

**REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT**

**BY AND AMONG**

**NORTH CRE VENTURE 2010-2, LLC,**

**EACH OTHER GRANTOR FROM TIME TO TIME PARTY HERETO,**

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
IN ITS CORPORATE CAPACITY AS PURCHASE MONEY NOTES GUARANTOR,**

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER FOR VARIOUS FAILED FINANCIAL INSTITUTIONS LISTED ON  
SCHEDULE I HERETO,  
AS COLLATERAL AGENT,**

**AND**

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER FOR VARIOUS FAILED FINANCIAL INSTITUTIONS LISTED ON  
SCHEDULE I HERETO,  
AS INITIAL MEMBER**

**Dated as of December 15, 2010**

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## REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT

THIS REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT, effective as of the 15<sup>th</sup> day of December, 2010 (this "**Agreement**"), is entered into by and among NORTH CRE VENTURE 2010-2, LLC, a Delaware limited liability company ("**Debtor**"), each of the other entities that becomes a party hereto pursuant to Section 8.12 (collectively, the "**Subsidiary Grantors**," and each individually, a "**Subsidiary Grantor**"; the Subsidiary Grantors together with Debtor, collectively, the "**Grantors**," and each individually, a "**Grantor**"), FEDERAL DEPOSIT INSURANCE CORPORATION (acting in any capacity, the "**FDIC**"), acting in its corporate capacity ("**Purchase Money Notes Guarantor**"), the FDIC, as Receiver for various failed financial institutions listed on Schedule I hereto (in such capacity, the "**Receiver**"), as Collateral Agent for the Secured Parties (in such capacity, together with any successor collateral agent, the "**Collateral Agent**"), and, solely for purposes of Sections 4.1(e), 4.1(j), 5.1(a)(vi) – (ix), 5.1(b), 5.1(c), 5.5, 11.1, 11.2 and 13.6 – 13.19, the FDIC, as Receiver, as Initial Member under the LLC Operating Agreement referred to below (in such capacity, the "**Initial Member**"). Capitalized terms used in this Agreement shall have the meanings assigned to them in, or by reference in, that certain North CRE 2010-2 Structured Transaction-Agreement of Common Definitions, dated as of the Closing Date, among the Initial Member, the Debtor and others.

WHEREAS, pursuant to that certain Contribution Agreement, the Receiver has transferred all of its right, title and interest in and to the Assets (as such term is defined below), including equity interests in the Ownership Entities and certain Acquired REO Property, to Debtor partly as a sale and partly as a capital contribution, and in consideration for the transfer of the Assets to the Debtor to the extent such transfer constitutes a sale, Debtor has issued to the Receiver two Classes of Purchase Money Notes in the aggregate principal face amount of \$28,477,487.00, inclusive of the Purchase Money Notes Issuance/Guaranty Fee;

WHEREAS, to provide support for the payment and performance of Debtor's obligations under the Purchase Money Note, the Purchase Money Notes Guarantor and the Receiver have entered into that certain Guaranty Agreement, pursuant to which, upon exercise by the Initial Member, as holder of the Purchase Money Note, and delivery of the Guaranty Notice by the Initial Member to the Purchase Money Notes Guarantor, the obligations with respect to such Purchase Money Notes shall automatically, and without further action, become subject to the Guaranty Agreement;

WHEREAS, in connection with the foregoing, each Grantor has agreed to (a) provide the Collateral Agent, for the benefit of the Secured Parties, with the collateral identified in this Agreement and (b) guaranty payment of the Secured Obligations in order to induce the Purchase Money Notes Guarantor to enter into the Guaranty Agreement and to secure Debtor's obligation to reimburse the Purchase Money Notes Guarantor for any payments made by Purchase Money Notes Guarantor thereunder;

**NOW, THEREFORE**, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Grantor, the Purchase Money Notes Guarantor, the Collateral Agent and the Initial Member agree as follows:

**ARTICLE I**  
**Definitions**

Section 1.1 Definitions.

(a) For purposes of this Agreement, including the prefatory paragraphs, certain terms used in this Agreement shall have the meaning and definitions set forth in the Agreement of Common Definitions (as such term is defined below). In addition, for purposes of this Agreement, the following terms shall have the meanings and definitions hereinafter respectively set forth:

“**Agreement**” means this Reimbursement, Security and Guaranty Agreement.

“**Allonge**” has the meaning given in Section 3.1 of this Agreement.

“**Controlling Party**” means the Purchase Money Notes Guarantor.

“**Debtor**” has the meaning given in the introductory paragraph to this Agreement.

“**Debtor Accounts**” means, collectively the Collection Account, the Distribution Account, the Defeasance Account and the Working Capital Reserve Account.

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would constitute an Event of Default.

