof (which shall be broken out by the reimbursable and unreimbursable portions thereof), shall be reflected in the Monthly Report with respect to the calendar month during which (or, as applicable, the Distribution Date for which) the relevant Excess Working Capital Advance was

made. The Manager may not Dispose of its interest in any Excess Working Capital Advances without the consent of the Initial Member. Excess Working Capital Advances shall not be regarded as additional Capital Contributions.

ARTICLE VI

Capital Accounts; Allocations; Priority of Payments; Distributions

6.1. Capital Accounts. A Capital Account shall be established and maintained for each Member to which shall be credited the Capital Contributions made by such Member and such Member's allocable share of Net Income (and items thereof), and from which shall be deducted distributions to such Member of cash or other Company Property and such Member's allocable share of Net Loss (and items thereof). As to the Private Owner, the initial Capital Account shall correspond to that portion of the Capital Account of the Initial Member that is attributable to the Private Owner Interest acquired by the Private Owner pursuant to the Private Owner Interest Sale Agreement, together with the Private Owner WCR Account Deposit made pursuant to the Private Owner Interest Sale Agreement. A Member's Capital Account also shall be adjusted for items specially allocated to such Member under this Article VI. The Capital Accounts of the Members generally shall be adjusted and maintained in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv); provided, however, that such adjustments to, and maintenance of, the Capital Accounts shall not adversely affect the manner in which distributions are to be made to the Members under Section 6.6.

6.2. Allocations to Capital Accounts. Allocation of Net Income and Net Loss shall be made as provided in this Article VI.

(a) General Allocation Rules. Except as otherwise provided in this Agreement, Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of the Company shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in Section 6.2(b), the Capital Account balance of each Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the distributions that would be made to such Member pursuant to Section 6.6 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Book Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the tax basis of the assets securing such liability), and the net assets of the Company were distributed, in accordance with Section 9.2(c), to the Members immediately after making such allocation, minus (ii) such Member's share of "partnership minimum gain" and "partner nonrecourse debt minimum gain" (as such terms are used in Treasury Regulations Section 1.704-2), computed immediately prior to the hypothetical sale of assets.

(b) Allocations in Special Circumstances. The following special allocations shall be made in the following order:

(i) *Minimum Gain Chargeback.* Notwithstanding any other provision of this Article VI, if there is a net decrease in minimum gain (as it corresponds to the definition of “partnership minimum gain” in Treasury Regulations Section 1.704-2(b)(2) and (d)) during any Fiscal Year, the Members shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to the portion of such Member’s share of the net decrease in minimum gain, determined in accordance with Treasury Regulations Section 1.704-2(f) and (g). This Section 6.2(b)(i) is intended to comply with the “minimum gain chargeback” requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.

(ii) *Member Minimum Gain Chargeback.* Notwithstanding any other provision of this Article VI other than Section 6.2(b)(i), if there is a net decrease in minimum gain attributable to a Member nonrecourse debt (as it corresponds to the definition of “partnership nonrecourse debt minimum gain” in Treasury Regulations Section 1.704-2(i)) during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to the portion of such Member’s share of the net decrease in such minimum gain attributable to such Member’s nonrecourse debt, determined in accordance with Treasury Regulations Section 1.704-2(i). This Section 6.2(b)(ii) is intended to comply with the “partner minimum gain chargeback” requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.

(iii) *Qualified Income Offset.* In the event any Member, for any reason, whether expected or not, has an Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, such Adjusted Capital Account Deficit as quickly as possible, provided that an allocation pursuant to this Section 6.2(b)(iii) shall be made only if and to the extent that such Member would have such Adjusted Capital Account Deficit after all other allocations provided for in this Section 6.2 have been tentatively made as if this Section 6.2(b)(iii) were not in this Agreement. This Section 6.2(b)(iii) is intended to comply with the “qualified income offset” provisions in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(iv) *Nonrecourse Deductions.* Any nonrecourse deductions attributable to a Member nonrecourse debt (as described in Treasury Regulations Section 1.704-2(i)) shall be allocated to the Member who bears the economic risk of loss with respect to such nonrecourse debt. Otherwise, nonrecourse deductions shall be allocable in accordance with the Members’ respective Percentage Interests.

(v) *Loss Allocation Limitation.* No allocation of Net Loss (or any item thereof) shall be made to any Member to the extent that such allocation would create or increase a Member’s Adjusted Capital Account Deficit. If, in the allocation of Net Loss (or any item thereof), less than all Members would have an Adjusted Capital Account Deficit as a result of

such allocation, then any Net Loss (or item thereof) not allocable to any such Member(s) as a result of such limitation shall be allocated (subject to such limitation) to the other Member so as to allocate the maximum permissible Net Loss to each Member under Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(vi) *Curative Allocations.* The allocation provisions of this Section 6.2(b) are intended to comply with certain requirements of the Treasury Regulations. Notwithstanding any other provisions of this Article VI, any allocation effected pursuant to this Section 6.2(b) shall be taken into account in allocating Net Income and Net Loss among the Members such that the cumulative effect of all such allocations achieves the fundamental purpose of Section 6.2(a), so that the Capital Account balances correspond to the amounts distributable to the Members.

(c) Allocations in the Event of Disallowed Deductions. In the event that any fees, interest or other amounts paid to a Member or an Affiliate of a Member pursuant to this Agreement or any other agreement between the Company and such Member or Affiliate providing for the payment of such amounts, and deducted by the Company, whether in reliance upon Section 162, 163, 707(a) or 707(c) of the Code or otherwise, are disallowed as deductions to the Company on its federal income tax return for the fiscal year in or with respect to which such amounts are paid and are treated instead as Company distributions, then:

(i) the Net Income or Net Loss, as the case may be, for the fiscal year in or with respect to which such fees, interest or other amounts were paid shall be increased or decreased, as the case may be, by the amount of such fees, interest or other amounts that are disallowed and treated as Company distributions; and

(ii) there shall be allocated to the Member who received (or whose Affiliate received) such payments an amount of gross income for the fiscal year in or with respect to which such fees, interest or other amounts were paid an amount equal to such fees, interest or other amounts that are so disallowed and treated as Company distributions.

(d) Transfer of or Change in LLC Interests. The Tax Matters Member is authorized to adopt any convention or combination of conventions likely to be upheld for federal income tax purposes regarding the allocation of items of Company income, gain, loss, deduction and expense with respect to a transferred LLC Interest. A transferee of an LLC Interest in the Company shall succeed to the Capital Account of the transferor Member to the extent it relates to the transferred LLC Interest.

6.3. Tax Allocations.

(a) General Rules. Except as otherwise provided in Section 6.3(b), for each Fiscal Year, items of Company income, gain, loss, deduction and expense shall be allocated, for federal, state and local income tax purposes among the Members in the same manner as the Net

Income (and items thereof) or Net Loss (and items thereof) of which such items are components were allocated pursuant to Section 6.2.

(b) Section 704(c) of the Code. Income, gains, losses and deductions with respect to any property (other than cash) contributed or deemed contributed to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the Company's adjusted basis of such property, with respect to each member of the Company, for federal income tax purposes and its Fair Market Value at the time of the contribution or deemed contribution in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder. Such allocations shall be made in such manner and utilizing such permissible tax elections as determined in good faith by the Tax Matters Member, following consultation with the Initial Member. In the event of a revaluation of Company Property pursuant to the definition of Book Value, subsequent allocations of income, gains, losses or deductions with respect to such Company Property shall take account of any variation between the Book Value and Fair Market Value of such Company Property, as so determined from time to time, in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder. Such allocations shall be made in such manner and utilizing such permissible tax elections as determined in good faith by the Tax Matters Member, following consultation with the Initial Member.

(c) Section 707(b) of the Code. Any losses realized by the Initial Member (including as the Transferor) with respect to any property (other than cash) sold or deemed sold to the Company at Closing pursuant to the Contribution Agreement and that are deferred pursuant to Section 707(b)(1) or Section 267(a) of the Code may be allocated and used by the Company in accordance with applicable tax rules upon its subsequent disposition of such property.

(d) Capital Accounts Not Affected. Allocations pursuant to this Section 6.3 are solely for federal, state and local tax purposes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or allocable share of Net Income (or items thereof) or Net Loss (or items thereof).

(e) Tax Allocations Binding. The Members acknowledge that they are aware of the tax consequences of the allocations made by this Section 6.3 and hereby agree to be bound by the provisions of this Section 6.3 in reporting their respective shares of items of Company income, gain, loss, deduction and expense.

6.4. Determinations by Tax Matters Member. All matters concerning the computation of the Capital Accounts, the allocation of items of Company income, gain, loss, deduction and expense and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the Tax Matters Member in good faith, following consultation with the Initial Member. Following such consultation, such determinations shall be final and conclusive as to all the Members. Without in any way limiting the scope of the

foregoing, if and to the extent that, for income tax purposes, any contribution to or distribution by the Company or any payment by any Member or by the Company is recharacterized, the Tax Matters Member may, in good faith following consultation with the Initial Member, specially allocate items of Company income, gain, loss, deduction or expense and/or make correlative adjustments to the Capital Accounts of the Members in a manner so that the net amount of income, gain, loss, deduction and expense realized by each relevant party (after taking into account such special allocations) and the net Capital Account balances of the Members (after taking into account such special allocations and adjustments) shall, as nearly as possible, achieve the fundamental purpose of Section 6.2(a), such that the Capital Account balances correspond to the amounts distributable to the Members, as if such recharacterization had not occurred.

6.5. Priority of Payments. Each calendar month the amounts deposited in the Distribution Account under the Custodial and Paying Agency Agreement shall be distributed by the Paying Agent in the order of the Priority of Payments; provided, however, that for the avoidance of doubt, to the extent amounts are available for distribution to the Members with respect to their respective LLC Interests (such available amounts, the “Distributable Cash”), such Distributable Cash shall be distributed to the Members in accordance with Section 6.6 below.

6.6. Distributions.

(a) No Right to Withdraw. No Member shall have the right to withdraw capital or demand or receive distributions or other returns of any amount in its Capital Account, except as expressly provided in this Agreement.

(b) Ordinary Distributions.

(i) Timing. Distributable Cash, if any, shall be distributed to the Members on a monthly basis by the Paying Agent out of the Distribution Account in the manner set forth in the Custodial and Paying Agency Agreement; provided, however, that the Manager shall instruct the Paying Agent as to how such distributions are to be allocated as between the Initial Member and the Private Owner based on Section 6.6(b)(ii) below (which instructions shall be included in one or more reports to be provided to Paying Agent in accordance with Section 7.4 (and Section 3(b) of the Reporting and Access Schedule).

(ii) Distributions of Distributable Cash. Each distribution of Distributable Cash shall be made to the Members as follows:

(A) first, 75% to the Initial Member and 25% to the Private Owner, until the time at which the Incentive Threshold Event occurs; and

(B) thereafter, 50% to the Initial Member and 50% to the Private Owner.

For the avoidance of doubt, distributions to the Members occurring on the Distribution Date on which the Incentive Threshold Event occurs shall, (x) with respect to all distributions up to the amount required for reaching such Incentive Threshold Event, be allocated without regard to the occurrence of such Incentive Threshold Event, and (y) with respect to all remaining distributions on such Distribution Date, be allocated taking into account the occurrence of such Incentive Threshold Event.

(iii) *Incentive Threshold Event.* The “**Incentive Threshold Event**” shall occur as of a Distribution Date if the aggregate distributions (for such Distribution Date and all prior Distribution Dates) made to the Private Owner and the Initial Member pursuant to Section 6.6(b)(ii) as of such Distribution Date are in an amount equal to or greater than four times the Private Owner Interest Sale Price.

(c) Intentionally Omitted.

(d) Restrictions on Distributions. The foregoing provisions of this Article VI to the contrary notwithstanding, no distribution shall be made if such distribution would violate any contract or agreement to which the Company is then a party or any Law or directive of any Governmental Authority then applicable to the Company.

(e) Withholding. Notwithstanding any other provision of this Agreement, the Manager is authorized to take any action that it determines to be necessary or appropriate to cause the Company to comply with any foreign or United States federal, state or local withholding requirement with respect to any allocation, payment or distribution by the Company to any Member or other Person. All amounts so withheld shall be treated as distributions to the applicable Members under the applicable provisions of this Agreement. If any such withholding requirement with respect to any Member exceeds the amount distributable to such Member under the applicable provisions of this Agreement, or if any such withholding requirement was not satisfied with respect to any amount previously allocated or distributed to such Member, such Member and any successor or assignee with respect to such Member’s LLC Interest hereby agrees to indemnify and hold harmless the Manager and the Company for such excess amount or such withholding requirement, as the case may be.

(f) Record Holders. Any distribution of Company Property, whether pursuant to this Article VI or otherwise, shall be made only to Persons that, according to the books and records of the Company, were the holders of record of LLC Interests on the date determined by the Manager as of which the Members are entitled to any such distribution.

(g) Final Distribution. The Final Distribution shall be made in accordance with the provisions of Section 9.2.

ARTICLE VII
Accounting, Reporting, Taxation, Business Plans and Verification

7.1. Fiscal Year. The books and records of the Company shall be kept on an accrual basis and the fiscal year of the Company shall commence on January 1 and end on December 31 of each year.

7.2. Maintenance of Books and Records. The Manager shall cause the Company to maintain, retain, and allow access to books and records in accordance with, and shall otherwise comply with the provisions set forth in, Section 1 of the Reporting and Access Schedule, which Section 1 is hereby incorporated by reference.

7.3. Financial Statements. The Manager shall prepare and deliver (or cause applicable preparation and delivery of) the financial statements and other items required by, and shall otherwise comply with the provisions set forth in, Section 2 of the Reporting and Access Schedule, which Section 2 is hereby incorporated by reference.

7.4. Additional Reporting and Notice Requirements; Audits. The Manager shall prepare and deliver (or cause applicable preparation and delivery of) the reports, certificates, notices, and other information required by, shall, and shall cause the Servicer and each Subservicer to grant to the Initial Member (and other applicable Persons) the audit and inspection rights in accordance with, and shall otherwise comply with the provisions set forth in, Section 3 of the Reporting and Access Schedule, which Section 3 is hereby incorporated by reference. All rights of the Initial Member pursuant to the foregoing are in addition to, and not in limitation of, the rights of the Members under Section 18-305(a) of the Act. Section 18-305(c) of the Act shall not apply in relation to the Initial Member.

7.5. Designation of Tax Matters Member. The Private Owner is hereby designated as the “**Tax Matters Member**” under Section 6231(a)(7) of the Code and under other similar Laws of other relevant jurisdictions, to manage, in consultation with the Initial Member, administrative tax proceedings conducted at the Company level by the Internal Revenue Service or other Tax authorities with respect to Company matters. Each Member expressly consents to such designation and agrees that, upon the request of the Tax Matters Member, it will execute, acknowledge, deliver, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. The Tax Matters Member is specifically directed and authorized to take whatever steps the Tax Matters Member in its sole and absolute discretion deems necessary or desirable to perfect such designation, including filing any forms or documents with the Internal Revenue Service (or other Tax authorities) and taking such other action as may from time to time be required under the Code, Treasury Regulations or other Laws. The Tax Matters Member shall keep the other Members fully informed as to any Tax audits of the Company, including promptly providing the other Members with copies of any correspondence from any Taxing authority and permitting the other Member to participate in any conferences or meetings with any Taxing authority and in any subsequent administrative or

judicial proceedings. The Tax Matters Member shall have the authority, following consultation with the Initial Member, to make any Tax elections on behalf of the Company permitted to be made, including the election pursuant to Section 754, under any section of the Code or the Treasury Regulations promulgated thereunder or under other Laws. In the event the Company may be deemed to be a “small partnership” as described in Section 6231(a)(1)(B), each Member consents to the Company’s electing to be treated as a partnership to which the provisions of Code Section 6221 et. seq. apply (thereby electing to have Code Section 6231(a)(1)(B)(i) not apply). The Initial Member may, at any time following the occurrence and during the continuation of an Event of Default, remove the Private Owner as the Tax Matters Member, appoint itself (or any other willing Member at the time) as the Tax Matters Member, and serve (or cause such other Member to so serve) in such capacity; provided that such removal shall not relieve the Private Owner as Tax Matters Member of any obligations or liabilities under this Agreement or any other Transaction Document arising out of, relating to, occurring in connection with, or required to have been paid or performed by, the Private Owner as the Tax Matters Member in its capacity as such.

7.6. Tax Information.

(a) Within ninety days after the end of each Fiscal Year, the Tax Matters Member shall send, or cause to be sent to, each Person who was a Member at any time during the Fiscal Year then ended a Schedule K-1 and such Company tax information as the Tax Matters Member reasonably believes shall be necessary for the preparation by such Person of its United States federal, state and local tax returns in accordance with any Law. Such information shall include a statement showing such Person’s share of distributions, income, gain, loss, deductions and expenses and other relevant items of the Company for such Fiscal Year. Promptly upon the request of any Member (or any former Member, for tax years during which such Person was a Member), the Tax Matters Member will furnish to such Member (or former Member):

(i) United States federal, state and local income tax returns or information returns, if any, filed by the Company; and

(ii) at the sole cost and expense of the requesting Member, such other information as such Member may reasonably request for the purpose of applying for refunds of withholding taxes.

(b) The Manager shall prepare and deliver, or cause the Company to prepare and deliver, together with delivery to the Initial Member of the annual financial statements pursuant to Section 7.3 (and Section 2(a) of the Reporting and Access Schedule), a report which shall specify, for each Due Period and for such annual reporting period, the information with respect to each Asset that is sold or otherwise disposed of by the Company so as to enable the Company (and each Member) to comply with allocation provisions of Section 704(c) of the Code, as determined as of the close of business on the applicable Determination Date and

certified by an authorized representative (who shall be the chief financial officer (or an equivalent officer)) of the Company.

7.7. **Business Plans.** As promptly as possible, but in no event later than the time periods set forth herein (and, as applicable, with current information as of the month most recently ended prior to delivery thereof) the Manager shall deliver to the Initial Member written plans detailing the strategy to be used by it in managing and disposing of the Assets (and the Ownership Entities) for achieving the Company's purposes with respect thereto, in conformance with the Servicing Standard, based, to the extent appropriate, on information gathered by the Company with respect to the Assets (each, together with any updates thereto, a "**Business Plan**"), which shall include individual Business Plans (each, an "**Asset Level Business Plan**") for each of the fifteen largest Assets based on their Unpaid Principal Balance as of the Cut-Off Date (as set forth on the Asset Schedule), and (ii) a consolidated Business Plan covering all Assets (a "**Consolidated Business Plan**"). Such initial Asset Level Business Plans shall be delivered not more than one hundred twenty days after the Closing Date, and such initial Consolidated Business Plan (including any updated Asset Level Business Plans) shall be delivered not more than one hundred twenty days after the Closing Date. With respect to the first such Asset Level Business Plans and Consolidated Business Plan, the Manager shall meet with the Initial Member as reasonably requested by the Initial Member from time to time during the thirty Business Days following the Initial Member's receipt of the same, or such later date as requested by the Initial Member, to review and discuss such Asset Level Business Plans and Consolidated Business Plan, including changes thereto suggested by the Initial Member. Within thirty Business Days following expiration of such review period, the Manager will deliver to the Initial Member a final version of such Asset Level Business Plans and Consolidated Business Plan reflecting such changes as the Manager considers to be appropriate in light of its discussions with the Initial Member during such review period. The Manager shall thereafter review and revise each Business Plan as the circumstances may require, and in any event provide periodic updates to such Business Plans (and for each such update to the Asset Level Business Plans, the same shall cover the fifteen largest Assets based on their Unpaid Principal Balance as of the time of such update) to the Initial Member, in January (current as of December 31 of the immediately preceding year) and July (current as of June 30 of such year) of each year, commencing in July of 2012, with each such periodic update to be delivered as part of the Monthly Reports due at such time pursuant to Section 7.4 (and Section 3(b) of the Reporting and Access Schedule). With respect to each such Business Plan (including any update thereto), upon reasonable notice by the Initial Member, the Company shall make its personnel who are familiar with such Business Plans available during normal business hours for the purposes of discussing such Business Plans with representatives of the Initial Member and responding to questions therefrom (and, as applicable, revising the same to reflect such changes as the Manager considers to be appropriate in light of such discussions with the Initial Member).

(a) Each Business Plan (including any update thereto) will set forth a strategy (consistent with any restrictions set forth in this Agreement and the other Transaction Documents, except to the extent that this Agreement or any such other Transaction Document, as

the case may be, expressly contemplates that such Business Plan (including any update thereto) may propose deviations from any such restriction) for the disposition of the Assets addressed thereby which strategy may consist of one or more of the following: (i) the pay-off of Assets at a discount; (ii) modifications of the related note and/or mortgage, including reductions in the mortgage loan interest rate, reductions in the principal balance and rescheduling principal payments; (iii) foreclosure upon the related Collateral (or acquisition thereof by deed in lieu of foreclosure) and subsequent sale thereof; (iv) assumptions of Assets by new borrowers; (v) repairs to and, if applicable, completion of construction of the related Collateral, with a view towards selling such Collateral or the Asset secured thereby; (vi) sale of an Asset, either singly or in pools, before or after restructuring; and (vii) any other method of work-out, rehabilitation and disposition consistent with the Servicing Standard and other general duties of the Manager specified in this Agreement.

(b) Each Business Plan (including any update thereto) will set forth a strategy (consistent with any restrictions set forth in this Agreement and the other Transaction Documents, except to the extent that this Agreement or any such other Transaction Document, as the case may be, expressly contemplates that such Business Plan (including any update thereto) may propose deviations from any such restriction) for the disposition of each related Acquired Property which strategy may consist of one or more of the following: (i) the sale or leasing of the Acquired Property in whole or in parts, or in pools; (ii) making repairs to, the rehabilitation or improvement of, and, if applicable, the completion of construction of, the Acquired Property, or making changes to the Acquired Property so that it may be used for uses other than its current use, with a view toward selling the Acquired Property; (iii) continued leasing or sales activity with respect to the Acquired Property available for leasing or sale (in whole or in part) at the time it is transferred to an Ownership Entity; and (iv) maintenance, landscaping and general upkeep of the Acquired Property. To the extent any such Business Plan (and related strategy) includes any permitted Vertical Development or Horizontal Development to be funded by the Company (other than pursuant to Required Funding Draws), such Business Plan (and any update thereto) shall include a description of such Vertical Development or Horizontal Development in reasonable detail (including the related budget and timeline). For avoidance of doubt, in no event shall delivery of any information pursuant to a Business Plan (or any update thereto) be deemed to constitute delivery or approval with respect to any Horizontal Development Plan.

(c) Each Business Plan (including any update thereto) shall contain the Company's estimate (or determination, as applicable) of (i) the present value of the net amount that is recoverable with respect to each related Asset (including, with respect to all related Acquired Property, the Net Fair Value thereof), (ii) with respect to all Acquired Property and Mortgaged Property included in any Asset covered by such Business Plan, in the event such Acquired Property or Mortgaged Property includes more than one parcel of real property (or would otherwise potentially be sold by the Company in severable parts), the applicable Release Price for each such parcel (or other severable part) of such Acquired Property and Mortgaged Property, and (iii) projected Working Capital Expenses, Permitted Vertical Completion Expenses, Permitted Horizontal Development Expenses and any other permitted expenditures

with respect to each such Asset (including any Acquired Property), and, in each case including in reasonable detail the manner of calculation of each of the foregoing. The Consolidated Business Plan (including any update thereto) shall include projected financials including statements of income, assets, and cash flows for the Company (and, for purposes of clarification, the information required pursuant to the immediately preceding sentence with respect to all Assets). Such cash flow projections shall, for the Consolidated Business Plan and each update thereto, include an Excel model of projected cash flows, as of June 30 and December 31 of each year (or, in the case of the initial Consolidated Business Plan, as of the date of preparation and delivery thereof) and covering the period through the seventh anniversary of the Closing Date, on a monthly basis for the upcoming twenty-four months and not less than a quarterly basis thereafter, including projected cash inflows (including projected Asset Proceeds, Excess Working Capital Advances and Discretionary Funding Advances), projected cash outflows (including projected Servicing Expenses, Required Funding Draws and other Working Capital Expenses, Permitted Vertical Development Funding Draws, and other Permitted Vertical Completion Expenses and Permitted Horizontal Development Expenses), projected Working Capital Reserve levels, and the amount and allocation of any projected distributions to the Initial Member and the Private Owner.

(d) Each update to a Business Plan shall include descriptions and explanations for the largest variances to the previously reported corresponding Business Plan. Variance explanations shall include changes in capital expenditures for Acquired Property, protective advances, internal rates of return, strategy for the disposition of the Assets, actual principal and interest income and other collection proceeds, cash flows, projected distributions to the Members, and other changes in strategy or other relevant matters as compared to the previously reported corresponding Business Plan.

(e) Each Business Plan (including any update thereto) will set forth the policies, practices and guidelines with respect to when (including how frequently) site inspections (of Mortgaged Property and Acquired REO Property) will be conducted, the procedures to be followed in conducting site inspections and the manner in which the results of site inspections are to be documented (including standard forms to be used in connection with such documentation).

(f) Each Business Plan (including any update thereto) will set forth (i) the organizational structure of the Manager and its Affiliates, and (ii) the policies and procedures of the Manager and its Affiliates regarding the manner in which the strategies set forth in the Business Plan, and the determinations described in Section 1(a)(ii) of the Reporting and Access Schedule, are determined, made, internally approved and implemented.

7.8. Verification Contractor. The Initial Member shall have the right, in its sole discretion, to retain, and at any or all times be a party to a written agreement with, a Verification Contractor (as selected by the Initial Member in its sole discretion), for the performance by such Verification Contractor of the services set forth with respect thereto in the Transaction

Documents (and such related services as the Initial Member may request from time to time), including (as so retained by the Initial Member) (A) assisting the Initial Member in review of Business Plans (including any updates thereto) and provision of recommendations to the Company with respect thereto, and (B) with respect to Horizontal Development, (1) assisting the Initial Member in its review of any Horizontal Development Approval Request, including the Horizontal Development Plan attached thereto, and recommending whether such Horizontal Development Approval Request and related Horizontal Development Plan should be approved, and (2) verifying that all Company funds used for Horizontal Development are used exclusively for the purposes described in the relevant approved Horizontal Development Plan, pursuant to Sections 5.3 and 12.13 of this Agreement and applicable provisions of the Custodial and Paying Agency Agreement (which verification may, as determined by the Initial Member and/or such Verification Contractor, require physical inspections to confirm completion of applicable items in accordance with such approved Horizontal Development Plan). The Verification Contractor Amounts shall be borne by the Company, and be paid (or, as applicable, reimbursed to the Initial Member) on each Distribution Date out of the applicable funds in the Distribution Account in accordance with the Priority of Payments.

ARTICLE VIII

Restrictions on Disposition of Private Owner Interest

8.1. Limitations on Disposition of Private Owner Interest. Except as otherwise provided in this Article VIII, the Private Owner shall not, and may not, Dispose of all or any part of the Private Owner Interest; provided, however, that the Private Owner may (A) make a direct, outright transfer of its entire (but not less than its entire) Private Owner Interest if, and only if, (i) (x) the transferee is a single Person that is a Qualified Transferee, (y) such transferee delivers to the Initial Member a Purchaser Eligibility Certification and the representations and warranties made by such transferee therein shall be true and correct both before and after giving effect to such transfer of the Private Owner Interest, and (z) the Private Owner first obtains the prior written consent of the Initial Member to such transfer, or (ii) such Disposition is done by or at the direction of the Initial Member pursuant to Section 3.13 or 3.14; provided, further, that it is understood that a direct or indirect Disposition of an interest of a third party in the Private Owner (i.e., as opposed to a Disposition of any nature by the Private Owner itself) does not violate this sentence (it being further understood that such transaction might nevertheless violate other provisions of the Transaction Document (such as for example Section 8.2 or 10.1 hereof), and (B) make a direct outright transfer of its right to receive the Interim Management Fee or Management Fee payments as set forth in (and subject to) Section 12.5. Transfers of the entire Private Owner Interest satisfying the foregoing criteria/criteria set forth in clause (A) of the preceding sentence are hereinafter referred to as “**Permitted Dispositions.**”

8.2. Change of Control. The Private Owner represents, warrants and covenants that no Change of Control will occur with respect to the Private Owner unless (i) it first obtains the prior written consent of the Initial Member, and (ii) following such Change of Control, the Private Owner would remain a Qualified Transferee. Without limitation of the preceding sentence, the

Private Owner will provide the Initial Member with immediate notice at the address specified in Section 13.6 of the occurrence of any Change of Control with respect to the Private Owner.

8.3. Additional Provisions Relating to Permitted Dispositions. Except as otherwise expressly provided in this Section 8.3, the following provisions shall apply to each Permitted Disposition:

(a) In the event the Private Owner proposes to make a Permitted Disposition, the Private Owner shall be required to pay any and all filing and recording fees, fees of counsel and accountants and other out-of-pocket costs and expenses reasonably incurred by the Initial Member and/or the Company in connection with such Permitted Disposition.

(b) The transferee in a Permitted Disposition shall deliver to the Company, with a copy to the Initial Member, an agreement, in form and substance reasonably satisfactory to the Initial Member, by which such transferee shall (i) agree to become a party to and be bound by each of this Agreement, the Custodial and Paying Agency Agreement, the Agreement of Definitions, the Servicing Agreement (if such transferee is also the Manager, and unless, in connection with such Permitted Disposition, the Servicing Agreement is terminated in accordance with its terms with a full release of claims by the Servicer and any terminating Subservicer and with execution of a replacement Servicing Agreement with such Servicer or a replacement Servicer in a manner acceptable to the Initial Member, and each other Transaction Document to which the Private Owner is a party (including, if the transferor Member, prior to such transfer, also was the Manager, to which it is a party in its capacity as the Manager (or in its individual capacity)) as the “Private Owner” (and/or as the “Manager” as applicable), (ii) agree (if the transferor Member, prior to such transfer, also was the Manager) to be appointed as the “Manager”, and without limitation of the generality of the foregoing, agree to be bound by the other terms of Section 8.4 hereof, and (iii) assume and agree to perform when due all of the obligations of the “Private Owner” and (if the transferor Member, prior to such transfer, also was the Manager) the “Manager” under each of this Agreement, the Custodial and Paying Agency Agreement, the Agreement of Definitions, the Servicing Agreement (or applicable replacement Servicing Agreement) and each other Transaction Document to which the Private Owner (including, if the transferor Member, prior to such transfer, also was the Manager, in its capacity as the Manager (or in its individual capacity)) is a party, and (iv) represent and warrant that it complies with the requirements set forth in Article X and make all the other representations and warranties as the “Private Owner” set forth in this Agreement.

(c) In connection with each Permitted Disposition, the Private Owner and the transferee shall deliver to the Company and the Initial Member such other documents and instruments as the Initial Member reasonably may request and which are required to effect the Permitted Disposition and substitute the transferee as a Member.

8.4. Effect of Permitted Dispositions.

(a) Upon consummation of any Permitted Disposition:

(i) the transferee shall be admitted as a member of the Company and be deemed to be a party to this Agreement as the “Private Owner” and, if the transferor Member, prior to such transfer, also was the Manager, such transferee shall be appointed as the Manager (in the place of the transferor Member);

(ii) the transferred LLC Interest shall continue to be subject to all the provisions of this Agreement, and the transferee Member shall have the same status as the Private Owner had at the time of consummation of such Permitted Disposition and, without limiting the generality of the foregoing, any outstanding breach, misrepresentation, violation or default (with respect to this Agreement or any other Transaction Document) by any direct or indirect predecessor to the transferee as the Member, or by any Affiliate of any such predecessor Member, shall be deemed to constitute an outstanding breach, misrepresentation, violation or default as the case may be, by the transferee Member; and

(iii) subject to Section 8.4(b) and the last sentence of Section 13.8, the transferor Member shall cease to be a member of the Company (and accordingly, except as expressly otherwise provided in Section 8.4(b) or the last sentence of Section 13.8, shall cease to be responsible for the payment or performance of any of the obligations or liabilities under this Agreement of the Private Owner, in any capacity hereunder).

(b) No Permitted Disposition (and no resulting withdrawal or resignation of the transferor Member from the Company) shall:

(i) relieve the transferor Member of any of the obligations or liabilities of the transferor Member, in any capacity, under this Agreement or any other Transaction Document required to have been paid or performed prior to the consummation of such Permitted Disposition (or of any liability it may have arising out of any breach, misrepresentation, violation or default by the transferor Member prior to such consummation);

(ii) result in the termination of, relieve the transferor Member (or any of its Affiliates) of, or otherwise affect, any of the obligations or liabilities of the transferor Member, in any capacity, or its Affiliates under, any Related Party Agreement (such Related Party Agreements to continue in effect in accordance with their respective terms), except to the extent expressly provided in such Related Party Agreement;

(iii) dissolve the Company; or

(iv) relieve the transferor Member of any obligations, liabilities and/or indemnities required pursuant to Section 4.6 hereof.

(c) The Initial Member, in its discretion, can waive any provision of Section 8.3 or 8.4(a) in the context of a transfer of the Private Owner Interest pursuant to Section 3.13 or 3.14.

8.5. Effect of Prohibited Dispositions. Any attempted or purported Disposition of the Private Owner Interest (or any portion thereof) not strictly in accordance with the terms of this Agreement shall be void ab initio and of no force or effect whatsoever. The Private Owner shall not be entitled, and hereby specifically waives any right, to receive Company distributions during (i) the period between any attempted or purported Disposition of the Private Owner Interest (or any portion thereof) not strictly in accordance with the terms of this Agreement and the express rescission of such attempted or purported Disposition by the Private Owner and (ii) any period when the Private Owner is in violation of Section 8.2, provided that all such omitted Company distributions (i) shall (subject to Section 8.6) be made to the Private Owner (without interest) forthwith after the end of the relevant suspension period and (ii) shall, for purposes of all calculations with respect to the occurrence (or non-occurrence) of the Incentive Threshold Event, be deemed to have been made to the Private Owner at such time as the same would have otherwise been made without giving effect to any such suspension or prohibition on account of such attempted or purported Disposition.

8.6. Distributions After Disposition. Distributions with respect to an LLC Interest (including pursuant to Section 8.5) made on or after the effective date of the Permitted Disposition of such LLC Interest shall be made to the transferee Member with respect to such LLC Interest, regardless of when such distributions accrued on the books of the Company.

8.7. Transfers By Initial Member.

(a) Notwithstanding anything to the contrary contained in this Agreement, except as provided by applicable Law, there shall be no restriction on the Initial Member's ability to Dispose of the Initial Member Interest, directly or indirectly, to any Person and the Private Owner shall have no right to purchase or right-of-first-refusal in connection with any such sale; provided, however, that, the Initial Member may not assign the consent and voting rights associated with the Initial Member Interest to more than one Person (for the avoidance of doubt, except as expressly provided above, the foregoing restriction shall not otherwise limit the Initial Member's right to Dispose of any interest associated with the Initial Member Interest) and provided, further, that in the event the Initial Member determines to sell the Initial Member Interest through an auction process, the Private Owner shall be entitled to participate in such auction on the same terms that apply generally to other participants in the auction. At the election of the Person then constituting the "Initial Member" under this Agreement, the transferee in any direct Disposition of any portion of the Initial Member Interest shall, upon delivery to the Company, with a copy to the Private Owner, of an agreement by which such transferee shall agree to become a party to and be bound by this Agreement as the "Initial Member," be admitted as a member of the Company and be deemed to be a party to this Agreement as the "Initial Member", and thereupon, subject to last sentence of Section 13.8, the

transferor Member shall cease to be a member of the Company (and accordingly, except as expressly otherwise provided in last sentence of Section 13.8, shall cease to be responsible for the payment or performance of any of the obligations or liabilities under this Agreement of the Initial Member).

(b) Intentionally Omitted.

(c) Anything in this Agreement (including Section 8.7(a)) to the contrary notwithstanding, from and after the acquisition by the FDIC in its corporate capacity of the assets of the receivership of the Failed Bank, the FDIC in its corporate capacity as successor to the FDIC in its capacity as the receiver under such receivership, automatically and without any further act of the parties, shall succeed to all of the rights, duties and obligations of the “Initial Member” hereunder.

8.8. Resignation; Dissolution.

(a) The Private Owner may not withdraw or resign from the Company, except (i) in connection with a Permitted Disposition made in accordance with the applicable provisions of this Article VIII or (ii) with the prior written consent of the Initial Member.

(b) The Private Owner covenants that it shall not allow a Dissolution Event to occur with respect to itself.

(c) Section 18-304 of the Act shall not apply to the Company. Nothing in this Section 8.8(c) shall limit the terms of Section 9.1 hereof.

(d) Except as is otherwise expressly provided in this Agreement, no Member shall be entitled to receive any payment pursuant to Section 18-604 of the Act.

8.9. Applicable Law Withdrawal. If, as a result of applicable Law, the ownership of an LLC Interest by a Member becomes illegal or is likely to become illegal or the applicable Law more likely than not requires divestiture of such Member’s LLC Interest, or the applicable Law would require the Company to register as an investment company under the Investment Company Act, then the Manager and such Member shall use their respective commercially reasonable efforts to avoid a violation of any such applicable Law by such Member or the need for the Company to register as an investment company. These steps may include, depending on the provisions of such applicable Law, (i) arranging for the sale of the Member’s LLC Interest to a third party upon terms reasonably satisfactory to the Member in a transaction that complies with Articles VIII and X, (ii) making any appropriate applications to the relevant Governmental Authority, (iii) prohibiting such Member from making further Capital Contributions, and converting its LLC Interest into a special interest with no voting or similar rights but with only an economic right (identical to its prior rights as a Member), or (iv) permitting the Member to withdraw from the Company in exchange for a “payment” to such Member equal to the value of its LLC Interest at the time of withdrawal, such value to be determined by a third party appraiser

mutually agreeable to the Manager and all Members. The aforesaid “payment” shall be made in cash unless the Manager determines that the payment in cash would be economically detrimental to the Company, in which case such payment may be made in kind, subject to the applicable Law. The timing of any such withdrawal must be mutually agreeable to the withdrawing Member and the Manager taking proper account of the effective date of the applicable Law or registration requirement that is the basis for the withdrawal or other remedy provided herein and the need of the Manager for a reasonable period of time to find a solution to the illegality or requirement for divestiture or renegotiation. Such illegality, divestiture or registration requirement must be established by (x) an opinion of counsel (which counsel shall be reasonably satisfactory to the Manager and the Initial Member) substantially to the effect that the ownership of the LLC Interest more likely than not will result in such illegality or requirement for registration or divestiture or (y) a ruling or order from a Governmental Authority.

ARTICLE IX

Dissolution and Winding-Up of the Company

9.1. Dissolution. A dissolution of the Company shall take place upon the first to occur of the following:

(a) the agreement by all Members to dissolve the Company (it being understood and agreed that neither Member, acting alone, shall have the right unilaterally to dissolve the Company);

(b) the sale of the Company Property (other than cash and cash equivalent instruments) as an entirety or substantially as an entirety;

(c) notice to such effect to the Private Owner from the Initial Member at any time after the occurrence of a Dissolution Event or an Insolvency Event with respect to the Private Owner or any Person that Controls the Private Owner; or

(d) exercise of the Clean-Up Call and liquidation of all remaining Assets and Acquired Property of the Company in accordance with Section 12.20.

9.2. Winding-Up Procedures. If a dissolution of the Company pursuant to Section 9.1 occurs, subject to the Company’s compliance with its obligation under the other agreements to which it is a party, the other terms and conditions of this Agreement or the other Transaction Documents, the Manager shall proceed as promptly as practicable to wind up the affairs of the Company in an orderly and businesslike manner. A final accounting shall be made by the Manager. As part of the winding up of the affairs of the Company, the following steps will be taken:

(a) The Company Property shall be sold except to the extent that some or all of the assets of the Company are retained by the Company for distribution to the Members as hereinafter provided.

(b) The Company shall comply with Section 18-804(b) of the Act.

(c) Distributions of the assets of the Company after a dissolution of the Company shall be conducted as follows:

(i) first, to creditors, but excluding the Members who are creditors, to the extent otherwise permitted by Law (and, to the extent permitted, in accordance with the Priority of Payments), in satisfaction of liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof);

(ii) second, to the Members or former Members who are creditors, to the extent otherwise permitted by Law, in satisfaction of liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to the Members and former Members under Section 18-601 of the Act;

(iii) third, to the Members and former Members in satisfaction of liabilities (if any) for distributions under Section 18-601 of the Act; and

(iv) finally, to the Members in the manner set forth in Section 6.6(b).

(d) Upon dissolution, the Manager, may, with the consent of all the Members, (i) liquidate all or a portion of the Company Property and apply the proceeds of such liquidation in the manner set forth in Section 9.2(c) and/or (ii) hire independent appraisers to appraise the value of Company Property not sold or otherwise disposed of or determine the Fair Market Value of such assets, and allocate any unrealized gain or loss determined by such appraisal to the Members' respective Capital Accounts as though the properties in question had been sold on the date of distribution and, after giving effect to any such adjustment, distribute said assets in the manner set forth in Section 9.2(c), provided that the Manager shall in good faith attempt to liquidate sufficient Company Property to satisfy in cash the debts and liabilities described in Section 9.2. If a Member shall, upon the advice of counsel (obtained at its own expense), determine that there is a reasonable likelihood that any distribution-in-kind of an asset would cause such Member to be in violation of any Law, such Member and the Manager shall each use its best efforts to make alternative arrangements for the sale or transfer into an escrow account of any such distribution-in-kind on mutually agreeable terms.

(e) In connection with any such dissolution and winding-up of the Company, and the making of the Final Distribution, the Manager shall provide the applicable instructions to the Paying Agent in accordance with the Custodial and Paying Agency Agreement, including the instructions for purposes of Section 3.6(d) of the Custodial and Paying Agency Agreement.

9.3. Termination of the Company. Upon the dissolution of the Company and the completion of the winding up process set forth in Section 9.2, the Manager (or such other Person or Persons as the Act may require or permit) shall cause the cancellation of the Certificate and

any filings required by clause (iii) of Section 4.3 and shall take (or cause to be taken) such other actions as may be necessary to terminate the Company.

ARTICLE X

Qualified Transferees

10.1. Qualified Transferees. The Private Owner (including, for the avoidance of doubt, its Successors), certifies, represents and warrants as follows, and covenants that it shall at all times be in compliance with, and (without limitation of the foregoing) will not enter into any transaction, or take (or omit to take) any other action, that would result in it ceasing to be in compliance with, the following (and any proposed transferee of the Private Owner Interest in compliance with the following shall be deemed a “**Qualified Transferee**”):

(a) Organization; Good Standing; Licenses. Such Member (i) is a Special Purpose Entity duly organized, validly existing and in good standing under the Laws of the state of its organization, (ii) has qualified or will qualify to do business as a foreign corporation, partnership or other entity and will remain so qualified, and is and will remain in good standing, in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary and in which failure to so qualify would have a material adverse effect upon such Member or its ability to perform its obligations hereunder, (iii) has full power to own its property, to carry on its business as presently conducted, and to enter into and perform its obligations under this Agreement, and (iv) has all licenses or other governmental approvals necessary to perform its obligations hereunder. As of the Closing Date (or, in the case of any Successor to the Private Owner, as of the date such Member first became a Member of the Company), such Member is in compliance with Section 8.2 hereof.

(b) Authorization; No Violation. The execution and delivery by such Member of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor compliance with the provisions hereof, will conflict with or result in a breach of, or constitute a default under, (i) any of the provisions of any Law binding on such Member or its properties, (ii) the constituent documents of such Member, or (iii) any of the provisions of any indenture, mortgage, contract or other instrument to which such Member is a party or by which it is bound or result in the creation or imposition of any Lien upon any of its property pursuant to the terms of any such indenture, mortgage, contract or other instrument.