“**Event of Default**” means each of the “Events of Default” described in Section 4.1 of this Agreement.

“**Grantor**” and “**Grantors**” have the meanings set forth in the introductory paragraph of this Agreement.

“**Guaranty**” means, with respect to any particular indebtedness or other obligation, (i) any direct or indirect guaranty thereof by a Person other than the obligor with respect to such indebtedness or other obligation or any transaction or arrangement intended to have the effect of directly or indirectly guarantying such indebtedness or other obligation, including without limitation any agreement by a Person other than the obligor with respect to such indebtedness or other obligation (A) to pay or purchase such indebtedness or other obligation or to advance or supply funds for the payment or purchase of such indebtedness or other obligation, (B) to purchase, sell or lease (as lessee or lessor) property of, to purchase or sell services from or to, to supply funds to or in any other manner invest in, the obligor with respect to such indebtedness or other obligation (including any agreement to pay for property or services of the obligor irrespective of whether such property is received or such services are rendered), primarily for the purpose of enabling the obligor to make payment of such indebtedness or other obligation or to assure the holder or other obligee of such indebtedness or other obligation against loss, or (C) otherwise to assure the obligee of such indebtedness or other obligation

against loss with respect thereto, or (ii) any grant (or agreement in favor of the obligee of such indebtedness or other obligation to grant such obligee, under any circumstances) by a Person other than the obligor with respect to such indebtedness or other obligation of a security interest in, or other Lien on, any property or other interest of such Person, whether or not such other Person has not assumed or become liable for the payment of such indebtedness or other obligation.

**“Indebtedness”** means, as applied to any Person, without duplication, (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person for the deferred purchase price of property or services (excluding trade payables arising in the ordinary course of business), (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (v) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capitalized leases, or (vi) all indebtedness or obligations of others of the kinds referred to in clauses (i) through (v) above in respect of which such Person has entered into or issued any Guaranty.

**“Indemnified Losses”** has the meaning given in Section 13.5(a) of this Agreement.

**“Indemnified Parties”** has the meaning given in Section 13.5(a) of this Agreement.

**“Intellectual Property”** means all United States or foreign intellectual and similar property of every kind and nature, including, without limitation, inventions, designs, patents, copyrights, trademarks, trade secrets, confidential or proprietary and technical and business information, know-how, show-how or other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and any license of any of the foregoing, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing and all rights to sue at Law or in equity for any infringement or other violation thereof, including the right to receive all proceeds and damages therefrom.

**“NY UCC”** means the Uniform Commercial Code as in effect on the date hereof in the State of New York, as amended from time to time, and any successor statute.

**“Perfection Requirement”** has the meaning given in Section 7.1(e) of this Agreement.

**“Proceedings”** means any suit in equity, action at Law or other judicial or administrative proceeding.

**“Purchase Money Notes Issuance/Guaranty Fee”** has the meaning given in Section 8.19 of this Agreement.



**“Purchase Money Notes Reissuance Fee”** has the meaning given in Section 8.20 of this Agreement.

**“Purchase Money Notes Trigger Event”** means an event that shall be deemed to have occurred if, as of any time during the periods set forth below, (a) the total amount then on deposit in the Defeasance Account (without giving effect to any net losses thereon arising from the investment of such amounts in accordance with the Custodial and Paying Agency Agreement), plus the sum of the aggregate amount from the Defeasance Account previously paid by the Debtor (excluding any payments made under the Guaranty Agreement) to all Noteholders to repay any Purchase Money Notes and the aggregate amount previously paid to the Purchase Money Notes Guarantor to reimburse the Purchase Money Notes Guarantor for payments it has made under the Guaranty Agreement, divided by (b) the original aggregate principal amount of the Purchase Money Note, as of the Closing Date is less than:

Fourth (4 <sup>th</sup> ) anniversary of the Closing Date (or any time thereafter before the fifth (5 <sup>th</sup> ) anniversary of the Closing Date):	50%
Fifth (5 <sup>th</sup> ) anniversary of the Closing Date (or any time thereafter before the sixth (6 <sup>th</sup> ) anniversary of the Closing Date):	67%
Sixth (6 <sup>th</sup> ) anniversary of the Closing Date (or any time thereafter before the seventh (7 <sup>th</sup> ) anniversary of the Closing Date):	83%
Seventh (7 <sup>th</sup> ) anniversary of the Closing Date.	100%

**“Related Entities”** has the meaning given in Section 13.5(a) of this Agreement.

**“REO Collateral Documents”** means, with respect to each Acquired REO Property, to the extent applicable, the following, (i) the REO Mortgage and (ii) a deed in lieu of foreclosure, a subordination agreement to subordinate the Lien of the Asset in favor of the Debtor to the Lien in favor of the Collateral Agent for the benefit of the Secured Parties, opinions of counsel, lender’s policies of title insurance (together with all endorsements thereto reasonably required by the Collateral Agent, including endorsements with respect to future advances), amendments to the Collateral Documents deemed necessary or advisable by the Collateral Agent to reflect the particular nature and characteristics of the Acquired REO Property in question and the requirements of local Law and such additional items as an institutional lender would customarily require in a construction or permanent, as applicable, loan transaction involving a property similar to such Acquired REO Property (all of the foregoing to be in form and substance satisfactory to the Collateral Agent).