(c) Governmental Approvals. All actions, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights and licenses required to be taken, given or obtained, as the case may be, by or from any Governmental Authority or agency that are necessary in connection with the execution and delivery by such Member of this Agreement and the consummation of the transactions contemplated hereby and the performance of its obligations hereunder, have been duly taken, given or obtained, as the case may be, are in

full force and effect, are not subject to any pending proceedings or appeals (administrative, judicial or otherwise) and either the time within which any appeal therefrom may be taken or review thereof may be obtained has expired or no review thereof may be obtained or appeal therefrom taken.

(d) No Litigation. On the date such Member becomes a party to this Agreement, there is no action, suit, proceeding or investigation pending or threatened against such Member before any Governmental Authority.

(e) No Violation of Orders, Decrees, etc. Such Member is not in default with respect to any order or decree of any Governmental Authority or in violation of any Law.

(f) Third Party Consents. No consents, approvals, or waivers of, or notifications to, stockholders, creditors, lessors or other nongovernmental Persons are required to be obtained or made by such Member in connection with the execution and delivery of this Agreement and the consummation of all the transactions herein contemplated and the performance of its obligations hereunder.

(g) Owners Accredited Investors. All of the equity owners of such Member are “accredited investors,” as that term is defined in Rule 501 under the Securities Act.

(h) Knowledge and Experience. Such Member, either by itself or through its advisers and principals, has such knowledge and experience in the origination, servicing, sale and/or purchase of performing and non-performing or distressed loans, including construction loans and loans secured by residential and commercial properties, as well as financial and business matters, as to enable such Member to utilize the information made available to it with respect to the LLC Interest acquired by it and the Assets to evaluate the merits and risks of a purchase of the Private Owner Interest and, indirectly, the Assets, and to make an informed decision with respect thereto.

(i) Economic Risks. Such Member acknowledges, understands and represents that it is able to bear the economic risks associated with the acquisition and ownership of the Private Owner Interest and, indirectly, the Assets, including the risk of a total loss of its investment in the Company and, indirectly, the Assets and/or the risk that it may be required to hold the Private Owner Interest and, indirectly, the Assets for an indefinite period of time.

(j) No Representations. Such Member hereby acknowledges that, except as is otherwise expressly provided in this Agreement, the Private Owner Interest Sale Agreement, or the Contribution Agreement, none of the Initial Member or the FDIC or any of their respective Related Persons, makes or has made any representation or warranty regarding the Company, the LLC Interests or the Assets or the value of any Collateral.

(k) Due Diligence. Such Member acknowledges and agrees that, whether or not information is available with respect to the LLC Interests or the Assets and whether or not it

chooses to review any information that is or was made available to it regarding the LLC Interests or the Assets, such Member, by itself or through its advisers or principals, has the ability and shall be responsible for making its own independent investigation and evaluation of the LLC Interests and the Assets and the economic, credit or other risks involved in an acquisition of the Private Owner Interest and, indirectly, the Assets. Except as is otherwise expressly provided in this Agreement, none of the Initial Member or the FDIC or any of their respective Related Persons, makes or has made any representation or warranty as to the completeness or accuracy of any information provided.

(l) No Securities. Such Member acknowledges and agrees that (i) neither the offer nor the sale of the Private Owner Interest (and, indirectly, the Assets) is intended to constitute an offer or sale of a “security” within the meaning of the Securities Act or any applicable federal or state securities Laws, (ii) no inference that any of the LLC Interests or the Assets is a “security” under such federal or state securities Laws shall be drawn from any of the certifications, representations or warranties made by any Person in this Agreement, (iii) it is not contemplated that any filing will be made with the Securities and Exchange Commission or pursuant to the “Blue Sky” or securities Laws of any jurisdiction, and (iv) if any of the LLC Interests or the Assets is a security, such may not be resold or otherwise transferred by such Member except in accordance with any and all applicable securities and “Blue Sky” Laws.

(m) Resales. Such Member is acquiring the Private Owner Interest (and, indirectly, the Assets) for its own account and not with a view toward resale in a distribution within the meaning of the Securities Act.

(n) Resales in Compliance with Law. Such Member will not (i) offer, pledge, sell or otherwise Dispose of the Private Owner Interest (or any interest therein) or any Asset (or any interest therein or evidence thereof) to, (ii) solicit any offer to buy or accept a transfer, pledge or other Disposition of the Private Owner Interest (or any interest therein) or any Asset (or any interest therein or evidence thereof) from, or (iii) otherwise approach or negotiate with respect to the Private Owner Interest (or any interest therein) or any Asset (or any interest therein or evidence thereof) with, any Person in any manner, or take any other action, that would (A) not comply with Article VIII, or (B) render the transfer to such Member of the Private Owner Interest or any interest in any Asset a violation of any Law relating to the issuance, regulation, registration or disposition of securities, nor will it authorize any Person to so act, in any manner with respect to the Private Owner Interest (or any interest therein) or any Asset (or interest therein or evidence thereof).

(o) Acquisition in Compliance with Law. Such Member’s acquisition of the Private Owner Interest and the resulting investment in the Assets will comply with all applicable Laws, including any and all Laws and/or restrictions imposed on resale of the Private Owner Interest and the Assets by federal and state securities or “Blue Sky” Laws.

(p) Independent Evaluation. Such Member has made an independent evaluation of the Company and its assets (including the Assets and related Asset files and/or any electronic data made available to it pertaining to the Assets held by the Company). Such Member also has conducted such other investigations as it deems appropriate, including searches of Uniform Commercial Code, title, court, bankruptcy, Tax and other public records. Such Member agrees and represents that it is entering into this Agreement solely on the basis of its own investigations and its judgment as to the value of the Private Owner Interest and the nature, validity, enforceability, collectability and value of the Assets and all other facts material to their ownership, including the legal matters and risks relating to collection and enforcement, and the performance of any obligations under any of the Assets in any jurisdiction. Such Member further acknowledges that no Related Person of the Initial Member, or the FDIC has been authorized to make any statements or representations other than those specifically contained in this Agreement or the Contribution Agreement. Such Member has consulted with its own counsel, accountants and other advisors as to the legal, tax, business, financial and related aspects of its ownership of the LLC Interest and no representation, warranty or advice has been provided as to such matters by the Initial Member, the FDIC or any of their Related Persons.

(q) Embargoed Person. (i) No consideration that such Member or any of its Affiliates contributes hereunder or under the other Transaction Documents in connection with any transaction regarding any assets has been derived from or related to any activity that is deemed criminal under United States Law; (ii) neither such Member nor any of its Affiliates or Direct Owners is an Embargoed Person; (iii) neither such Member nor any of its Affiliates or Direct Owners engages in any dealings or transactions, or is otherwise “associated with” (as defined in 31 C.F.R. 594.101, et seq.), any Embargoed Person; and (iv) if and to the extent such Member or any of its Affiliates is required by Law to maintain an anti-money laundering compliance program under applicable anti-money laundering Laws and regulations, including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56), such compliance programs are currently being maintained. The foregoing certifications, representations and warranties shall be based upon a due inquiry and investigation; provided, however, that for purposes of determining whether any of the same with respect to indirect ownership are true, such Member shall not be required to make an investigation into the ownership of publicly-traded securities (including securities of open-end investment companies registered under the Investment Company Act) or the ownership of assets by a collective investment fund that holds assets for employee benefit plans or retirement arrangements.

(r) ERISA Plan Asset. The assets of such Member (including any successor to or transferee of such Member) are not deemed to be ERISA Plan Assets.

(s) Purchaser Eligibility. Each of such Member and any Person that, together with its Affiliates, directly or indirectly holds twenty-five percent (25%) or more of the equity interests of such Member is and remains capable of truthfully making the representations and warranties in the Purchaser Eligibility Certification.

(t) Qualified Purchaser. Such Member is a “qualified purchaser” within the meaning of Section 3(c)(7) of the Investment Company Act.

ARTICLE XI **Manager Liability**

11.1. Liability of Manager.

(a) Except as otherwise specifically provided in this Agreement (including in the other subsections of this Section 11.1), the duties (including fiduciary duties) and obligations owed to the Company and the Initial Member by the Manager shall be as provided in Section 3.1(b) hereof.

(b) The Manager may rely, and shall be protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(c) The Manager may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion of such Persons as to matters that the Manager reasonably believes to be within such Person’s professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

(d) The Manager shall not be liable to the Company or the Members for its good faith reliance on the provisions of this Agreement.

(e) The limitations and exculpation afforded by each provision of this Section 11.1 are cumulative and not exclusive. Nothing in this Section 11.1 is intended, or shall be deemed, to permit conduct that would otherwise constitute misappropriation of a trade secret of the Company under applicable Law or conduct that, even disregarding the terms hereof, otherwise would be actionable by the Company or any Member.

ARTICLE XII **Servicing of Assets**

12.1. Servicing.

(a) Appointment and Acceptance as Servicer. Effective as of the Closing Date, but subject to Section 3.3 of the Contribution Agreement (with which the Manager agrees to comply) and the further obligations hereunder with respect to retention of the Servicer, the Manager is hereby appointed (and hereby accepts the appointment) with full authority and responsibility, in its own name, to act as the servicer for the Assets and any Collateral. Until

such time as the Company is dissolved and liquidated pursuant to Article IX, and except as otherwise provided in Section 12.4 and subject to the interim servicing being provided by or on behalf of the Initial Member (as the Transferor) pursuant to Section 3.3 of the Contribution Agreement, the Manager shall, with respect to each Asset or Group of Assets, from and after the Closing Date, be responsible for (and hereby assumes responsibility for) Servicing (in accordance with the standards (collectively, the “**Servicing Standard**”) set forth in Section 12.2 (such obligations referred to collectively herein as the “**Servicing Obligations**”) and the other provisions of this Article XII, including the provisions of Section 12.3 (which require that Servicing, other than Asset Management functions retained by Manager, be performed through one or more Qualified Servicers)). Without in any way limiting the foregoing, but subject to Section 3.3 of the Contribution Agreement and applicable rights of the Manager to perform Asset Management pursuant to Section 12.3, the Manager shall cause the Assets (including, for all purposes under this Article XII, the related Collateral) to be serviced as follows: (a) such Asset shall, from and after the applicable Servicing Transfer Date, and except as provided in the immediately following subsection (b) or as otherwise expressly permitted by the Initial Member, be Serviced by or through the Servicer appointed in accordance with Section 12.3 below, and (b) following the replacement of the Servicer as a result of an Event of Default, the Assets shall be serviced by or through the Servicer appointed by the Initial Member in accordance with Section 12.4 below. All Servicing following the Closing Date shall be performed in accordance with the terms of the Contribution Agreement and this Article XII.

(b) Servicing and Subservicing Agreement Requirements. Except as is otherwise agreed in writing by the Initial Member, each Servicing Agreement (and any Subservicing Agreement with any Subservicer) shall, among other things,

(i) provide for the Servicing by the Servicer (or any Subservicer) in accordance with the Servicing Standard and the other terms of this Agreement;

(ii) subject to clause (x) below with respect to immediate termination, be terminable upon no more than thirty days prior notice if an Event of Default or any default under the Servicing Agreement (or Subservicing Agreement) has occurred;

(iii) provide that the Manager (in its individual capacity) and the Initial Member (and, in the case of any Subservicing Agreement, the Servicer or applicable Subservicer having been engaged by the Servicer pursuant to a separate Subservicing Agreement, as the case may be) each shall be entitled to exercise termination rights under the relevant Servicing Agreement or Subservicing Agreement (it being understood that the Initial Member shall only exercise such termination rights as contemplated or permitted in this Agreement);

(iv) provide that the Servicer (or any Subservicer) and the Manager (in its individual capacity) acknowledge that the Servicing Agreement (or Subservicing Agreement) constitutes a personal services agreement between the Manager (in its individual capacity) and the Servicer (or between the Servicer or applicable Subservicer having been engaged by the

Servicer pursuant to a separate Subservicing Agreement, as the case may be, and the Subservicer, as applicable);

(v) provide that (A) each of the Company and the FDIC are third party beneficiaries thereunder to the extent of any rights expressly granted to such Person under the Servicing Agreement or Subservicing Agreement and is entitled to enforce the Servicing Agreement or Subservicing Agreement, as applicable, with respect to such rights, and (B) the Initial Member and, in the case of any Subservicing Agreement, the Manager (in its individual capacity) is a third party beneficiary thereunder; and further provide that in no event shall any amendment or waiver to any such Servicing Agreement or Subservicing Agreement limit or affect any rights of any such third party beneficiary thereunder without the express written consent of such third party beneficiary;

(vi) provide that (A) upon the removal of the Private Owner as the Manager or the occurrence of an Event of Default, the Initial Member (and any successor Manager) may exercise all of the rights of the Manager thereunder and cause the termination or assignment of the same from the Private Owner as the Manager to any other Person, without penalty or payment of any fee, and (B) upon the occurrence of any "Default" under (and as defined in) the Servicing Agreement, the Initial Member (and any successor Manager) may exercise all of the rights of (1) the Manager (in its individual capacity) under such Servicing Agreement and cause the termination or assignment of the same from the Manager (in its individual capacity) to any other Person, without penalty or payment of any fee, and (2) the Servicer (or applicable Subservicer having been engaged by the Servicer pursuant to a separate Subservicing Agreement) under the Subservicing Agreement and cause the termination or assignment of the Subservicing Agreement from the Servicer (or such applicable Subservicer) to any other Person, without penalty or payment of any fee (it being understood that the Initial Member shall only exercise the foregoing rights as contemplated or permitted in this Agreement);

(vii) provide that the Initial Member, the Manager and the Company (and each of their respective representatives) shall each have access to and the right to review, copy and audit the books and records of the Servicer and any Subservicers and that the Servicer and all Subservicers shall make available their respective officers, directors, employees, accountants and attorneys to answer the Initial Member's, the Manager's and the Company's (and each of their respective representatives') questions or to discuss any matter relating to the Servicer's or Subservicer's affairs, finances and accounts, as they relate to the Assets, the Collateral, the Company Accounts or any other accounts established or maintained pursuant to this Agreement, the Custodial and Paying Agency Agreement, the Servicing Agreement or any Subservicing Agreement, or any matters relating to the Servicing Agreement or any Subservicing Agreement or the rights or obligations thereunder;

(viii) provide that all Asset Proceeds are to be deposited into the Collection Account on a daily basis (without reduction or setoff) within two Business Days of

receipt and that under no circumstances are funds, other than Asset Proceeds and interest and earnings thereon, transfers of funds from the Working Capital Reserve Account and the proceeds of Excess Working Capital Advances and Discretionary Funding Advances, to be commingled in the Collection Account;

(ix) provide that the Servicer or any Subservicer shall not sell, transfer or assign its rights under the Servicing Agreement or Subservicing Agreement, as applicable, other than Servicer's rights to delegate to Subservicers (or applicable Subservicer's right to further delegate to another Subservicer) certain responsibilities thereunder as and to the extent permitted by this Agreement, and that any prohibited sale, transfer or assignment shall be void *ab initio*;

(x) provide that (A) the Servicer consents to the immediate termination of the Servicer upon the occurrence of any Insolvency Event with respect to the Servicer, (B) each Subservicer consents to the immediate termination of such Subservicer upon the occurrence of a termination event under the Servicing Agreement, and upon the occurrence of any Insolvency Event with respect to such Subservicer (or any Subservicer having been engaged by such Subservicer), (C) the occurrence of any Restricted Servicer Change of Control with respect to the Servicer (or any applicable Rated Subservicer) constitutes a default under the Servicing Agreement (and any applicable Subservicing Agreement with such Rated Subservicer) and (D) the occurrence of any Insolvency Event with respect to the Servicer or any Subservicer constitutes a default under the Servicing Agreement and the Subservicing Agreement, as applicable; provided, however, that, in the case of the Servicing Agreement, or a Subservicing Agreement with a Rated Subservicer, the occurrence of an Insolvency Event with respect to a Subservicer (which is not an Affiliate of the Servicer) may, at the election of the Manager, be subject to a cure period of not more than thirty days for replacement of the affected Subservicer (in a manner that will permit the Manager to comply with its obligations hereunder);

(xi) provide that there shall be no right of setoff on the part of the Servicer or any Subservicer against the Asset Proceeds (or the Company);

(xii) provide for such other matters as are necessary or appropriate to ensure that the Servicer or any Subservicer is obligated to comply with the Servicing Obligations of the Manager hereunder;

(xiii) provide a full release and discharge of each Prior Servicer from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Servicer (or any such Subservicer) had, has or might have in the future, whether known or unknown, which are related in any manner whatsoever to the Servicing by the Prior Servicers prior to the applicable Servicing Transfer Date (other than due to gross negligence, violation of Law or willful misconduct of such Prior Servicer);

(xiv) provide that, to the extent required under Section 12.3(h) hereof, all Loans registered on the MERS® System shall remain registered unless default, foreclosure or similar legal or MERS requirements dictate otherwise;

(xv) provide that none of the Servicer, any Subservicer or any Affiliate of the Servicer or any Subservicer may at any time, (A) be or become a partner or joint venturer with any Borrower or Obligor, (B) be or become an agent of any Borrower or Obligor, or allow any Borrower or Obligor to be an agent of such Servicer or any Subservicer or of any Affiliate of the Servicer or any Subservicer, or (C) have any interest whatsoever in any Borrower or Obligor, and that the Servicer or Subservicer, as applicable, shall immediately notify the Manager and the Initial Member upon becoming aware of the occurrence of any of the foregoing;

(xvi) provide that the Servicer (and any Rated Subservicer) shall immediately notify the Manager and the Initial Member of the occurrence of any Change of Control with respect to the Servicer (or any Rated Subservicer);

(xvii) provide that, upon any sale of any Asset by the Company (including by the Servicer on behalf of the Manager on behalf of the Company) in accordance with the terms hereof, such Asset shall prospectively cease to constitute an “Asset” for any purpose of the Servicing Agreement or Subservicing Agreement, as applicable, provided that the Servicer or Subservicer, as applicable, shall not thereby be released from any liability or obligation thereunder with respect to such Asset in relation to the period prior to such sale;

(xviii) not conflict with the Servicing Standard or any other terms or provisions of this Agreement, the Custodial and Paying Agency Agreement or any of the other Transaction Documents insofar as such other terms or provisions hereof or thereof are required to be imposed by the Manager (in its individual capacity) on the Servicer (or any Subservicers) in the Servicing Agreement (or Subservicing Agreements); and

(xix) in the event the Subservicer is a Rated Subservicer, include, for the benefit of the Manager and each third party beneficiary under the Servicing Agreement (including the Company and the Initial Member), an agreement of such Rated Subservicer to further comply with (and separately assume in favor of the Manager and each such third party beneficiary) all terms, conditions and obligations of the Servicer under the Servicing Agreement (including obligations in such Servicing Agreement with respect to maintenance of insurance, indemnity rights of the Indemnified Parties (as against such Rated Subservicer), and engagement of a Subservicer), in each case to the same extent as though such Rated Subservicer were executing the Servicing Agreement (as the “Servicer”) directly with the Manager.

Nothing contained in any Servicing Agreement or any Subservicing Agreement shall alter any obligation of the Manager under this Agreement and, in the event of any inconsistency between the Servicing Agreement (or any Subservicing Agreement) and the terms of this Agreement, among the parties to this Agreement the terms of this Agreement shall control.

12.2. Servicing Standard. The Manager shall perform (or cause the performance of) the Servicing Obligations: (i) in the best interests and for the benefit of the Initial Member and the Company, (ii) in accordance with the terms of the Assets (and related Asset Documents), (iii) in accordance with the terms of this Agreement and the other Transaction Documents, (iv) in accordance with all applicable Law, and (v) to the extent consistent with the foregoing terms, in the same manner in which a prudent servicer would service and administer similar loans and in which a prudent servicer would manage and administer similar properties for its own portfolio or for other Persons, whichever standard is higher, but using no less care and diligence than would be customarily employed by a prudent servicer following customary and usual standards of practice of prudent mortgage lenders, loan servicers and asset managers servicing, managing and administering similar loans and properties on an arms' length basis; provided, however, that, with respect to each Asset and related Collateral, in the absence of a customary and usual standard of practice, the Company shall comply with the applicable Fannie Mae Guidelines, if any, with respect to similar loans and properties in similar situations. The Manager shall cause its Servicing Obligations with respect to the Assets and the Collateral to be performed without regard to (w) any relationship that the Company, the Manager the Servicer or any Subservicer, or any of their respective Affiliates, may have to any Borrower, Obligor or other obligor, or any of their respective Affiliates, including any other banking or lending relationship, (x) the obligations of any of the Company, the Manager, the Servicer or any Subservicer to make disbursements and advances with respect to the Assets and Collateral, (y) any relationship that the Servicer or any Subservicer may have to each other or to the Company, the Manager or any of their respective Affiliates, or any relationship that any of their respective Affiliates may have to the Company, the Manager or any of their respective Affiliates (other than the contractual relationship evidenced by this Agreement or the Servicing Agreement or any Subservicing Agreement), and (z) the right of any of the Manager, the Servicer or any Subservicer to receive compensation (including the Management Fee and any Interim Management Fee) for its services under this Agreement, the Servicing Agreement or any Subservicing Agreement. Without limiting the generality of the foregoing, the Manager's Servicing Obligations hereunder shall include the following:

(a) discharging in a timely manner each and every obligation (i) which the Asset Documents provide is to be performed by the lender thereunder, on its own behalf and on behalf of the Company and the Initial Member and (ii) in the case of Acquired REO Property, which the Asset Documents that were applicable to the Collateral before it became Acquired REO Property provided were to be performed by the Borrower thereunder in respect of such Collateral (not including payment of debt service under the applicable Asset Documents), in the case of each of (i) and (ii), together with such additional obligations as are required of the Company under this Agreement in respect of such Acquired REO Property;

(b) incurring costs (including Servicing Expenses (or Interim Servicing Expenses) and Pre-Approved Charges) in accordance with (i) the provisions of the Asset Documents, or (ii) in the case of Acquired REO Property, the Asset Documents that were

applicable to the Acquired REO Property before it became an Acquired REO Property (not including payment of debt service under the applicable Asset Documents);

(c) causing to be maintained with respect to the Assets (including any Collateral for which the Borrower has failed to maintain required insurance and any Acquired Property), insurance as required under the Insurance Schedule;

(d) diligently monitoring and seeking compliance with the terms and conditions of each insurer under any hazard policy and preparing and presenting claims under any policy in a timely fashion in accordance with the terms of the policy;

(e) supervising and coordinating the construction, ownership, management, leasing and preservation of the Acquired Property as well as all other matters involved in the administration, preservation and ultimate disposition of the Acquired Property as would be taken by a prudent asset manager managing properties similar to the Acquired Property and as required of the Company under this Agreement;

(f) administering the making of advances to Borrowers under Loans pursuant to and in accordance with the provisions herein and in the Custodial and Paying Agency Agreement governing the making of Funding Draws;

(g) to the extent consistent with the foregoing, seeking to maximize the timely and complete recovery of principal and interest on the Assets and otherwise to maximize the value of the Assets and the Collateral;

(h) except as otherwise set forth in this Agreement, making decisions under, and enforcing and performing in accordance with, the Asset Documents all loan administration, inspections, review of financial data and other matters involved in the Servicing;

(i) ensuring that all filings required to maintain perfection in any Collateral remain up to date and in force, including Uniform Commercial Code financing statements;

(j) ensuring that each Borrower (or in the case of Acquired REO Property, the applicable Ownership Entity) is diligently performing all applicable construction work (including all applicable Permitted Horizontal Development and Substantially Complete Vertical Development) using all commercially reasonable efforts in accordance with the requirements of the applicable Asset Documents and of this Agreement;

(k) providing the Servicer and any Subservicers with copies of such Transaction Documents (or portions thereof) as are necessary for the Servicer or any Subservicers to be familiar with in order to perform their respective obligations provided for in this Agreement, the Servicing Agreements or the Subservicing Agreements, as applicable; and

(l) complying, and causing the Servicer and each Subservicer to comply, with all applicable Laws regarding the privacy or security of Customer Information, including by maintaining and complying with policies and procedures for protection of Customer Information in a way that is designed to ensure such compliance with applicable Laws (including by obtaining information technology audits and maintaining monitoring software on internal accounting systems and the systems of applicable Servicer, Subservicers and other third-party vendors generating, maintaining or otherwise having access to any Customer Information).

12.3. Servicing of Assets.

(a) Appointment of Servicer. The Manager (in its individual capacity) has entered into a Servicing Agreement dated the date hereof to provide for the Servicing by the Servicer named therein. Each Servicer, at all times during which it acts as Servicer, shall satisfy (and must continue to satisfy) the definition of Qualified Servicer. Subject, with respect to the Interim Servicing Period, to the provisions of Section 3.3 of the Contribution Agreement, each Asset shall at all times be Serviced, and the Servicing Obligations shall be performed, by or through the Servicer (including any Subservicers engaged by the Servicer as permitted hereunder); provided, that, subject to Section 12.3(b) below, the Manager shall have the right to retain (and not delegate to the Servicer) any or all Asset Management functions. Subject to the other terms and conditions of this Agreement, the Servicer may be an Affiliate of the Private Owner or of the Manager. The Servicer may engage or retain one or more Subservicers (and any Rated Subservicer may further engage or retain one or more Subservicers), including Affiliates of the Private Owner or of the Manager, to perform certain of its duties under the Servicing Agreement (or applicable Subservicing Agreement), as it may deem necessary and appropriate, by entering into a Subservicing Agreement with each such Subservicer, provided that any Subservicer meets (and at all times continues to meet) the requirements set forth in the definition of Qualified Servicer and the terms of the applicable Subservicing Agreement comply with the terms of this Agreement and the applicable Servicing Agreement. The costs and fees of the Servicer (and any Subservicers) shall be borne exclusively by the Manager in its individual capacity without any right of reimbursement from the Company or the Initial Member (it being understood that the Manager will have the applicable rights to receive, or, if applicable, direct payment of, the Interim Management Fee and Management Fee in accordance with Section 12.5 hereof). Except as expressly permitted with respect to direction of payment of the Interim Management Fee and the Management Fee to the Servicer pursuant to Section 12.5, under no circumstances shall the Manager transfer, or permit to be transferred, to the Servicer or any other Person any ownership interest in any Servicing rights or any right to transfer or sell any Servicing rights, and no Servicer shall be permitted to assign, pledge or otherwise transfer to any Subservicer or other Person or purport to assign, pledge or otherwise transfer any interest in any Servicing rights, and any purported assignment, pledge or other transfer in violation of this provision shall be void *ab initio* and of no effect.

(b) Manager Right to Conduct Asset Management. Notwithstanding the obligation to generally cause all Servicing to be performed by (or through) the Servicer, the

Manager shall have the right to retain (and not delegate to the Servicer) any or all Asset Management functions by expressly retaining such applicable Asset Management functions pursuant to the Servicing Agreement (including Schedule 2 thereto), with all Servicing other than such retained Asset Management being conducted by or through the Servicer. Any such Servicing (comprised entirely of Asset Management) not so delegated to the Servicer in accordance with the foregoing shall be duly performed by the Manager itself (without further delegation) in accordance with the Servicing Standard and the provisions herein and in the other Transaction Documents, with the Manager having all obligations (and with the same rights, benefits and protections to the Company, the Initial Member and any third party beneficiary hereof) as though the same were being conducted by the Servicer, such that the Manager, in performance of such Servicing shall meet and comply with all qualifications (including qualification as a Qualified Servicer), requirements (including as to insurance) and obligations of the Servicer hereunder (including as to reporting and audit requirements), in all cases without any additional expense to the Company (including as to any applicable insurance, certifications or licenses so required to be obtained or maintained by the Manager as a result of the foregoing).

(c) Manager Liable for Servicer and Subservicers. Notwithstanding anything to the contrary contained herein, the use of the Servicer (or any Subservicer) shall not release the Manager from any of its Servicing Obligations or other obligations under this Agreement, and the Manager shall remain responsible and liable for all acts and omissions of the Servicer (and each Subservicer) as fully as if such acts and omissions were those of the Manager. All actions of the Servicer (or any Subservicer) performed pursuant to the Servicing Agreement (or any Subservicing Agreement) shall be performed as an agent of the Manager (or, in the case of Subservicers, the Servicer or applicable Rated Subservicer having engaged such Subservicer).

(d) Copies of Servicing and Subservicing Agreements. Copies of all fully executed Servicing Agreements and Subservicing Agreements, including all supplements and amendments thereto, shall be provided to the Initial Member.

(e) Regulation AB Requirements. The Manager shall use commercially reasonable efforts to confirm, where applicable, that the Servicer (and any Subservicer) (i) has in place, policies and procedures instituted to monitor any performance or other triggers and events of default in accordance with the applicable Asset Documents and the Servicing Obligations (as generally required pursuant to Sections 1122(d)(1)(i) and (ii) of Regulation AB), and (ii) complies with Sections 1122(d)(2)(i) through (vii), and Sections 1122(d)(4)(i) through (xiv) of Regulation AB, it being understood that any such requirements of Regulation AB referenced herein shall be deemed applicable to the Servicing conducted hereunder (and under any Subservicing Agreement) regardless of whether such requirements apply, by their terms, only to companies registered or required to file reports with the Securities and Exchange Commission.

(f) Servicer and Subservicer Fees. No Servicer or Subservicer shall be paid any fees or indemnified out of any Asset Proceeds (or funds in any Company Account), it being understood that all fees and related costs or liabilities of the Servicer and Subservicers shall be

the sole responsibility of the Manager (in its individual capacity), without any right of reimbursement from the Company or the Initial Member (provided that this clause (f) does not prohibit reimbursement to the Manager (in its individual capacity) for Servicing Expenses or Pre-Approved Charges incurred by the Servicer or any Subservicer on behalf of the Manager (in its individual capacity)).

(g) Insurance. The Servicer and each Subservicer shall maintain (and, to the extent the Manager performs any Servicing functions pursuant to Section 12.3(b), the Manager shall, at its sole cost and expense, itself maintain) applicable insurance as required pursuant to (and the Manager shall otherwise comply, and cause the Company, each Ownership Entity, each Servicer and each Subservicer to comply, with applicable obligations set forth in) the Insurance Schedule (attached hereto as Annex III).

(h) MERS Requirements. In the event that any of the Loans are (or are required by the terms hereof to be) registered on the MERS® System, and unless and until no Loan so remains registered on the MERS® System in accordance herewith, (i) the Manager shall cause each of the Company and the Servicer to be (or become) a member of MERS on or before the initial Servicing Transfer Date, and to each maintain itself as a MERS member in good standing (including paying all dues and other fees required to maintain its membership and complying with MERS policies and procedures), and (ii) the Servicer shall maintain (or register, as applicable) such Loan on the MERS® System and execute and deliver on behalf of the Company (including, as applicable, on behalf of the Manager, in turn on behalf of the Company) any and all instruments of assignment and other comparable instruments with respect to such assignment or re-recording of a mortgage securing a Loan in the name of MERS, solely as nominee for the Company and its successors and assigns. With respect to each Loan that is registered on the MERS® System, (x) the Servicer shall be designated as the “servicer” and 1000002 (Org Id.) shall be designated as the “investor” with respect to such Loan, and, if applicable, the Manager may cause or permit an applicable Subservicer (and, in the event such Loan is being serviced by a Rated Subservicer, shall so cause such Subservicer) to be designated as the “subservicer” with respect to such Loan (provided, that (1) upon the Company becoming a member of MERS in good standing, the Manager shall cause the Company to be identified in the “investor” field on the MERS® System, and (2) the Manager may, as determined in accordance with the Servicing Standard and so long as the Manager is and remains a MERS member in good standing, designate the Manager as the “servicer” with respect to any such Loan, in which case the Servicer shall be designated as the “subservicer” with respect thereto), and (y) no other Person shall be identified on the MERS® System as having any interest in such Loan unless otherwise consented to by the Initial Member (or required pursuant to the Electronic Tracking Agreement). All Loans registered on the MERS® System shall remain registered on the MERS® System unless default, foreclosure or similar legal or MERS requirements dictate otherwise; provided, however, that if the Manager determines, in accordance with the Servicing Standard and other applicable provisions herein and in the other Transaction Documents, to remove any or all such Loans so registered with MERS from the MERS® System, the Manager shall have the right to cause such removal so long as, with respect to any such Loan to be so

removed, (A) the applicable mortgage (or other Collateral Document) and rights to Collateral for such Loan that are so registered in the name of MERS are duly transferred and assigned to the Company (with all applicable recordings or filings with respect thereto being duly made) so as to cause the Company to have the full benefit of its applicable security (or other) interest in all such Collateral, and (B) for any such removal occurring on or before the applicable Servicing Transfer Date, the same is accomplished in accordance with the applicable requirements (and delivery of the applicable notice) in Section 3.1(c) of the Contribution Agreement. The Servicer shall provide the Manager and the Initial Member with such reports from the MERS® System as the Manager or the Initial Member, from time to time, may request, including to allow the Manager and the Initial Member to verify the Persons identified on the MERS® System as having any interest in any of the Loans and to confirm that the Loans required to be registered on the MERS® System are so registered. For so long as any Loans remain registered with MERS, the same shall be subject to an Electronic Tracking Agreement in the form of Exhibit B to the Servicing Agreement, and, to the extent any such Loans are so registered with MERS as of the Closing Date, the Servicer, the Manager and the Initial Member shall execute such Electronic Tracking Agreement on the Closing Date and deliver the same to MERS. Without limiting the foregoing, upon the request of the Manager or the Initial Member, the Servicer shall cause MERS to run a query with respect to any and all specified fields on the MERS® System with respect to any or all of the Loans registered on the MERS® System and provide the results to the Manager and the Initial Member and, if requested by the Manager or the Initial Member (and subject to any applicable provisions of the Electronic Tracking Agreement), shall cause MERS to change the information in such fields, to the extent MERS will do so in accordance with its policies and procedures, to reflect its instructions.

(i) Information Security Standards. Further to Section 12.2(l), the Manager shall promptly make available to the Initial Member information regarding the policies and procedures for protection of Customer Information described in Section 12.2(l) as requested by either of them from time to time. The Manager further agrees that any Customer Information transmitted electronically by it (or the Servicer or any Subservicer) shall be encrypted.

12.4. Removal of Servicer.

(a) Removal of Servicer. Upon the occurrence of an Event of Default, in addition to any other rights it may have pursuant to this Agreement, any other Transaction Document or applicable Law (including the Uniform Commercial Code), whether at Law or in equity and whether pursuant to statute or regulation or otherwise, the Initial Member shall have the right to take, at the Initial Member's option and the Manager's expense, one or more of the following actions: (i) upon notice in writing to the Manager (effective at such time as is specified in such notice), to act on behalf of the Manager (in its individual capacity) to terminate the existing Servicer (and any Subservicers) and to cause the Manager (in its individual capacity) to enter into a new Servicing Agreement with a servicer (as a successor Servicer) selected by the Initial Member (in its sole and absolute discretion, and whether or not the same qualifies as a Qualified Servicer), and (ii) upon notice in writing to the Manager (effective at such time as is

specified in such notice), to remove the Private Owner as the Manager and appoint a successor Manager (which successor Manager may be the Initial Member) in the sole discretion of the Initial Member, whereupon (without limitation of Section 13.5), such successor Manager shall immediately succeed to all, or such portion as the Initial Member and successor Manager agree, of the rights and obligations of the Private Owner as the Manager of the Company, and, in such case, the Initial Member shall further have the right (A) to terminate the Servicer and any or all Subservicers (in its sole and absolute discretion), and cause or permit the successor Manager selected by the Initial Member (and/or the Company directly, as determined by the Initial Member in its sole discretion) to enter into a Servicing Agreement with a successor Servicer, such Servicing Agreement to be between the applicable successor Manager (and/or the Company) and the successor Servicer chosen by the Initial Member, or (B) to retain the existing Servicer and cause or permit the successor Manager (and/or the Company directly, as determined by the Initial Member in its sole discretion) to enter into a new Servicing Agreement between such successor Manager (and/or the Company) and the Servicer (or to effect an assignment of the existing Servicing Agreement from the existing Manager (in its individual capacity) to such successor Manager (and/or the Company). None of the Initial Member, any successor Manager or the Company shall have any obligation to assume any obligations or liabilities of the removed Manager (in its individual capacity) under or in connection with any Servicing Agreement. Notwithstanding the foregoing, the Initial Member shall not exercise its right to terminate a Servicer that is not an Affiliate of the Manager or of the Private Owner in the absence of (1) an Event of Default attributable in whole or in part to the failure by the Servicer or any of its Subservicers to perform any material obligation under its applicable Servicing Agreement or Subservicing Agreement, (2) an Event of Default as described in clause (ii) or clause (vii) of the definition thereof with respect to the Servicer or any of its Subservicers, (3) an Event of Default resulting from the failure of the Servicer or any of its Subservicers at any time to meet the criteria of a Qualified Servicer, (4) an Event of Default as described in clause (v) of the definition thereof, to the extent relating to such Servicer or any of its Subservicers, or (5) any other Event of Default that consists of a breach of a Servicing obligation under this Agreement. Subject to the foregoing, the Manager hereby consents to the immediate termination of the Servicer upon the occurrence of any Event of Default. For the avoidance of doubt, the rights of the Initial Member in this Section 12.4 are in addition to, and can be exercised independently of the rights of the Initial Member in Sections 3.2, 3.13, and 3.14; and in any event all rights and remedies of the Initial Member under this Agreement with respect to or following an Event of Default shall be cumulative, and any or all thereof may be exercised instead of or in addition to each other or any other remedies available to the Initial Member, whether under this Agreement, any other Transaction Document or otherwise.

(b) Appointment of Successor Servicer. If the Initial Member exercises its right to act on behalf of the Manager (in its individual capacity) to appoint a successor Servicer, the costs and expenses associated with such successor Servicer (including any Servicing fees) shall be borne by the Manager (in its individual capacity) (and not the Company or the Initial Member), and no termination or other fee shall be due to the Manager (in any capacity) or the Servicer or any Subservicer in connection with or as a result of any such action; provided,

however, that, if the Initial Member has also exercised its right to remove the Manager (such that such removed Manager no longer has rights to the Management Fee), then, with respect to Servicing fees of such successor Servicer (but not costs and expenses in connection with the replacement of the Servicer with such successor Servicer) such removed Manager shall be responsible (in any capacity) only for the portion of such fees that, as of any particular Distribution Date, are in excess of the Management Fee payable to the successor Manager on such Distribution Date.

(c) Removal of Manager; Management Fee. If the Initial Member exercises its right pursuant to this Section 12.4 to remove the Private Owner as the Manager and appoint a successor Manager, (i) the successor Manager selected by the Initial Member shall immediately succeed to all, or such portion as the Initial Member and successor Manager agree, of the rights and obligations of the Private Owner as the Manager of the Company, and all references in this Agreement to the Private Owner, in its capacity as Manager of the Company, shall be deemed to be references to the successor Manager so appointed by the Initial Member, (ii) without limitation of Section 13.5, the Initial Member shall have the right to determine, in its sole discretion, the extent, terms and conditions of the appointment of any such successor Manager, including as to compensation (whether from the Initial Member or the Company), indemnification by the Company, term of appointment and removal rights, in each case without the necessity for any consent from the Private Owner or any other Person, and (iii) the successor Manager appointed by the Initial Member shall be entitled to be paid the Interim Management Fee or Management Fee (or, in each case, such portion thereof as the Initial Member and the successor Manager agree) in accordance with the terms of this Agreement and the Custodial and Paying Agency Agreement. The removal of the Private Owner as the Manager shall not relieve the Private Owner of (x) any of the liabilities and/or obligations of the Private Owner as Manager to the extent required under the terms of this Agreement to have been paid and/or performed prior to such removal or (y) any liability the Private Owner may have arising out of any act or omission by the Private Owner as Manager. No successor to the Private Owner as Manager shall have any liability or obligation for any of the matters described in clause (x) or (y) of the preceding sentence, except as may be otherwise specified pursuant to any modification to this Agreement pursuant to Section 13.5. In connection with any such removal of the Manager, the Initial Member and any successor Manager selected by the Initial Member are each hereby authorized and empowered, as attorney-in-fact or otherwise, to execute and deliver, on behalf of and at the expense of the removed Manager (in its individual capacity), any and all documents and other instruments and to do or take any and all acts necessary or appropriate to effect the termination and replacement of such Manager and the Servicer and, in the event the Initial Member decides to retain a new Servicer, to enter into a new Servicing Agreement between the successor Manager (and/or the Company) and the Servicer or to effect an assignment of the existing Servicing Agreement from the removed Manager (in its individual capacity) to the successor Manager (and/or the Company).

(d) Cooperation To Facilitate Transfer. In the event any of the Manager, the Servicer or a Subservicer is terminated pursuant to the provisions of this Article XII, the

Manager (in its individual capacity) shall, and shall cause the Servicer (and any Subservicer) to, provide the Initial Member and any successor Manager or Servicer in a timely manner with all documents, records and data (including electronic documents, records and data) requested by the Initial Member or any successor Manager or Servicer to enable such Person to assume the responsibilities as Manager under this Agreement and any applicable Servicing Agreement, and to cooperate with the Initial Member in effecting the termination of the Servicer (or any Subservicer) or the Manager's rights as "Manager" under this Agreement, including, in each case subject to applicable requirements in the Custodial and Paying Agency Agreement, (x) the transfer within one Business Day to such account as the Initial Member may specify of all cash amounts which, at the time, shall be or should have been credited to the Collection Account or are thereafter received with respect to any Assets or Acquired Property, and (y) the transfer of all lockbox accounts with respect to which payments or other amounts with respect to the Assets are directed or the redirection of all such payments and other amounts to such account as the Initial Member may specify, and (z) the assignment to the Initial Member (or the applicable successor Manager or Servicer as indicated by the Initial Member) of the right to access all such lockbox accounts, the Collection Account and any other account into which Asset Proceeds or Borrower escrow payments are deposited or held. The Manager (in its individual capacity) shall be liable for all costs and expenses incurred by the Initial Member or the Company (x) associated with the complete transfer of the Servicing data, (y) associated with the completion, correction or manipulation of Servicing data as may be required to correct errors or insufficiencies in the Servicing data to enable the Initial Member and any successor Manager and successor Servicer (and Subservicers) to service the Assets and Acquired Property properly and effectively, and (z) to retain and maintain the services of a successor Manager and/or successor Servicer (and any Subservicers), it being understood that, as to the compensation to be paid to the successor Manager (and Servicing fees due and payable to the Servicer or any Subservicer engaged by or through such successor Manager), the removed Manager shall be responsible only for the portion of such compensation and fees that, as of any particular Distribution Date, are in excess of the Management Fee payable to the successor Manager on such Distribution Date. Within a reasonable time after receipt of a written request of the Manager (in its individual capacity) for the same, the Initial Member shall provide reasonable documentation evidencing such costs and expenses, but the Initial Member's right to reimbursement of such costs and expenses (and to exercise offset rights under Section 4.6(h) on account thereof) shall not be subject to or contingent upon the provision of such documentation.

(e) Intentionally Omitted.

(f) Power of Attorney. The Company hereby irrevocably constitutes and appoints the Initial Member and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact for the purposes of this Agreement and allowing the Initial Member to perfect, preserve the validity, perfection and priority of, and enforce any Lien granted by this Agreement and, after the occurrence and during the continuance of any Event of Default or any default under any other Transaction Document, to exercise its rights, remedies and powers and privileges under this Agreement. This appointment as attorney-in-fact is irrevocable and

coupled with an interest until this Agreement is terminated and the security interests created hereby are released. Without limiting the generality of the foregoing, the Initial Member shall be entitled under this Section 12.4(f) to do any of the following if an Event of Default has occurred and is continuing: (i) ask, demand, collect, sue for, recover, receive and give receipt and discharge for amounts due and to become due under and in respect of any or all of the Assets; (ii) file any claims or take any action or proceeding in any court of law or equity that the Initial Member may reasonably deem necessary or advisable for the collection or other enforcement of all or any part of the Assets, defend any suit, action or proceeding brought against the Company with respect to any Asset, and settle, compromise or adjust any such suit, action or proceeding; (iii) execute, in connection with any sale or disposition of the Assets, any endorsements, assignments, bills of sale or other instruments of conveyance or transfer with respect to all or any part of the Assets; (iv) enforce the rights of the Company under any provision of any Servicing Agreement to the extent permitted thereunder and under the terms of this Agreement; (v) pay or discharge Taxes and Liens levied or placed on the Assets; (vi) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Assets as fully and completely as though the Initial Member were the absolute owner thereof for all purposes; and (vii) do, at the Initial Member's option and the Company's expense, at any time and from time to time, all acts and things that the Initial Member reasonably deems necessary to protect, preserve, or realize upon the Assets and the Initial Member's security interests in any Secured Assets and to effect the intent of this Agreement, all as fully and effectively as the Company might do. Anything in this Section 12.4(f) to the contrary notwithstanding, the Initial Member agrees that it shall not exercise any right under the power of attorney provided for in this Section 12.4(f) unless an Event of Default shall have occurred and be continuing.

12.5. Interim Management Fee and Interim Servicing Fee; Management Fee.

(a) Calculation and Payment. For each Due Period (and as determined separately for each Group of Assets), (i) with respect to any Group of Assets for which the Servicing Transfer Date has not occurred as of the first day of such Due Period, the Company shall pay the Interim Management Fee to the Manager and the Interim Servicing Fee to the Initial Member, and (ii) for each Group of Assets for which the Servicing Transfer Date has occurred as of (or occurs on) the first day of such Due Period, the Company shall pay the Management Fee to the Manager. Each such payment of any Interim Servicing Fee, Interim Management Fee and Management Fee shall be made in the manner described in the Custodial and Paying Agency Agreement (and, as applicable, on the Distribution Date with respect to the applicable Due Period, provided, that to the extent there are insufficient funds in the Distribution Account to pay any applicable Management Fee or Interim Management Fee then payable (including on account of any prior deferred amounts), the amount of such deficiency shall be added to the Management Fee or Interim Management Fee, as applicable, that is due on the next succeeding Distribution Date, without the accrual of interest and without the Company being deemed to be in breach of any obligation to pay any such Management Fee or Interim Management Fee, until all such fees so deferred and unpaid have been paid in full).

(b) Manager Right to Direct Payments; Removal of Manager. Subject to the foregoing requirements (and to all limitations on payments to the Manager, and rights of the Initial Member, as set forth in each of the Transaction Documents), the Manager may, by delivery of written notice to the Paying Agent (with a copy to the Initial Member) direct payment of all or any portion of the Interim Management Fee and the Management Fee to the Servicer if, and only for so long as, (i) there shall not have occurred and be continuing any Event of Default, or any Insolvency Event with respect to the Servicer, (ii) such Servicer is and remains an Affiliate of the Manager, (iii) such assignment is on fair terms and would not result in the Private Owner being in violation of any of its obligations under the Transaction Documents (including the obligation to be and remain a Special Purpose Entity), and (iv) such Servicer has no right (and expressly disclaims any such right) to enforce against the Paying Agent or the Company (or any Person other than the Manager) any such right granted by the Manager for the Servicer to so receive such payment of all or any portion of the Interim Management Fee or the Management Fee. Notwithstanding the foregoing, in the event the Manager is removed and replaced by the Initial Member in accordance with Section 12.4 above, the Management Fee and Interim Management Fee shall thereafter be payable to the Initial Member or successor Manager, as determined by the Initial Member pursuant to such Section 12.4.

(c) Sole Compensation of Manager. For avoidance of doubt (and without limitation of Servicing Expenses and Pre-Approved Charges expressly reimbursable pursuant to the Transaction Documents), the Management Fee and Interim Management Fee (to the extent that applicable duties are not performed by the Transferor during the Interim Servicing Period), as applicable, shall be the exclusive compensation from the Company to the Manager for performance of all obligations of the Manager in connection with the administration and management of the Company, the Servicing of the Assets, and performance of Asset Management, including for (i) at the Manager's own cost and expense (other than as to Reimbursable Company Administrative Expenses expressly payable to the Manager pursuant to the Transaction Documents and, for purposes of item (E) below, costs and expenses expressly payable by an applicable Beneficiary pursuant to the Reporting and Access Schedule), (A) making available to the Company applicable employees and other personnel, facilities, office equipment and support services pursuant to Section 3.3 hereof (including engaging any other Person for providing the same to the Company), (B) obtaining and maintaining all licenses and registrations, and taking all other required actions, with respect to the good standing, continuation and eventual dissolution of Company and each Ownership Entity pursuant to Section 4.3 and Article IX hereof, (C) with respect to any Manager that is also the Tax Matters Member, performing all obligations as such Tax Matters Member (it being understood that in no event shall the Private Owner or any Manager receive any separate compensation for serving as the Tax Matters Member), (D) developing and updating all Business Plans and Horizontal Development Plans, and otherwise monitoring the Assets (and monitoring any construction, renovation, development, exercise of remedies, foreclosure, disposition or other actions or events with respect to any Asset), and (E) complying with the Reporting and Access Schedule and all other reporting, accounting, audit and record maintenance requirements pursuant to the Transaction Documents, (ii) engaging and maintaining the Servicer, and paying or causing to be

paid, at no cost to the Company or the Initial Member (and without any reimbursement from the Company, the Initial Member or otherwise out of Asset Proceeds), all fees or other compensation payable to the Servicer or any Subservicer, (iii) obtaining and maintaining (or, as applicable, causing each Servicer and Subservicer to obtain and maintain), at no cost to the Company or the Initial Member (and without any reimbursement from the Company, the Initial Member or otherwise out of Asset Proceeds), all insurance required pursuant to Section 1 of the Insurance Schedule, (iv) performing (or causing to be performed) all Servicing and Asset Management required to be performed pursuant to the Servicing Standard set forth in Section 12.2 hereof, Section 12.3 hereof and other applicable provisions of the Transaction Documents, and (v) paying or causing to be paid, at no cost to the Company or the Initial Member (and without any reimbursement from the Company, the Initial Member or otherwise out of Asset Proceeds), all Excluded Expenses incurred by or through the Manager, the Private Owner, the Servicer, or any Subservicer (including on behalf of the Company).

12.6. Working Capital Expenses. Subject to Section 3.3 of the Contribution Agreement (with respect to the Interim Servicing Period, including as to any Interim Servicing Expenses), from and after the Closing Date (and, with respect to each Asset, from and after the Servicing Transfer Date with respect thereto), the Manager shall cause the Company to pay, from available Company funds (in the Collection Account, the Working Capital Reserve Account or any other applicable Company Account the funds of which may be used for such purpose, or otherwise through Excess Working Capital Advances funded by the Manager) all amounts due as Servicing Expenses (or, as applicable, Pre-Approved Charges), Required Funding Draws and other Working Capital Expenses in a timely manner, and in each case in accordance with applicable requirements set forth in the Custodial and Paying Agency Agreement (and, as applicable, the Contribution Agreement); provided, however, that anything to the contrary herein or in any other Transaction Document notwithstanding, the Manager shall not have an obligation to fund Excess Working Capital Advances for purposes of the payment by the Company of (i) any Pre-Approved Charges, (ii) any Servicing Expenses (or Interim Servicing Expenses) consisting of amounts required for the Company to discharge the Obligations as they become due, or to make applicable indemnification and/or reimbursement payments owing by the Company to the Initial Member, the Transferor or any other Indemnified Party under the Transaction Documents, in each case to the extent such amounts would not constitute Servicing Expenses (or Interim Servicing Expenses) but for application of clause (vii) of the definition of Servicing Expenses (or clause (vi) of the definition of Interim Servicing Expenses), or (iii) any specific Servicing Expense relating to an Asset to the extent that the Manager has reasonably determined in accordance with the Servicing Standard that such Servicing Expense, if so paid, when combined with all unreimbursed previous Servicing Expenses, Permitted Vertical Completion Expenses, Permitted Horizontal Development Expenses, Required Funding Draws and Pre-Approved Charges with respect to such Asset (and any remaining Interim Servicing Expenses or other amounts owing to the Initial Member (including as Transferor) with respect to its Servicing of such Assets during the Interim Servicing Period pursuant to Sections 2.3, 2.4, 3.1 and 3.3 of the Contribution Agreement), would not ultimately be recoverable from the Asset Proceeds for such

Asset. All Working Capital Expenses (and Excess Working Capital Advances for the funding of the same) shall be reimbursed in accordance with the Custodial and Paying Agency Agreement.

12.7. Use of Asset Proceeds.

(a) Permitted Payments. Subject to Section 12.7(b), each month the Asset Proceeds shall be utilized and distributed in the manner set forth in the Custodial and Paying Agency Agreement following receipt by the Paying Agent from the Manager of the Cash Flow and Distribution Report required to be provided under Section 7.4 (and Section 3(b) of the Reporting and Access Schedule).

(b) Costs That Are Not Reimbursable. Notwithstanding anything else to the contrary contained herein or in any other Transaction Document, without the prior written consent of the Initial Member (which may be withheld, conditioned or delayed in the Initial Member's sole and absolute discretion), in no event may the Manager deduct from the Asset Proceeds, or otherwise use Asset Proceeds to reimburse itself or the Servicer or any Subservicer or pay for, any Excluded Expenses (all of which shall be borne by the Manager in its individual capacity).

12.8. Collection Account. On the Closing Date, the Manager shall cause the Company to establish the Collection Account with the Paying Agent in accordance with the Custodial and Paying Agency Agreement.

12.9. Distribution Account. On the Closing Date, the Manager shall cause the Company to establish the Distribution Account with the Paying Agent in accordance with the Custodial and Paying Agency Agreement.

12.10. Intentionally Omitted.

12.11. Working Capital Reserve Account.

(a) Establishment of Working Capital Reserve Account. On the Closing Date, the Manager shall cause the Company to establish the Working Capital Reserve Account with the Paying Agent for the exclusive purpose of holding the Working Capital Reserve to cover Working Capital Expenses to the same extent, and in the same order of priority, as are applicable to Asset Proceeds in accordance with the terms hereof and the Custodial and Paying Agency Agreement (and, as of any date of determination, the amount of the Working Capital Reserve shall be deemed to be the amount of the funds in such Working Capital Reserve Account).

(b) Funding Working Capital Reserve. On the Closing Date, the Initial Member and the Private Owner shall fund the Working Capital Reserve in an initial principal amount of the WCR Account Deposit as follows: the Initial Member shall deposit cash in the amount of the Initial Member WCR Account Deposit, and the Private Owner shall deposit cash in the amount of the Private Owner WCR Account Deposit, which deposits shall be made in

accordance with the applicable provisions of the Private Owner Interest Sale Agreement. The Company may fund the Working Capital Reserve Account with Asset Proceeds in accordance with the terms of the Custodial and Paying Agency Agreement and must maintain certain deposit amounts to comply with the Working Capital Reserve Floor, the Working Capital Reserve Target and Working Capital Reserve Replenishment Cap established under the Custodial and Paying Agency Agreement.

(c) Use of Working Capital Reserve. The Manager or (in relation to its interim Servicing obligations) the Initial Member (including as Transferor) may direct the Company to withdraw funds from the Working Capital Reserve Account (including, as applicable, through release of such funds into the Collection Account) only to cover Working Capital Expenses, Permitted Vertical Completion Expenses and Permitted Horizontal Development Expenses in accordance with Section 3.6 of the Custodial and Paying Agency Agreement. The Manager shall not permit withdrawals from the Working Capital Reserve Account for any other purpose; provided, that, to the extent expressly permitted in the Custodial and Paying Agency Agreement, the Manager may cause the release of funds from the Working Capital Reserve Account (including for purposes of distributions to the Members) in accordance with, and subject to, the terms of the Custodial and Paying Agency Agreement. With respect to any Group of Assets, on the Servicing Transfer Date, the Initial Member shall be reimbursed from the Working Capital Reserve Account (including, as applicable, through release of such funds into the Collection Account) for an amount equal to all Working Capital Expenses paid by it (including as the Transferor) with respect to such Group of Assets at any time after the Cut-Off Date and on or before such Servicing Transfer Date (to the extent the same have not been otherwise reimbursed pursuant to the Contribution Agreement or Custodial and Paying Agency Agreement).

(d) Permitted Investments. The Working Capital Reserve shall be invested in Permitted Investments in accordance with the Custodial and Paying Agency Agreement.

12.12. Intentionally Omitted.

12.13. Approval of Horizontal Development.

(a) Horizontal Development Approval Request. The Company may, based on determinations of the Manager and with the consent of the Private Owner, from time to time submit a request for approval by the Initial Member of Horizontal Development of specific Acquired REO Property. Any such request (a “**Horizontal Development Approval Request**”), must be in writing signed by each of the Manager and the Private Owner delivered to the Initial Member specifying in reasonable detail, for such Acquired REO Property, the proposed Horizontal Development, including attached thereto the applicable Horizontal Development Plan for such Horizontal Development. Within forty-five Business Days after receipt of a Horizontal Development Approval Request and related Horizontal Development Plan, the Initial Member in its sole discretion, shall (i) approve the submitted Horizontal Development Plan, (ii) provide the

Manager and Private Owner with a description of the changes required to obtain such approval, or (iii) indicate to the Manager and the Private Owner that the plan will not be approved (and a failure of the Initial Member to provide one of the foregoing responses within forty-five Business Days after receipt of the applicable Horizontal Development Plan shall be deemed as such indication that the Horizontal Development Plan will not be approved). In connection with its review of any such Horizontal Development Plan, the Initial Member may, at the Company's expense, engage the Verification Contractor to review such Horizontal Development Plan and provide to the Initial Member recommendations with respect thereto (it being understood that no such recommendation shall be binding on the Initial Member). No Horizontal Development Plan may be modified without the approval of the Initial Member.

(b) Use of Funds for Horizontal Development. Once an Horizontal Development Plan has been approved, the Company will be permitted, to the extent that Company funds are available for such purpose as provided in Section 12.14 hereof, to incur expenses and hire subcontractors as necessary up to the approved amount and based on the approved schedule in such Horizontal Development Plan (and an amount of funds equal to the amount so included in the approved budget shall be deemed allocated for purposes of the applicable Permitted Horizontal Development). Disbursement of Company funds shall be made by the Paying Agent, upon the direction of the Manager on a monthly basis (with one collective disbursement of funds each month with respect to each Horizontal Development Plan), subject to and following submission of invoices and other relevant evidence (including evidence of completion of applicable work) to the Verification Contractor and applicable authorization by the Verification Contractor for release (by the Paying Agent) of applicable Company funds following the Verification Contractor's review and verification with respect to such invoices (and other evidence) and applicable compliance with the Horizontal Development Plan.

12.14. Other Uses of Company Funds. Subject to the terms and conditions herein and in the other Transaction Documents, the Company shall use Asset Proceeds, Excess Working Capital Advances, Discretionary Funding Advances, and funds in the Working Capital Reserve Account, the Collection Account or any other Company Account solely for such purposes as are expressly permitted herein, in the Custodial and Paying Agency Agreement and in the other applicable Transaction Documents. Accordingly, except as may be required in connection with Required Funding Draws, (i) Horizontal Development of or with respect to an Asset (including by the Company or by any Borrower under a Loan) with use of Company funds shall be limited to Permitted Horizontal Development (of Acquired REO Property) and related Permitted Horizontal Development Expenses, and (ii) Vertical Development of or with respect to an Asset (including by the Company or by any Borrower under a Loan) with use of Company funds shall be limited to Substantially Complete Vertical Development (and related Permitted Vertical Completion Expenses) with respect to ADC Assets (it being understood that no such Horizontal Development or Vertical Development shall be permitted with respect to CRE Assets) funded, in each case, from the Collection Account, the Working Capital Reserve Account and, if applicable, Discretionary Funding Advances pursuant to the applicable provisions herein and in the Custodial and Paying Agency Agreement and the other Transaction Documents, no Horizontal

Development or Vertical Development shall be permitted. The foregoing notwithstanding, at the request of the Manager and the Private Owner, and subject to the specific written approval of the Initial Member (which approval may be granted or withheld in the sole discretion of the Initial Member, the Company may, on an Asset-by-Asset basis, fund or incur additional expenses with respect to an Asset (not otherwise expressly permitted to be funded by the Company), including for purposes of the completion (by the applicable Borrower under a Loan or by the Company with respect to Acquired REO Property) of Horizontal Development or Vertical Development that is not Substantially Complete (or any Vertical Development of CRE Assets) (to the extent the Company is not otherwise required to fund the same pursuant to Required Funding Advances). Any such request by the Manager and the Private Owner to the Initial Member shall specify in reasonable detail the applicable requested expenses (including an applicable budget and timeline with respect thereto) and requested sources (including any applicable use of funds in the Collection Account, the Working Capital Reserve Account and any right or obligation to make Excess Working Capital Advances or Discretionary Funding Advances with respect thereto), and any such requested expenses and sources shall be permitted only to the extent expressly set forth in the applicable written approval, if any, by the Initial Member.

12.15. Certain Servicing and Asset Administration Decisions. The Manager shall have full power and authority, acting alone or through the Servicer or any Subservicer, to cause to be done any and all things in connection with the Servicing that the Manager may deem necessary or desirable, and cause to be made all Servicing decisions in its reasonable discretion, subject to its obligation to comply with the Servicing Standard and other applicable provisions herein and in the other Transaction Documents. Upon the occurrence of an event of default under any of the Asset Documents, but subject to the other terms and conditions of this Agreement (including the Servicing Standard), the Manager shall cause to be determined the response to such event of default and course of action with respect to such event of default, including (i) the selection of attorneys to be used in connection with any action, whether judicial or otherwise, to protect the interests of the Company in the Asset and the Collateral, (ii) the declaration and recording of a notice of such default and the acceleration of the maturity of the Asset, (iii) the institution of proceedings to foreclose under the Asset Documents securing the Asset pursuant to the power of sale contained therein or through a judicial action, or to appoint a receiver, (iv) the institution of proceedings against any Obligor, (v) the acceptance of a deed in lieu of foreclosure, (vi) the purchase of the real property Collateral at a foreclosure sale or trustee's sale or the purchase of the personal property Collateral at a Uniform Commercial Code sale, and (vii) the institution or continuation of proceedings to obtain a deficiency judgment against such Borrower or any Obligor. Notwithstanding any provision to the contrary herein, the Manager shall not, and shall not cause the Servicer or any Subservicer to, take any action that is inconsistent with or prohibited by the terms of the Custodial and Paying Agency Agreement, in each case without the prior written consent of the Initial Member.

12.16. Management and Disposition of Collateral. Subject to the other terms and conditions of this Agreement (including the Servicing Standard), the Manager shall have full power and authority, acting alone or through the Servicer and any Subservicer, to cause to be

done any and all things in connection with the Manager's management of any Collateral or Acquired Property, that the Manager may deem necessary or desirable, and cause to be made all asset management decisions in its reasonable discretion.

12.17. Acquisition of Collateral.

(a) If title to any Collateral that constitutes real property is to be acquired by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, or otherwise, title to such Acquired REO Property shall be taken and held in the name of an Ownership Entity; provided, however, that for any Acquired REO Property with respect to which there exists any Environmental Hazard, the Ownership Entity that holds such Acquired REO Property may hold title only to such Acquired REO Property (and no other Acquired REO Property).

(b) Nothing in this Article XII or anything else in this Agreement shall be deemed to affirmatively require the Manager to cause the Company to acquire all or any portion of any Acquired REO Property with respect to which there exists any Environmental Hazard. Prior to acquisition of title (whether by foreclosure, deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, or otherwise) to any Acquired REO Property, the Manager shall (or, with respect to any Acquired REO Property included in the SFR Assets, may, but shall not be required to) cause a Site Assessment to be commissioned with respect to such Acquired REO Property; provided, that the Company may rely on a third-party Site Assessment conducted within one year prior to acquiring title so long as the Company has obtained all relevant updates within one hundred and eighty days prior to acquiring title, and taken applicable further action, so as to be deemed to have satisfied the United States Environmental Protection Agency's "All Appropriate Inquiries" standards, set forth in 40 C.F.R. § 312, for meeting the "Bona Fide Prospective Purchaser" and "Innocent Purchaser" defenses under the Superfund statute, 42 U.S.C. §§ 9601, 9607. The costs of any Site Assessment (or relevant updates) conducted or obtained pursuant to the foregoing shall be deemed to be Servicing Expenses (or Interim Servicing Expenses) as long as such costs were not paid to any Affiliate of the Manager, or any Affiliate of the Servicer or any Subservicer.

(c) The Company shall be the sole member of each Ownership Entity and each Ownership Entity shall be wholly owned by the Company. The purposes of each Ownership Entity shall be to hold the Acquired Property pending sale, to complete applicable permitted construction of any such Acquired Property and to operate the Acquired Property as efficiently as possible in order to minimize financial loss to the Company and the Initial Member and to sell the Acquired REO Property as promptly as practicable in a way designed to minimize financial loss to the Company and the Initial Member.

(d) In connection with any such acquisition of title to Acquired Property by the Company (or any Ownership Entity) occurring after the Closing Date (by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial

Code, or otherwise), the Company shall obtain (or shall have obtained), during the period commencing six months prior to such acquisition and ending on the earlier of (i) sixty days after such acquisition or (ii) such earlier date as may be required in connection with the relevant exercise of remedies so as to comply with applicable Law and preserve rights to collect any Deficiency Balance), an updated Appraisal for determination of the Appraised Value (to serve as the basis for the initial Net Fair Value) of such Acquired Property.

12.18. Administration of Acquired REO Properties. The following terms and conditions shall be binding on the Company and the Ownership Entities (and on the Manager's performance of its obligations hereunder) with respect to any Acquired REO Properties, in addition to any other terms and conditions concerning the same subject matter set forth in this Agreement and any of the other Transaction Documents:

(a) Insurance. With respect to each Acquired REO Property, the Manager shall cause the applicable Ownership Entity to maintain the applicable insurance required pursuant to (and the Manager shall otherwise comply, and cause the applicable Ownership Entity to comply, with the obligations set forth in) the Insurance Schedule.

(b) Leasing Covenants. With respect to each Acquired REO Property, the Manager shall cause the applicable Ownership Entity to (i) perform the obligations that such Ownership Entity is required to perform under the leases to which it is a party in all material respects and (ii) enforce, in accordance with commercially reasonable practices for properties similar to the applicable Acquired REO Property, the material obligations to be performed by the tenants under such leases.

(c) Zoning. The Manager shall not permit any Ownership Entity to initiate or consent to any zoning reclassification of any portion of the Acquired REO Property owned by such Ownership Entity, or use or permit the use of any portion of an Acquired REO Property in any manner that could result in such use (taking into account any applicable variance obtained in accordance with the Servicing Standard) becoming a non-conforming use under any zoning ordinance or any other applicable land use Law, rule or regulation, without the prior consent of the Initial Member.

(d) No Joint Assessment. The Manager shall not permit any Ownership Entity to suffer, permit or initiate the joint assessment of Acquired REO Property (i) with any other real property constituting a Tax lot separate from such Acquired REO Property, and (ii) with any portion of a Acquired REO Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any Taxes which may be levied against such personal property shall be assessed or levied or charged to such Acquired REO Property.

(e) Maintenance, Repairs and Alterations. From and after the completion of any buildings or other improvements at an Acquired REO Property, the Manager shall cause the applicable Ownership Entity to maintain such Acquired REO Property in a good and safe

condition and repair (subject to such alterations as the Manager may from time to time determine to be appropriate in accordance with the Servicing Standard and applicable requirements herein and in the other Transaction Documents) and in accordance with applicable Law.

(f) Ground Leases. With respect to any Acquired REO Property that is leased under a Ground Lease, the Manager shall cause the applicable Ownership Entity to (i) pay all rents and other sums required to be paid by the tenant under and pursuant to the provisions of the applicable Ground Lease as and when such rent or other charge is payable, and (ii) diligently and timely perform and observe all of the terms, covenants and conditions binding on the tenant under the Ground Lease. The Manager shall not permit the applicable Ownership Entity to subordinate or consent to the subordination of any Ground Lease to any mortgage, lease or other interest on or in the ground lessor's interest in the applicable Acquired REO Property without the prior consent of the Initial Member unless such subordination is required under the provisions of such Ground Lease.

(g) Additional Construction Covenants. In the event the Manager elects to cause the Company to fund any permitted construction with respect to Acquired REO Property, then the Manager shall cause each applicable Ownership Entity to pursue with diligence the construction of the Acquired REO Property owned by such Ownership Entity (i) in accordance with the construction, construction management (if any) and all other material contracts relating to such construction, and all requirements of Law, all restrictions, covenants and easements affecting such Acquired REO Property, and all applicable governmental approvals, (ii) in the case of any Substantially Complete Vertical Development, in substantial compliance with the plans and specifications therefor as in existence on the Closing Date and as thereafter modified by the Manager in its business judgment exercised in accordance with the Servicing Standard and applicable provisions in this Agreement and the other Transaction Documents, and, in the case of any Permitted Horizontal Development, in accordance with the applicable approved Horizontal Development Plan, (iii) in a good and workmanlike manner and free of defects, (iv) in a manner such that such Acquired REO Property remains free from any Liens, claims or assessments (actual or contingent), in each case for any material, labor or other item furnished in connection therewith, and (v) in conformance with the all other applicable requirements set forth herein and in the other Transaction Documents.

(h) Acquired REO Property Generally. Notwithstanding any other provision of this Section 12.18 to the contrary, (i) in operating, managing, leasing or disposing of any Acquired REO Property, the Manager shall act in the best interests of the Company, and the Members and creditors of the Company (including the FDIC in its various capacities) and in accordance with the Servicing Standard, and (ii) without relieving the Manager of any obligation elsewhere in this Agreement or any other Transaction Document, the Manager shall not be required to act in accordance with a specific provision of this Section 12.18 (other than requirements to obtain and maintain insurance) if such action is (A) not in the best interests of Company and the Members and creditors of the Company (including the FDIC in its various

capacities), as determined by the Manager in the exercise of its reasonable discretion, or (B) not in accordance with the Servicing Standard.

(i) Reports. The Manager shall furnish to the Initial Member such reports regarding the construction, leasing and sales efforts of or relating to the Acquired REO Property as the Initial Member shall reasonably request. Without limitation of the foregoing, the Monthly Reports shall include applicable reporting, in form and substance satisfactory to the Initial Member, with respect to all permitted Vertical Development and Horizontal Development, including, as applicable, a tracking of progress of construction and use of funds with a comparison thereof to the approved Horizontal Development Plan (in the case of Permitted Horizontal Development) and any applicable Business Plan (including any update thereto) (in the case of any other permitted Vertical Development or Horizontal Development).

12.19. Releases of Collateral. The Manager is authorized to cause the release or assignment of any Lien granted to or held by the Company on any Collateral upon payment of any Loan in full and satisfaction in full of all of the secured obligations with respect to a Loan, upon receipt of a discounted payoff as payment in full of a Loan, or upon a sale of the Loan to any Person, in each case as and to the extent permitted hereunder.

12.20. Clean-Up Call Rights.

(a) The Initial Member shall have the right, exercisable in its sole and absolute discretion, to require the liquidation and sale, for cash consideration, of any remaining Assets held by the Company or any Ownership Entity at any time after the earlier to occur of (i) the seventh anniversary of the Closing Date and (ii) the date on which the then Unpaid Principal Balance is 10.0% or less of the Unpaid Principal Balance as of the Cut-Off Date as set forth on the Asset Schedule (such right to cause such liquidation and sale at such time, the "Clean-Up Call").

(b) In order to exercise its rights under this Section 12.20, the Initial Member shall give notice in writing to the Manager, setting forth the date by which the remaining Assets are to be liquidated by the Company, which date shall be no less than one hundred and fifty calendar days after the date of such notice.

(c) The Manager shall proceed expeditiously to cause to be commenced the liquidation of the remaining Assets by means of sealed bid sales to Persons other than Affiliates of the Company, the Servicer or any Subservicer, or Affiliates of the Servicer or any Subservicer. The selection of any financial adviser or other Person, broker or sales agent retained for the liquidation of the remaining Assets pursuant to this Section 12.20 shall be subject to the prior approval of the Initial Member, such approval not to be unreasonably withheld, delayed or conditioned as long as the fees to be charged by such financial adviser or other Person, broker or sales agent are reasonable and such Person is not an Affiliate of the Manager, the Servicer or Subservicer. In the event the remaining Assets are not liquidated by the date specified in the

notice provided by the Initial Member pursuant to Section 12.20(b), the Initial Member shall be entitled to liquidate the remaining Assets in its discretion and the Manager shall, and shall cause the Company to, cooperate and assist with such liquidation to the extent reasonably requested by the Initial Member. In the event the Manager or any Affiliate thereof desires to bid to acquire the remaining Assets, then the Initial Member shall be entitled to liquidate the remaining Assets in its discretion. In the event the Initial Member undertakes to liquidate the remaining Assets pursuant to this Section 12.20(c), all costs and expenses incurred by it shall be deducted from the Asset Proceeds and retained by the Initial Member and the remaining Asset Proceeds shall be distributed in accordance with Section 9.2.

12.21. Certain Transfer Obligations. Without limitation of other obligations of the Manager with respect to the Contribution Agreement, the Manager agrees to cause the Company to comply with its obligations under the Contribution Agreement with respect to preparing, furnishing, executing and recording transfer documents with respect to the Assets (including special warranty deeds to convey the real property subject to any contract for deed and any Acquired Property to the Company). Any title curative work with respect to such Assets shall be at the Company's sole expense, provided that, as set forth in Section 4.10 of the Contribution Agreement, such expense shall constitute a Pre-Approved Charge.

12.22. Seller Financing. The Manager may propose to the Initial Member that the Company provide one or more seller financed loans (i.e., the seller accepts a secured promissory note in lieu of cash in payment of all or a portion of the sales price of Acquired Property ("**Seller Financed Loans**") to purchasers of Acquired Property (or any portion thereof) (any borrower with respect to any such seller financed loan is referred to herein as an "**SFL Borrower**" and any guarantor, indemnitor or other Person having any obligations under the applicable Seller Financed Loan documents is referred to herein as an "**SFL Obligor**"). In such case, the Manager shall submit to the Initial Member at least sixty days prior to the first such proposed closing date of a Seller Financed Loan for the approval of the Initial Member (in its sole and absolute discretion), a written proposal (the "**SFL Proposal**") to offer such seller financing by the Company to any one or more SFL Borrowers, which SFL Proposal shall identify all material terms and conditions of the proposed Seller Financed Loan (or program for multiple such Seller Financed Loans), including (i) the interest rate, (ii) the loan term, (iii) the loan-to-value ratio, (iv) the underwriting criteria for establishing the creditworthiness for any SFL Borrowers and SFL Obligors, (v) the form of Seller Financed Loan documents, which forms shall be similar to those of other prudent lenders financing collateral of similar type and size of the Seller Financed Loans collateral (the "**SFL Collateral**"), and including a form loan commitment letter specifying the conditions of making such Seller Financed Loan, (vi) the identity of the proposed servicer (if other than the Servicer; provided, that in such case, such servicer executes a servicing agreement in the form of the Servicing Agreement and which complies with the Servicing Standard, this Agreement, and the terms of the other Transaction Documents), (vii) the amount and source of payment of any applicable servicing fee, and (viii) any other term or condition that the Initial Member may determine in its reasonable discretion is necessary for it to consider approving or disapproving such SFL Proposal. Any such SFL Proposal and related specific items may include

options or ranges as determined to be appropriate by the Manager for purposes of obtaining applicable approval permitting multiple Seller Financed Loans. If the Initial Member shall, in its sole and absolute discretion, approve the proposed SFL Proposal, the Manager may cause the Company to provide applicable Seller Financed Loans meeting the requirements and conditions set forth in such approved SFL Proposal (and any applicable additional conditions required by the Initial Member in connection with their applicable approval). Each such Seller Financed Loan shall be evidenced by a promissory note (a “**Seller Financed Loan Note**”) payable to the order of the Company that is secured by a mortgage, or a deed of trust, as applicable, in either case in recordable form for the jurisdiction in which the SFL Collateral is located, to secure the Seller Financed Loan Note. The Manager shall, or shall cause the Company to, promptly deliver the original Seller Financed Loan Note and the other original Seller Financed Loan documents to the Custodian. The Initial Member shall have thirty days from the time the SFL Proposal is delivered by the Manager according to Section 13.6 hereof to approve or disapprove such SFL Proposal. If the Initial Member shall not have provided a response within such thirty day period, such SFL Proposal shall be deemed disapproved by the Initial Member. Furthermore, any such approval of an SFL Proposal for multiple Seller Financed Loans, if granted, may thereafter be revoked by the Initial Member on a prospective basis (as to Future Seller Financed Loans not yet entered into by the Company pursuant to such applicable SFL Proposal).

ARTICLE XIII **Miscellaneous**

13.1. Waiver of Rights of Partition and Dissolution. Each Member (other than the Initial Member) hereby irrevocably waives all rights it may have at any time to maintain any action for division or sale of the Company Property as now or hereafter permitted under any applicable Law. Each Member (other than the Initial Member) hereby waives and renounces its rights to seek a court decree of dissolution or to seek the appointment of a court receiver for the Company as now or hereafter permitted under any applicable Law.

13.2. Entire Agreement; Other Agreements.

(a) This Agreement, together with the Annexes and Exhibits hereto and the other Transaction Documents (and any other agreements expressly contemplated hereby or thereby), constitutes the entire agreement and understanding, and supersedes all other prior agreements and understandings, both written and oral, between the Members or their respective Affiliates or any of them and the Company with respect to the subject matter hereof; provided, however, that any confidentiality agreement between the FDIC and the Private Owner or any Affiliates of the Private Owner (including by way of joinder) with respect to the transaction that is the subject of this Agreement and the other Transaction Documents (including each Confidentiality Agreement) shall remain in full force and effect to the extent provided therein, except that the Company’s rights under Article VI of the Contribution Agreement shall not be deemed a repurchase option for purposes of Section 2 of each Confidentiality Agreement (or any corresponding provision of any other such confidentiality agreement). The Members

acknowledge that certain agreements or other instruments are being (or were) executed by the Company, the Members and/or Affiliates of the Members simultaneously or otherwise in connection with the execution of this Agreement and that notwithstanding anything to the contrary contained in the foregoing sentence of this Section 13.2, such agreements shall be effective and binding on the parties thereto in accordance with the terms thereof.

(b) By executing this Agreement, the Manager agrees to be bound by the terms of the Transaction Documents pursuant to which the Manager is expressly required to take or omit from taking certain actions, as in each case, with the same effect as if the Manager were a party to such Transaction Document.

13.3. Third Party Beneficiaries. Each of the FDIC and the Receiver is hereby constituted an express third party beneficiary of this Agreement with respect to those provisions of this Agreement which expressly grant rights or benefits to such Person, and, as such, each is entitled to enforce such provisions of this Agreement as if such Person were a party hereto. Each Person ceasing to constitute the “Initial Member” under this Agreement (as a result of a Disposition of its LLC Interest) shall remain a third-party beneficiary of this Agreement with respect to Section 4.6 and, as such is entitled to enforce Section 4.6 as if such Person remained a party hereto. For the avoidance of doubt, in furtherance and without limitation of the preceding sentence, each Person comprising the “Initial Member” pursuant to the last sentence of the second paragraph of Section 4.6(a), and each other Indemnified Party (other than a Person that is an Indemnified Party solely by being a Related Person of another Indemnified Party), may enforce the provisions of Section 4.6 with respect to any Related Person in relation to itself (in its own name and/or in the name of and/or otherwise on behalf of such other Related Person). Subject to Section 11.1 and to the preceding provisions of this Section 13.3, (A) this Agreement is for the benefit solely of, and shall inure solely to the benefit of, the Members and the Company, and (B) this Agreement is not enforceable by any Person (including any creditor of the Company or of any Member) other than the Members and the Company.

13.4. Expenses. Except as may otherwise be expressly provided herein or in any other Transaction Document, each Member shall pay its own expenses (including legal, accounting investment banker, broker or finder’s fees) incident to the negotiation and execution of this Agreement and the other Transaction Documents, the consummation of the transactions contemplated by Section 2.3 hereof and the performance of its obligations hereunder.

13.5. Waivers and Amendments.

(a) This Agreement may be amended or modified, and the terms hereof may be waived, only by a written instrument signed by all Members; provided, however, that, following an Event of Default, from time to time this Agreement may be amended or modified and/or the terms hereof may be waived, in each case, by a written instrument signed only by the Initial Member as long as such amendment, modification or waiver would not (i) adversely affect the Private Owner’s or the Company’s limited liability status; (ii) adversely affect the Private

Owner's share of the Company's distributions, income, gains or losses; (iii) impose on the Private Owner any additional obligations or (iv) amend Section 3.13 or this Section 13.5; provided further, that in no event shall any amendment, modification or waiver, limit or otherwise adversely affect the rights or benefits expressly granted in this Agreement to (x) any Person comprising the "Initial Member" pursuant to the last sentence of the second paragraph of Section 4.6(a) (and/or any other Related Persons in relation to such Person) without the express written consent of such Person so comprising the "Initial Member" or (y) a third party beneficiary of this Agreement (to the extent such third party beneficiary is, and remains, a third party beneficiary pursuant to Section 13.3 above), and/or any Related Person in relation to such third party beneficiary, without the express written consent of such third party beneficiary. Except where a specific period for action or inaction is provided herein, no failure on the part of a Person to exercise, and no delay on the part of a Person in exercising, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of such Person of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) Intentionally Omitted.

(c) Notwithstanding anything to contrary contained elsewhere in this Agreement (including the foregoing Section 13.5(a)) or in any other Transaction Document), this Agreement may be amended or modified by a written instrument signed only by the Initial Member to the extent determined by the Initial Member in good faith to be necessary or desirable in order to facilitate any Disposition by the Initial Member of only a portion of the Initial Member Interest, or a Disposition by the Initial Member of the entire Initial Member Interest to more than one Person, including to provide for more than two Persons being members of the Company, provided that no such amendment or modification shall (i) adversely affect the Private Owner's or the Company's limited liability status; (ii) adversely affect the Private Owner's share of the Company's distributions, income, gains or losses; (iii) impose on the Private Owner any additional obligations or (iv) amend Section 3.13 (other than to the extent that such amendment or modification amends or modifies which member or members of the Company shall constitute the "Initial Member" hereunder) or this Section 13.5.

13.6. Notices. All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be given by certified or registered mail, postage prepaid, by delivery by hand or by nationally recognized courier service, or by electronic mail (followed up by a hard copy delivered through an alternate manner permitted under this Section 13.6), in each case mailed or delivered to the applicable address or electronic mail address specified in, or in the manner provided in, this Section 13.6. All such notices, requests, demands and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt (or refusal thereof) by the relevant party hereto and (ii) (A) if delivered by hand or by nationally recognized courier service, when signed for (or refused) by or on behalf of the

relevant party hereto, and (B) if delivered by electronic mail (which form of delivery is subject to the provisions of this paragraph), when delivered and capable of being accessed from the recipient's office computer, provided, however, that any notice, request, demand or other communication that is received other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder. From time to time, any party may designate a new address for purposes of notice to it hereunder by notice to such effect to the other parties hereto in the manner set forth in this Section 13.6.

If to the Company, to:

2011-SIP-2 Venture, LLC
4601 College Boulevard
Suite 300
Leawood, KS 66211
Attention: Ryan Anderson
Facsimile: [REDACTED]
E-mail Address: [REDACTED]

with a copy to:

Greenberg Traurig
1750 Tysons Boulevard
Suite 1200
McLean, VA 22102
Attention: Thomas Galli
Facsimile: [REDACTED]
E-mail Address: [REDACTED]

If to the Initial Member, to:

Assistant Director - Structured Transactions
Federal Deposit Insurance Corporation
550 17th Street, NW (Room F-7015)
Washington, D.C. 20429-0002
Attention: Ralph Malami
E-mail Address: rmalami@fdic.gov

with a copy to:

Supervisory Counsel
FDIC Legal Division
Litigation and Resolutions Branch, Receivership Section
Special Issues Unit
3501 Fairfax Drive (Room D-7102)
Arlington, Virginia 22226
Attention: Kathleen Russo
E-mail Address: krusso@fdic.gov

If to the Private Owner (including in its role as Manager and/or Tax Matter Member), to:

SIP PO, LLC
4200 W. 115th Street
Suite 100
Leawood, KS 66221
Attention: Ryan Anderson and Kirk Lambright
Facsimile: [REDACTED]
E-mail Address: [REDACTED]

with a copy to:

Greenberg Traurig
1750 Tysons Boulevard
Suite 1200
McLean, VA 22102
Attention: Thomas Galli
Facsimile: [REDACTED]
E-mail Address: [REDACTED]

13.7. Counterparts; Facsimile Signatures.

(a) This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all parties hereto.

(b) This Agreement and any amendments hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an

original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No signatory to this Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

13.8. Successors and Assigns. Except as otherwise specifically provided in this Agreement (including in Article VIII), this Agreement shall be binding upon and inure to the benefit of the Members and the Company and their respective Successors and assigns. Without limitation of Section 8.4, this Agreement, as in effect on the date that any particular Person shall cease to be Member, shall continue to bind such Person in relation to the period during which it was Member.

13.9. Compliance With Law; Severability.

(a) Compliance With Law. Except as otherwise specifically provided herein, each party to this Agreement shall obey and comply with all applicable Laws, as they may pertain to such party's performance of its obligations hereunder.

(b) Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 13.9(b) is intended to, or shall, limit (1) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 13.11.

13.10. Power of Attorney.

(a) The Private Owner does hereby constitute and appoint the Manager as its true and lawful representative and attorney-in-fact, in its name, place and stead to make, execute, sign, acknowledge, deliver or file any certificate, document or other instrument that the Private Owner is required to execute and deliver pursuant to clause (i), (ii), (iii) or (iv) of Section 4.3 hereof. The foregoing notwithstanding, the Manager shall not have any right, power or authority to amend or modify this Agreement. The power of attorney granted hereby is coupled with an interest and shall, unless revoked pursuant to Section 13.10(c), (i) survive and not be affected by the subsequent death, incapacity, disability, dissolution, termination or bankruptcy of the Private Owner granting the same or the transfer of all or any portion of the Private Owner Interest and (ii) extend to the Private Owner's Successors, assigns and legal representatives.

(b) The Company hereby grants to the Manager a limited power of attorney to execute all documents on its behalf in accordance with the Servicing Standard set forth above and as may be necessary to effectuate the Manager's obligations under Article XII until such time as the Company revokes said limited power of attorney.

(c) Revocation of any power of attorney granted pursuant to Section 13.10(a) or limited power of attorney granted pursuant to Section 13.10(b) shall occur in the event of, and take effect upon, (i) the receipt by the Manager of written notice thereof from the Initial Member, or (ii) removal of the Manager in accordance with the terms of this Agreement; provided, however, in the event of such removal, any such power of attorney shall thereafter automatically be vested in the successor or replacement Manager appointed in accordance with this Agreement.

13.11. Governing Law. THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAWS OF ANOTHER JURISDICTION, AND EACH PARTY TO THIS AGREEMENT UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT. In the event of a direct conflict between the provisions of this Agreement and any mandatory, non-waivable provision of the Act, such provision of the Act shall control to the extent necessary to eliminate such direct conflict. Nothing in this Agreement shall require any unlawful action or inaction by any Person.

13.12. Jurisdiction; Venue and Service.

(a) Each of the Private Owner (for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) and the Company, in each case on behalf of itself and its Affiliates, hereby irrevocably and unconditionally:

(i) consents to the jurisdiction of the United States District Court for the Southern District of New York and to the jurisdiction of the United States District Court for the District of Columbia for any suit, action or proceeding against it (in the case of the Private Owner and for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) or any such Affiliate commenced by the Initial Member or the FDIC arising out of, relating to, or in connection with this Agreement or any other Transaction Document, and waives any right to:

(A) remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum (other than the court in which the Initial Member files the action, suit or proceeding) without the consent of the Initial Member or the FDIC, as applicable;

(B) assert that venue is improper in either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia; or

(C) assert that the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia is an inconvenient forum.

(ii) consents to the jurisdiction of the Chancery Court of the State of Delaware for any suit, action or proceeding against it (in the case of the Private Owner and for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) or any such Affiliate commenced by the Initial Member or the FDIC arising out of, relating to, or in connection with this Agreement or any other Transaction Document, and waives any right to:

(A) remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member or the FDIC, as applicable;

(B) assert that venue is improper in the Chancery Court of the State of Delaware; or

(C) assert that the Chancery Court of the State of Delaware is an inconvenient forum.

(iii) agrees to bring any suit, action or proceeding by it (in the case of the Private Owner and for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) or any such Affiliate against the Initial Member or the FDIC arising out of, relating to, or in connection with this Agreement or any other Transaction Document in only the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial

Member or the FDIC, as applicable, and agrees to consent thereafter to transfer of the suit, action or proceeding to either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia at the option of the Initial Member or the FDIC, as applicable; and

(iv) agrees, if the United States District Court for the Southern District of New York and the United States District Court for the District of Columbia both lack jurisdiction to hear a suit, action or proceeding falling within Section 13.12(a)(iii), to bring that suit, action or proceeding in only the Chancery Court of the State of Delaware, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member or the FDIC, as applicable.

(b) Each of the Private Owner (in any capacity, including as a Member and/or as the Manager) and the Company, in each case on behalf of itself and its Affiliates, hereby irrevocably and unconditionally agrees that any final judgment entered against it in any suit, action or proceeding falling within Section 13.12(a) may be enforced in any court of competent jurisdiction;

(c) Subject to the provisions of Section 13.12(d), each of the Private Owner (in any capacity, including as a Member and/or as the Manager) and the Company, in each case on behalf of itself and its Affiliates, and the Initial Member, hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 13.12(a) or Section 13.12(b) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 13.6 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 13.12(c) shall affect the right of any party to serve process in any other manner permitted by Law;

(d) Nothing in this Section 13.12 shall constitute consent to jurisdiction in any court by the FDIC (in any capacity, including as the Initial Member), other than as expressly provided in Section 13.12(a)(iii) and Section 13.12(a)(iv), or in any way limit the FDIC's (in any capacity, including as the Initial Member) right to remove, transfer, seek to dismiss, or otherwise respond to any suit, action, or proceeding against it in any forum.


13.13. Waiver of Jury Trial. EACH OF THE PRIVATE OWNER AND THE COMPANY, FOR ITSELF AND ITS AFFILIATES, AND THE INITIAL MEMBER, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION DOCUMENTS AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized on the date first above written.

Initial Member


FEDERAL DEPOSIT INSURANCE
CORPORATION IN ITS CAPACITY AS
RECEIVER FOR THE BANK OF WHITMAN,
COLFAX, WASHINGTON

By: 
Name: Jocelyn Spector
Title: Senior Capital Markets Specialist

Company

2011-SIP-2 VENTURE, LLC

By: Federal Deposit Insurance Corporation in its
capacity as Receiver for The Bank of Whitman,
Colfax, Washington, as Sole Member and Manager

By: 
Name: Jocelyn Spector
Title: Senior Capital Markets Specialist

Private Owner

SIP PO, LLC

By: MREP III 2011-2 ADC Venture LLC, as
Manager
By: Mariner Real Estate Partners III, LLC, as
Manager
By: Mariner Real Estate Management,
LLC, as Manager

By: 
Name: Kirk Lambright
Title: Chief Legal Officer

Annex I

Member Schedule

| Member | Percentage Interests | Capital Contributions to Working Capital Reserve Account |
|----------------|----------------------|--|
| Initial Member | 75% | \$500,000 |
| Private Owner | 25% | \$500,000 |

Annex II

Reporting and Access Schedule

For purposes of the LLC Operating Agreement (and any incorporation of all or any portion of this Reporting and Access Schedule therein), references in this Annex II (i) to this “Agreement” shall mean and refer to the LLC Operating Agreement, (ii) to the “Applicable Agreements” shall mean and refer to the LLC Operating Agreement (or, as applicable, the Servicing Agreement or any Subservicing Agreement), (iii) to the “Beneficiaries” shall mean and refer to the Initial Member and the FDIC (and the term “Beneficiary” shall have a correlative meaning) or (iv) to an “Event of Default” shall mean and refer to an “Event of Default” as defined in the LLC Operating Agreement.

1. Maintenance of Books and Records.

(a) Maintenance of Books and Records. (i) At all times during the continuance of the Company, the Manager shall cause to be kept and maintained (including by the Servicer and any Ownership Entity and including records transferred by the Transferor to the Company in connection with its conveyance of the Assets to the Company under the Contribution Agreement), at all times, at the Company’s chief executive office referred to in Section 2.4 of the LLC Operating Agreement, a complete and accurate set of files, books and records regarding the Assets and the Collateral, and the Company’s and any Ownership Entity’s interests in the Assets and the Collateral, including records relating to each Company Account, the Escrow Accounts, the disbursement of all Asset Proceeds and all other amounts disbursed from any Company Account. This obligation to maintain a complete and accurate set of records shall encompass all files in or subject to the Manager’s or the Company’s custody, possession or control pertaining to the Assets or the Collateral, including (except as required to be held by the Custodian pursuant to the Custodial and Paying Agency Agreement) all original and other documentation pertaining to the Assets, the Collateral, all documentation relating to items of income and expense pertaining to the Assets or the Collateral, and all of the Manager’s (and the Servicer’s and any Subservicer’s) internal memoranda pertaining to the Assets or the Collateral. The books of account shall be maintained in a manner that, and the Manager shall cause to be maintained a system of internal controls and procedures that, provides reasonable and sufficient assurance: (A) that transactions of the Company are executed in accordance with, and only in accordance with, the general or specific authorization of management of the Manager consistent with the provisions of the LLC Operating Agreement; (B) that transactions of the Company are recorded in such form and manner as will: (x) permit preparation of federal, state and local income and franchise tax returns and information returns in accordance with the LLC Operating Agreement and as required by Law; (y) permit preparation of the Company’s financial statements in accordance with GAAP and as otherwise set forth herein and the provisions of the reports required to be provided hereunder; and (z) maintain accountability for the Company’s assets, (C) regarding the prevention or timely detection of any unauthorized, and non-de minimis, acquisition, use or disposition of assets of the Company or any Ownership Entity; and (D) that any material information regarding the business or affairs of the Company is

accumulated, recorded, processed, summarized and reported to management of the Manager in a timely manner. For purposes of the preceding sentence “transactions of the Company” include (without limitation) all transfers of funds out of, into, or between, Accounts (to the extent that the Manager has discretion with respect thereto), including all determinations as to the amount of the Working Capital Reserve Target, submissions of Horizontal Development Approval Requests, and the making of any Discretionary Funding Advance or of any discretionary Excess Working Capital Advance, and the making of any sale or other Disposition of an Asset (including any Bulk Sale).

(ii) Without limiting the generality of Section 1(a)(i) above, the obligation to cause to be kept and maintained a complete and accurate set of records as set forth in Section 1(a)(i) in any event shall include the obligation to cause each of the following to be maintained (including by the Servicer or applicable Subservicers): (A)(x) accurate records reflecting the status of ground rents, Taxes, assessments, water rates, sewer rents, and other charges which are or may become a Lien upon any Acquired Property or Mortgaged Property (or any other Collateral) and the status of fire and hazard insurance coverage and all bills for the payment of such charges (including renewal premiums), and (y) with respect to any such Mortgaged Property (or other Collateral), accurate records, in reasonable detail, of all determinations as to whether (or not) to pay any of the foregoing on behalf of any Borrower, and the basis (and back-up documentation) for such determinations, (B) accurate records, in reasonable detail, of the results of site inspections of any Mortgaged Property or Acquired REO Property, (C) accurate records, in reasonable detail, of all determinations as to whether (or not) to transfer (or cause to be transferred) funds out of, into, or between, Accounts (to the extent that the Manager has discretion with respect thereto), including all determinations as to the amount of the Working Capital Reserve Target, to submit a Horizontal Development Approval Request, to make any Discretionary Funding Advance or to make any discretionary Excess Working Capital Advance, and the basis (and back-up documentation) for all such determinations, (D) accurate records, in reasonable detail, of all determinations as to whether (or not) to effect any proposed sale or other Disposition of an Asset (including any Bulk Sale), and the basis (and back-up documentation) of such determination, and (E) accurate records, in reasonable detail, of all other determinations that are material to the Company.

(b) Retention of Books and Records. The Manager shall cause all books and records at any time kept or maintained pursuant to Section 1(a) above to be and remain property of the Company, and to be maintained and retained until the date that is the later of ten years after the Closing Date and three years after the Final Distribution Date. All such books and records shall be available during such period for inspection by each Beneficiary or any of its representatives (including any Governmental Authority) and agents at the Company’s chief executive office referred to in Section 2.4 of the LLC Operating Agreement at all reasonable times during business hours on any Business Day (or, in the case of any such inspection after the term of this Agreement, at such other location as is provided by notice to the Beneficiaries), in each instance upon two Business Days’ prior notice to the Manager. Upon request by any Beneficiary, the Manager shall promptly send copies (the number of copies of which shall be reasonable) of such books and records to such requesting Person or its designee. The Manager

shall provide each Beneficiary with reasonable advance notice of the Manager's intention to destroy or dispose of any documents or files relating to the Assets and, upon the request of any Beneficiary, shall allow such requesting Person to recover the same (or copies thereof) from the Company and in the case the FDIC (in any capacity) and any other Beneficiary (that is not the FDIC) so request the same, the FDIC shall have the right to recover such documents or files, but any such other Beneficiary shall have the right to make copies of such applicable documents or files so long as such copies are made while such documents files remain with the Manager or the Company (and prior to recovery of the same by the FDIC). Any expense incurred by a Beneficiary and any reasonable out-of-pocket expense incurred by the Company in connection with the exercise by such Beneficiary of its respective rights in this Section 1(b) to recover or make (or otherwise receive) copies of books, records, documents or files shall be borne by such Person so exercising such rights; provided, however, that any expense incident to the exercise of such rights pursuant to this Section 1(b) as a result of or during the continuance of an Event of Default shall in all cases be borne by the Private Owner (except to the extent such Event of Default is attributable exclusively to a Manager having been appointed by such Beneficiary (in any capacity) following removal of the Private Owner in such applicable capacity, or to any applicable Servicer (and any of its Subservicers) having been engaged by such Beneficiary (in any capacity), the Company or the applicable replacement Manager following such removal of the Private Owner as the Manager, in each case that is not an Affiliate of the Private Owner).

2. Financial Statements.

(a) Annual Financial Statements. As soon as practicable following, but no later than ninety days immediately after, the end of each Fiscal Year (commencing with respect to the 2012 Fiscal Year), the Manager shall prepare and deliver to each Beneficiary an audited consolidated balance sheet of the Company and the Ownership Entities as at the end of such Fiscal Year, and audited consolidated statements of operations and cash flow of the Company and the Ownership Entities for such Fiscal Year, each prepared in accordance with GAAP and accompanied by the Accountants' report and opinion thereon, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any qualification or exception as to the scope of such audit. If not included in any such audited financial statements, the Manager shall, together with the delivery of such audited financial statements, deliver to the Initial Member a separate schedule setting forth (separately) the value of each Loan and Acquired REO Property held by the Company or any Ownership Entity as of the end of the relevant Fiscal Year, in each case as reflected in (or otherwise consistent with) such audited financial statements.

(b) Quarterly Financial Information. As soon as practicable following, but no later than forty-five days immediately after, the end of each quarter of each Fiscal Year (other than the last quarter of such Fiscal Year, and commencing with the calendar quarter ending on or about June 30, 2012), the Manager shall prepare and deliver to each Beneficiary the unaudited consolidated balance sheet of the Company and the Ownership Entities as at the end of such calendar quarter, and unaudited consolidated statements of operations and cash flow of the Company and the Ownership Entities for such calendar quarter (for the first such report, also

covering the period from the Closing Date through the end of such calendar quarter), each prepared in accordance with GAAP.

3. Additional Reporting and Notice Requirements.

(a) Manager's Duty to Initial Member; Delivery of Certain Notices. In addition to such other reports and access to books, records and reports as are required to be provided under this Agreement, the Manager shall cause to be delivered to each Beneficiary such information as is specified in Exhibit B to the LLC Operating Agreement (in addition to the Monthly Report) and such other information relating to the Assets, the Collateral, the Company, the Servicer and any Subservicers as such Beneficiary may reasonably request from time to time and, in any case, shall ensure that each Beneficiary is promptly advised, in writing, of any matter of which the Manager, the Servicer or any Subservicer becomes aware relating to the Assets, the Collateral, each Company Account, the Escrow Accounts, or any Borrower or Obligor that materially and adversely affects the interests of the Initial Member under any Transaction Document. Without limiting the generality of the foregoing, the Manager (i) shall cause to be delivered to each Beneficiary (x) information indicating any possible Environmental Hazards with respect to any Collateral, Acquired REO Property or other Assets, (y) any notice or report provided to the Company or the Manager pursuant to Section 5.5 of the Servicing Agreement as in effect on the Closing Date (or pursuant to any other provision of the Servicing Agreement comparable to this Section 3(a)) and (z) such information and certificates (including officers' certificates of the Private Owner) regarding compliance of the Private Owner with the requirements of Sections 8.2 and 10.1 of the LLC Operating Agreement as such Beneficiary may request from time to time, and (ii) in any event shall immediately notify each Beneficiary in writing of any failure or cessation of the Private Owner to satisfy the requirements of Sections 8.2 and 10.1 of the LLC Operating Agreement, provided that any failure of the Manager to so provide such immediate notice under this clause (ii) shall not be deemed a breach of this Agreement so long as the relevant information with respect thereto is included in the applicable Monthly Report for the period including the date on which such failure occurred (so long as such Monthly Report is timely delivered in accordance herewith). To the extent that any Beneficiary requests information which is dependent upon obtaining such information from a Borrower, Obligor or other third party, the Manager shall cause to be made commercially reasonable efforts to obtain such information but it shall not be a breach by the Manager of this Agreement if the Manager fails to cause such information to be provided to such Beneficiary because a Borrower, Obligor or other Person has failed to provide such information after such efforts have been made.

(b) Monthly Reports. On or prior to the day which is five Business Days prior to the Distribution Date for each month, commencing on the Distribution Date following the calendar month in which the Closing Date occurs, the Manager shall deliver or cause the Company to deliver to the Paying Agent and to each Beneficiary the Monthly Report (in the form set forth in Exhibit B to the LLC Operating Agreement, and as may be updated from time to time in accordance herewith) with respect to the relevant Due Period, which Monthly Report shall include the Cash Flow and Distribution Report specifying the amounts and recipients of all funds to be distributed by the Paying Agent on such Distribution Date; provided, however, that

(unless the Company and the Initial Member agree otherwise) the Initial Member (including as Transferor) will prepare and deliver to the Initial Member and to the Paying Agent each such Monthly Report (including a Cash Flow and Distribution Report) on behalf of the Company for all Due Periods ending on or before the last occurring Servicing Transfer Date (provided, further, however, that with respect to each such Monthly Report, the Manager shall (with respect to information relating to all Groups of Assets other than those for which the Interim Servicing Period has not ended) cooperate with the Initial Member in preparing such Monthly Report or will provide to the Initial Member on a timely basis information needed to enable the Initial Member to prepare the Monthly Report). The Manager also shall cause each Beneficiary to be furnished with the Custodian and Paying Agent Report in accordance with the terms of the Custodial and Paying Agency Agreement. Each Monthly Report (including the Cash Flow and Distribution Report) prepared and delivered by the Manager shall be certified by the chief financial officer (or an equivalent officer) of the Manager. Each Monthly Report prepared and delivered by the Manager shall also include a certification of the Manager that all withdrawals by the Manager from the Collection Account during such Due Period were made in accordance with the terms of this Agreement and the Custodial and Paying Agency Agreement. The Initial Member shall have the right from time to time after the Closing Date to update (and otherwise modify) the form of Monthly Report (in such manner as determined appropriate by the Initial Member, in its sole discretion) by delivery of written notice to the Manager including or attaching the applicable updated (or otherwise modified) form of Monthly Report at least three months prior to the effective date (as selected by the Initial Member) of such update (or modification).

(c) Annual Compliance Certificates. The Manager shall, and shall cause the Servicer and any Subservicer to, deliver to each Beneficiary on or before March 15 of each year, commencing in the year 2013, an officer's certificate stating, as to the signer thereof, that (i) a review of such party's (in the case of the Manager, for the avoidance of doubt, in any capacity under this Agreement) activities during the preceding Fiscal Year (or other applicable period as set forth below in this Section 3(c)) and of its performance under the Applicable Agreements has been made under such officer's supervision, and (ii) to the best of such officer's knowledge and belief, based on such review, such party (in the case of the Manager, for the avoidance of doubt, in any capacity under this Agreement) has fulfilled all of its obligations under the Applicable Agreements in all material respects throughout such year (or other applicable period as set forth below in this Section 3(c)) or, if there has been a failure to fulfill any such obligation in any material respect, specifying each such failure and the nature and status thereof. The first such officer's certificate shall cover the period commencing on the Closing Date (and with respect to each Asset, shall include relevant information with respect thereto for the period commencing on the Servicing Transfer Date for such Asset) and continuing through the end of the 2019 Fiscal Year. In the event the Servicer or any Subservicer was terminated, resigned or otherwise performed in such capacity for only part of a year (or other applicable period, as the case may be, with respect to the period commencing, with respect to any Asset, on the applicable Servicing Transfer Date through the end of the 2019 Fiscal Year), such party shall provide an officer's certificate pursuant to this Section 3(c) with respect to such portion of the year (or other applicable period).

(d) Annual Compliance Report. On or before March 15 of each year, commencing in the year 2013, the Manager shall (including by causing the Servicer and each Subservicer to) provide to each Beneficiary a report prepared by a nationally recognized firm of independent certified public accountants to the effect that, with respect to the prior Fiscal Year (or other applicable period as set forth below), such firm has examined certain records and documents relating to compliance with the servicing requirements in the LLC Operating Agreement and the Servicing Agreement and that, on the basis of such examination conducted substantially in compliance with either the Uniform Single Attestation Program for Mortgage Bankers or Item 1122 of Regulation AB, such firm is of the opinion that the Manager's or its Servicer's or Subservicers' activities have been conducted in compliance with the LLC Operating Agreement (including, to the extent applicable pursuant to Section 12.3(e) of the LLC Operating Agreement, Regulation AB) and the Servicing Agreement, or that such examination has disclosed no material items of noncompliance except for (i) such exceptions as such firm believes to be immaterial, and (ii) such other exceptions as are set forth in the report. The first such reports shall cover the period commencing on the Closing Date (and with respect to each Asset, shall include the relevant information with respect thereto for the period from the applicable Servicing Transfer Date) and continuing through the end of the 2019 Fiscal Year.

(e) Audits. Until the later of the date that is ten years after the Closing Date and the date that is three years after the Final Distribution, the Manager shall, and shall cause the Servicer and each Subservicer to, (i) provide any representative of any Beneficiary (including any Governmental Authority), during normal business hours and on reasonable notice, with access to all of the books of account, reports and records relating to the Assets, any Collateral, the Servicing Obligations, the Company Accounts, the Escrow Accounts, disbursements under the Custodial and Paying Agency Agreement, distributions hereunder or any other matters relating to, or the rights or obligations pursuant to, this Agreement or the other Transaction Documents; (ii) permit such representatives to make copies of and extracts from the same, (iii) allow each Beneficiary to cause such books to be audited by accountants selected by such Beneficiary, and (iv) allow each Beneficiary's representatives to discuss the Company's, the Manager's the Servicer's and any Subservicer's affairs, finances and accounts, as they relate to the Assets, the Collateral, the Servicing Obligations, the Company Accounts, the Escrow Accounts, or any other matters relating to this Agreement, the other Transaction Documents, or the rights or obligations hereunder or thereunder, with the Company's, the Manager's, the Servicer's and any Subservicer's officers, directors, employees, attorneys and accountants (and by this provision the Company and the Manager hereby irrevocably and unconditionally authorize the respective accountants of the Company, the Manager, the Servicer and any Subservicer to discuss such affairs, finances and accounts with such representatives). Any expense incurred by any Beneficiary and any reasonable out-of-pocket expense incurred by the Company in connection with the exercise by such Beneficiary of its rights in this Section 3(e) shall be borne by such Beneficiary; provided, however, that any expense incident to the exercise of such rights pursuant to this Section 3(e) as a result of or during the continuance of an Event of Default shall in all cases be borne by the Private Owner (except to the extent such Event of Default is attributable exclusively to a Manager having been appointed by such Beneficiary (in any capacity) following removal of the Private Owner in such applicable capacity, or to any

applicable Servicer (and any of its Subservicers) having been engaged by such Beneficiary (in any capacity), the Company or the applicable replacement Manager following such removal of the Private Owner as the Manager, in each case that is not an Affiliate of the Private Owner).

4. No Duplicate Reports. Notwithstanding any provision in this Annex II to the contrary, the Manager shall not be required to deliver duplicate copies of the reports as described in this Annex II to the FDIC (in any capacity as a Beneficiary), so long as the FDIC (including, as applicable, as Receiver) is acting in its capacity as any such Beneficiary, and during any such period shall only be required to deliver one copy of each such reports addressed to the FDIC (in any such applicable capacity) with a notation on the envelope that such reports is being delivered to the FDIC in its capacity as each such applicable Beneficiary.

Annex III

Insurance Schedule

1. General Insurance Coverages for Servicer, Subservicers and Manager.

(a) The Servicer, each Subservicer and (with respect to any Servicing (including any Asset Management) performed by the Manager) the Manager (including all employees, officers or any person acting on their behalf) shall, in each case at no cost or expense to the Company, maintain each of the following types of insurance coverage having minimum limits as described below:

(i) *Professional Liability*: Professional Liability insurance policies (including Errors and Omissions/Miscellaneous Professional Liability/Bank Servicer Liability) covering all Servicing being conducted by such Person, including the servicing of any Asset (including but not limited to, in each case to the extent to be performed by such Person, record keeping, billing and disbursements of principal and interest, insurance premium and taxes, determination of the depreciation amounts for leased property (but not for projections of or an appraisal for residual value of leased property) and any other professional loan services required to be performed under this Agreement). Coverage shall include automatic tail coverage for 90 days and include an extended reporting period of 12 months. Professional Liability policies shall be written with the following minimum limits:

- \$1,000,00 to \$3,000,000 per occurrence and in the aggregate
- Deductible amount not to exceed: \$100,000

Such Professional Liability insurance can be maintained on a claims-made form and shall cover all Servicing, including any such Servicing as may be performed by the Manager, the Servicer, and any Subservicer. In all events such Professional Liability insurance shall, taking into account all insured party designations and exclusions, permit (or have the effect of permitting) each of the Company and the Initial Member to make claims thereunder on account of the Servicing covered thereby.

The Manager shall, and shall cause each Servicer and Subservicer, as applicable, to notify the Company and the Initial Member in the event such Person is made aware of any fact or circumstance which has given rise, or could give rise, to a potential Professional Liability claim with respect to any Servicing being performed by such Person.

The Manager and the Initial Member shall be notified immediately upon the reduction of or potential reduction of 50.0% of the limits, and each expressly reserves the right to require that the Servicer and each Subservicer (and the Manager, if applicable) purchase additional limits to equal or exceed the required limits as stated above. "Potential reduction of 50.0%" shall mean any knowledge by the Servicer or Subservicer or Manager where applicable,

that a claim or the sum of all claims, current or initiated after the effective date of the policy would reduce the limits by 50.0%.

(ii) *Directors and Officers Liability*: Directors and Officers Liability coverage. Such policies shall cover acts of the Entity, all past, present, and future Directors and Officers and employees, including outside consultants, leased, temporary and part time employees, and be available to respond to any claims which might arise from this Contract. Coverage shall include automatic tail coverage for 90 days and include an extended reporting period of 12 months. Such Directors and Officers Liability policies shall be written with the following limits:

o For the Manager or any Servicer that is an Affiliate of the Manager:

- \$5,000,000 per occurrence and \$5,000,000 in the aggregate
- Deductible amount not to exceed: \$250,000

o For the Servicer (other than a Servicer that is an Affiliate of the Manager) or any Subservicer:

- \$1,000,000 per occurrence and in the aggregate¹
- Deductible amount not to exceed: \$250,000

(iii) *Crime Insurance/Fidelity Bond*: Crime Insurance or a Fidelity Bond in an amount of not less than \$10,000,000 per claim and \$10,000,000 in the aggregate, covering employee theft, forgery and alteration, wire/funds transfer, computer fraud and client coverage all for on or off premises exposure. Such coverage shall insure all employees or any other Persons authorized to handle any funds, money, documents or papers relating to any Asset, and shall protect against losses arising out of theft, embezzlement, fraud, misplacement, and other similar causes. The Company and the Manager (as to insurance obtained by the Servicer or any Subservicer), or the Company (as to any Servicing performed by the Manager), shall each be named as a loss payee under such Crime Insurance or Fidelity Bond with respect to claims arising out of Assets handled under this Agreement or any applicable Servicing Agreement or

¹ Note to posted form: The FDIC retains the right to adjust the applicable insurance levels for the Servicer and any Subservicer (in each case as among expressly referenced levels herein) in its sole discretion prior to Closing based on its review and approval of the actual Servicer selected by the Private Owner and any applicable Subservicer.

Subservicing Agreement. Such coverage shall be endorsed to protect the interests of the Company and the Manager (where applicable), in the form of a third-party client coverage endorsement or equivalent.

- Deductible amount not to exceed: \$250,000

The insurance requirements in Sections (i), (ii) and (iii) above can be maintained on a claims-made form, such coverage shall continue in force by renewal or extended reporting provision for a minimum period equal to the greater of (i) the period under which a claim can be asserted under the applicable statute of limitations and/or repose or (ii) three (3) years after completion of service.

Retroactive date on policies, if any, must be no later than the date of execution of this agreement, or initiation of any services, whichever comes first.

Deductible, if any, as outlined above is the sole responsibility of the Insured, Manager, Servicer or Subservicer, as applicable.

(iv) *Commercial General Liability*: Commercial General Liability Insurance, including coverage for bodily injury (including coverage for death, mental anguish), Premises-Liability/Operations, Products-Completed Operations, Blanket Contractual Liability, Personal Injury and Broad form Property Damage, and including Cross Liability and Severability of Interests, with the following minimum limits:

- o \$1,000,000 Each Occurrence
- o \$2,000,000 General Aggregate
- o \$1,000,000 Personal and Advertising Injury
- o \$2,000,000 Products-Completed Operations Aggregate

Such policy shall provide coverage on an occurrence form. Coverage shall apply to all operations of Insured, Manager, Servicer and any Subservicer. The contractual liability insurance shall include coverage sufficient to meet the indemnity obligations, where insurable, between all relevant parties.

The Company, the Initial Member and all other parties as may from time to time be designated by the Company, the Manager or the Initial Member shall be added as an additional insureds. Such Commercial General Liability Insurance shall be primary and non-contributory with regard to any other insurance that may be available to the Company, Manager or any such other additional insureds.

(v) *Auto*: Auto Liability with a combined single limit of not less than \$1,000,000 to provide coverage for any owned, hired, or non-owned vehicles.

(vi) *Workers' Compensation:* Workers' Compensation Insurance in compliance with statutory requirements of the state(s) in which applicable employees reside, are hired, and in which the services are being performed and shall apply to all persons employed by such Servicer or Subservicer or, with respect to the Manager, all persons otherwise made available by the Manager for performance of its Servicing obligations under the LLC Operating Agreement, as applicable.

(vii) *Employers Liability:* Employer's Liability Insurance in the amount of \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit for bodily injury by disease, or such other amount as may be required by umbrella policy to effect umbrella coverage.

(viii) *Employment Practices Liability:* Employment Practices Liability Insurance in an amount of \$1,000,000 covering third party liability actions brought against the Manager and Company or Servicer and Subservicer, as applicable.

(ix) *Umbrella/Excess Liability:* Umbrella/Excess Liability Insurance on a follow form basis with a per occurrence and annual aggregate limit of \$10,000,000. Coverage shall be excess of Commercial General Liability (including products and completed operations coverage), Employers Liability Insurance and Auto Liability with such coverage being concurrent with and not more restrictive than underlying insurance.

(x) *Other Insurance:* Such other insurance as it deems necessary for its own protection. The Company or Initial Member reserves the right to require, on not less than thirty days' prior notice, such other insurance as may from time to time be reasonably prudent, taking into account the Servicing being performed and prudent market practices with respect to servicing of assets similar to the Assets.

The limits required above in Section 1 are minimum limits and not intended to restrict the liability of the Manager, the Servicer or any Subservicer under any Transaction Document.

2. Insurance With Respect to Assets.

(a) From and after the Closing Date, the Company (and the Ownership Entities) shall obtain and maintain (and the Manager shall cause the Company and such Ownership Entities to so obtain and maintain, including, as applicable with respect to Collateral, through the Servicer or applicable Subservicers) insurance for the Assets (including (x) any Acquired Property, and (y) any Collateral with respect to which the Borrower or Obligors have failed to maintain applicable insurance) in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions, as determined in the reasonable judgment of the Manager to be prudent and in the best interests of the Company (and the Members) in accordance with the Servicing Standard, in all cases in a manner acceptable to the Initial Member

and in accordance with any additional requirements as may be set forth in the Transaction Documents.

(b) Such insurance shall include, with respect to any such Acquired REO Property or real property Collateral, applicable public liability insurance, property insurance, flood insurance, fire insurance, wind insurance, hazard insurance, boiler and machinery insurance, business interruption or rent insurance and other insurance, in each case as are customarily maintained by property owners for other real property and buildings similar to such Acquired REO Property or real property Collateral in the area in which such Acquired REO Property or real property collateral is located, in each case as determined by the Manager pursuant to the standard set forth in Section 1(a) above in a manner acceptable to the Initial Member.

(c) For any Acquired REO Property, such insurance shall further include an owner's title insurance policy, on the 2006 ALTA form, (i) insuring the deed, (ii) naming the applicable Ownership Entity, as insured, (iii) in an amount equal to the Net Fair Value of the Acquired REO Property, (iv) dated as of the date that such Acquired REO Property became an Acquired REO Property or, for any for any property constituting Acquired REO Property as of the Closing Date, as of a date within thirty days after the Closing Date, and (v) with such endorsements as are reasonably customary attached thereto.

3. General Requirements; Notices; Delivery of Certificates and Policies.

(a) Each insurance policy or fidelity bond required pursuant to Sections 1 and 2 above shall (i) be written with carriers having a minimum insurer rating of A- VIII from A.M. Best and A from Standard & Poor's, (ii) provide that it may not be cancelled or materially changed except upon thirty days' prior written notice of cancellation (except for non-payment of premium whereby a ten day prior written notice of cancellation is acceptable) to the Manager or applicable Servicer or Subservicer, and (iii) name (and all applicable certificates with respect thereto shall show) the Manager and the Company as an additional insured or loss payee, as applicable, as its interest may appear or, as to any insurance or fidelity bond required pursuant to Section 1 above, as may be designated by the language in clauses (a)(i)-(a)(x) of such Section 1.

(b) The Manager shall notify (or shall cause the Servicer and Subservicer to notify) the Initial Member immediately of the cancellation or the receipt of a notice of cancellation of any insurance policy or fidelity bond required to be maintained pursuant to this Insurance Schedule and the efforts made to obtain replacement coverage.

(c) On (or before) the Closing Date (and, with respect to each Asset, on or before the applicable Servicing Transfer Date with respect thereto), the Manager shall provide (or shall cause the Servicer and any applicable Subservicer to provide) to the Initial Member, (i) certificates evidencing all fidelity bonds and insurance policies required to be maintained pursuant to this Insurance Schedule, and (ii) copies of all such fidelity bonds and insurance

policies (or such other evidence of insurance satisfactory to the Initial Member), all of which must be in form and substance satisfactory to the Initial Member.

(d) Following the Closing Date (and, with respect to any Asset, the applicable Servicing Transfer Date), the Manager shall (i) provide to the Initial Member certificates evidencing all fidelity bonds and insurance policies required to be maintained pursuant to this Insurance Schedule on each anniversary of the Closing Date, and otherwise upon request of the Initial Member, and (ii) cause copies of fidelity bonds and insurance policies required to be maintained pursuant to this Insurance Schedule to be made available (and delivered, if requested) to the Initial Member, or its representatives, upon request.

EXHIBIT A
FORM OF
CERTIFICATE OF FORMATION
OF
2011-SIP-2 Venture, LLC

Pursuant to and in accordance with the provisions of Section 18-201 of the Delaware Limited Liability Company Act, the undersigned hereby certifies that:

FIRST, the name of the limited liability company is 2011-SIP-2 Venture, LLC (the "Company").

SECOND, the address of the registered office of the Company in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE, in the City of Wilmington, County of New Castle. The name of the registered agent at such address is Corporation Service Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of the Company on this ___ day of January, 2011.

By: _____

Name:

Title: Authorized Person

EXHIBIT B
FORM OF MONTHLY REPORT

[See attached]²

² Form of Monthly Report may be updated (or otherwise modified) from time to time by the Initial Member pursuant to Section 2(b) of the Reporting and Access Schedule.

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of _____, 20__ by and between SIP PO, LLC, a Delaware limited liability company ("Transferor"), and _____, a _____ ("Transferee").

RECITALS

WHEREAS, the Transferor is the owner of a limited liability company interest in 2011-SIP-2 Venture, LLC, a Delaware limited liability company (the "Company");

WHEREAS, such limited liability company interest represents a 25% "Percentage Interest" in the Company (as defined in that certain Amended and Restated Limited Liability Company Operating Agreement, effective as of January 11, 2011, by and among the Federal Deposit Insurance Corporation in its capacity as Receiver (as such term is defined in the Agreement of Definitions referred to therein) (the "Initial Member"), Transferor and the Company (the "LLC Operating Agreement"));

WHEREAS, the ownership and other rights associated with such limited liability company interest are set forth in the LLC Operating Agreement;

WHEREAS, pursuant to Section 3.13 of the LLC Operating Agreement, Transferor granted the Initial Member a first priority security interest in the Private Owner Interest (as such term is defined in the LLC Operating Agreement) in order to secure certain obligations of Transferor as more fully described in the LLC Operating Agreement;

WHEREAS, an Event of Default (as defined in the LLC Operating Agreement) has occurred and is continuing, and the Initial Member has elected, pursuant to the LLC Operating Agreement, to foreclose on its security interest in the Private Owner Interest and effect the assignment contemplated hereby;

NOW THEREFORE, in consideration of the mutual agreements contained herein and in the LLC Operating Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Assignment and Assumption. Transferor hereby assigns and transfers the Private Owner Interest to Transferee, and Transferee hereby accepts and assumes the Private Owner Interest and agrees to be bound by the LLC Operating Agreement and the other Transaction Documents to which the Private Owner is a party, as amended from time to time, to the extent it relates to such Private Owner Interest.

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2. **Counterparts.** This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered (including by telecopy) to the other party.

3. **No Third Party Beneficiaries.** This Agreement shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement is not intended to confer upon any other person any rights or remedies hereunder.

4. **Governing Law.** The laws of the State of Delaware will govern the validity, performance and enforcement of this Agreement, without giving effect to the principles of conflict of laws of the State of Delaware or any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the date first above written.

TRANSFEROR:

SIP PO, LLC

By: MREP III 2011-2 ADC Venture LLC, as
Manager

By: Mariner Real Estate Partners III, LLC, as
Manager

By: Mariner Real Estate Management,
LLC, as Manager

By: _____
Name: Kirk Lambright
Title: Chief Legal Officer

TRANSFeree:

By: _____
Name:
Title:

EXHIBIT D

FORM OF LETTER OF CREDIT

(Bank Letterhead Stationary)

Federal Deposit Insurance Corporation, in its capacity as Initial Member (as defined below)
Manager, Capital Markets & Resolutions
c/o Federal Deposit Insurance Corporation
550 17th Street, NW (Room F-7015)
Washington, D.C. 20429-0002
Attention: Ralph Malami
E-mail Address:: rmalami@fdic.gov
Tel: [(202) 898-3713]
Fax: [REDACTED]

RE: Irrevocable Transferable Letter of Credit No. _____ for
U.S.\$ _____, Dated _____.

Gentlemen:

We hereby issue our irrevocable transferable Letter of Credit No. _____
(this "**Letter of Credit**") in favor of Federal Deposit Insurance Corporation (in any capacity,
including as receiver for the failed financial institution referenced in or pursuant to the LLC
Agreement defined below, in its corporate capacity or otherwise, the "**FDIC**"), as the Initial
Member under the LLC Operating Agreement defined below (including its successors, and its
assigns as provided herein, the "**Initial Member**") (such Initial Member being the beneficiary of
this Letter of Credit), for the account of SIP PO, LLC (the "**Private Owner**").

We understand that this Letter of Credit is issued pursuant to the Amended and Restated
Limited Liability Company Operating Agreement dated as of January 11, 2012 (as amended or
otherwise modified from time to time, the "**LLC Operating Agreement**"), by and among 2011-
SIP-2 Venture, LLC (the "**Company**"), the Private Owner and the Initial Member.

We undertake to honor from time to time your draft or drafts presented to us in
accordance herewith not exceeding in the aggregate One Million U.S. Dollars (U.S.\$
1,000,000.00). All drafts hereunder (i) must be marked "Drawn under irrevocable transferable
Letter of Credit No. _____, dated January 11, 2012", (ii) must be accompanied by a
typewritten statement signed by a purportedly authorized representative of the Initial Member
stating that an "Event of Default" or "LC Reissuance/Extension Failure" has occurred under (and
as defined in) the LLC Operating Agreement (a "**Drawing Request**"), and (iii) shall, unless

payment is to be made at sight, include the wire transfer instructions for remittance by us of the amount of such draft.

Presentation of drafts drawn hereunder, together with the required statement and applicable wire transfer instructions, may be made at any time on or before the expiry date hereof (i) by physical presentation of such draft at, or overnight delivery of such draft to, our offices located at _____ or (ii) by facsimile, at _____, without further need of documentation. Each such drawing should be accompanied by contemporaneous telephonic notification to _____, at _____. If we receive such documents at such office, all in conformity with the terms and conditions of this Letter of Credit, we will honor your draft on the second Business Day (as defined below) after receipt of such Drawing Request.

This Letter of Credit shall expire at 5:00 p.m. (New York, New York time) on the date that occurs one year after the date hereof (or, if such date is not a Business Day, the immediately succeeding Business Day) (the “**Expiration Date**”); provided, however, that this Letter of Credit will be automatically extended without amendment for additional periods of one year each (in each case commencing from the expiry date hereof as then in effect), unless we elect not to extend this Letter of Credit and deliver to the Initial Member written notice of such election at least sixty days prior to any such Expiration Date. Any such notice shall be in writing and shall be delivered in hand with receipt acknowledged, or by certified mail (return receipt requested), to the Initial Member at its address set forth above (or to such other address for any such notices which Initial Member may hereafter specify in a written notice delivered to the undersigned). “**Business Day**” means any date other than a Saturday, Sunday or a day on which banks in the [State of New York] [District of Columbia]³ are authorized or required by law to be closed, and a day on which payments can be effected on the Fedwire system (or any replacement thereto).

Partial and multiple drafts are permitted, and the amount of this Letter of Credit will be reduced by each such draft honored.

All our charges (including wire transfer fees in connection with any payments by us hereunder and transfer charges in connection with a transfer of this Letter of Credit by the FDIC (in any capacity), as Initial Member, to a transferee thereof) are for the account of the Private Owner, and in no event shall any such charges reduce the amount of any draft or payment hereunder; provided, however, transfer charges in connection with a transfer of this Letter of Credit by any Initial Member other than the FDIC (in any capacity) to a transferee thereof shall be for the account of such Initial Member and/or transferee.

3. Select based on location of presentation

We agree that we shall have no duty or right to inquire as to the basis upon which Initial Member has determined to present to us any draft under this Letter of Credit.

This Letter of Credit is transferable in whole but not in part to any transferee who has succeeded you as the Initial Member under the LLC Operating Agreement, and may be successively transferred. Any transfer request must be effected by presenting to us the attached form of Attachment I signed by the transferor and the transferee together with the original Letter of Credit. Upon our endorsement of such transfer, the transferee instead of the transferor shall, without necessity of further action, be entitled to all the benefits of and rights under this Letter of Credit in the transferor's place; provided that, in such case, any drafts of the Initial Member to be provided hereunder shall be signed by one who states therein that he is a duly authorized officer or agent of the transferee. For purposes of clarification, internal transfers within the FDIC (where following such transfer, the FDIC, in any capacity is to remain as the beneficiary of the Letter of Credit) shall be effective without the need for notice or execution and delivery of any such request for transfer in the form of Attachment I hereto.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices, International Chamber of Commerce Publication No. 590, including any amendments, modifications or revisions thereof (the "**ISP 98**"). As to matters not covered by the ISP 98, and to the extent not inconsistent with the ISP 98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, including without limitation the Uniform Commercial Code as in effect in the State of New York, without regard to principles of conflict of laws.

All of the terms and conditions of this Letter of Credit are contained herein and shall not be altered except by reduction in the amount of this Letter of Credit due to corresponding payments in like amount in compliance with the aforementioned terms. Except as otherwise expressly set forth herein, there are no conditions to this Letter of Credit.

Very truly yours,

By: _____
Name: _____
Title: _____

ATTACHMENT I TO LETTER OF CREDIT

REQUEST FOR TRANSFER

[Insert Bank Name and Address]

RE: Irrevocable Transferable Letter of Credit No. [] for
U.S.\$[], Dated [].

Gentlemen:

Reference is made to that certain irrevocable transferable Letter of Credit No. [], dated _____ (the "**Letter of Credit**"), issued by you in favor of [] (the "**Transferor**"), for the account of SIP PO, LLC (the "**Private Owner**").

The Transferor has transferred and assigned (and hereby confirms to you said transfer and assignment) all of its rights in and under the Letter of Credit to [name of Transferee] (the "**Transferee**") and confirms that the Transferor no longer has any rights under or interest in the Letter of Credit.

The Letter of Credit is returned herewith and we request that you issue an irrevocable transferable letter of credit in the name of the Transferee and providing for notices to be sent to the Transferee at the address set forth below and in all other respects identical to the Letter of Credit.

Transferee hereby certifies that it is a duly authorized transferee under the terms of the Letter of Credit and is accordingly entitled, upon presentation of the drafts (and applicable items) called for therein, to receive payment thereunder.

Notices under the Letter of Credit should be sent to the Transferee as follows: [Name], [Address], [Attention: _____], E-mail Address: [], Fax: [], Tel: [].

[NAME OF TRANSFEROR]

By _____
[Name and Title of Authorized
Representative of Transferor]

[NAME OF TRANSFEREE]

By _____
[Name and Title of Authorized
Representative of Transferee]