**“REO Mortgage”** means, with respect to each Acquired REO Property, a mortgage, deed of trust, trust deed or deed to secure debt securing the Secured Obligations in form suitable for recording in the appropriate public records and otherwise substantially in the form attached to the REO Checklist attached hereto as Exhibit B (which REO Mortgage may, if the Mortgage on the applicable Acquired REO Property has not been discharged and if the

Collateral Agent agrees, consist of such Mortgage, as assigned to the Collateral Agent and including such modifications thereto as the Collateral Agent may require).

“**Sale**” has the meaning given in Section 5.3 of this Agreement.

“**Secured Obligations**” means the Guaranteed Obligations and all obligations of the Grantors pursuant to this Agreement (including specifically the obligations pursuant to Sections 2.1 and 8.9).

“**Secured Parties**” means, collectively, the Collateral Agent, each co-agent or sub-agent appointed by the Collateral Agent from time to time pursuant to this Agreement and the Purchase Money Notes Guarantor.

“**Secured Parties Collateral**” has the meaning given in Section 3.1 of this Agreement.

“**Secured Parties Collateral Documents**” means, collectively, this Agreement, the Account Control Agreements, the REO Collateral Documents, the Custodial and Paying Agency Agreement and each of the other agreements, instruments or documents that creates or purports to create a Lien or guaranty in favor of the Collateral Agent for the benefit of the Secured Parties.

“**Site Assessment**” has the meaning given in Section 3.2(b) of this Agreement.

“**Subsidiary Grantor**” and “**Subsidiary Grantors**” have the meanings given in the introductory paragraph to this Agreement.

“**Successor Servicer**” has the meaning given in Section 5.1(a)(vi) of this Agreement.

“**Third Party Claims**” has the meaning given in Section 13.5(a) of this Agreement.

“**Transfer**” has the meaning given in Section 9.1(a) of this Agreement.

“**Underlying Mortgage**” has the meaning given in Section 9.1(a) of this Agreement.

(b) **UCC Terms**. The following terms have the meanings given to them in the UCC and terms used herein without definition that are defined in the UCC have the meanings given to them in the UCC (such meanings to be equally applicable to both the singular and plural forms of the terms defined): “**account**”, “**chattel paper**”, “**commercial tort claim**”, “**deposit account**”, “**equipment**”, “**fixture**”, “**general intangible**”, “**goods**”, “**instruments**”, “**inventory**”, “**investment property**”, “**letter-of-credit right**”, “**proceeds**”, “**security**” and “**supporting obligation**”.

Section 1.2 Other Interpretive Provisions. With reference to this Agreement and each other Secured Parties Collateral Document, unless otherwise specified herein or in such other Secured Parties Collateral Document:

(a) References to “Affiliates” include, with respect to any specified Person, only such other Persons which from time to time constitute “Affiliates” of such specified Person, and do not include, at any particular time, other Persons that may have been, but at such time have ceased to be, “Affiliates” of such specified Person, except to the extent that any such reference specifically provides otherwise.

(b) The term “or” is not exclusive.

(c) A reference to a Law includes any amendment, modification or replacement to such Law.

(d) References to any document, instrument or agreement (including this Agreement) (a) shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in replacement thereof, and (b) shall mean such document, instrument or agreement, or replacement thereto, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time.

(e) Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(f) The words “include” and “including” and words of similar import are not limiting, and shall be construed to be followed by the words “without limitation,” whether or not they are in fact followed by such words.

(g) The word “during” when used with respect to a period of time shall be construed to mean commencing at the beginning of such period and continuing until the end of such period.

(h) Unless the context otherwise requires, singular nouns and pronouns when used herein shall be deemed to include the plural and vice versa and impersonal pronouns shall be deemed to include the personal pronoun of the appropriate gender.

## **ARTICLE II** **Reimbursement**

Section 2.1 Reimbursement. In accordance with and subject to Section 8.9, Debtor agrees to pay to the Purchase Money Notes Guarantor (a) on the Distribution Date following any payment by the Purchase Money Notes Guarantor with respect to the Guaranteed Obligations, the amount of such payment (provided, however, that any such payment by the Purchase Money Notes Guarantor occurring after the Determination Date immediately preceding such

Distribution Date shall be payable on the second Distribution Date following such payment); and (b) for any day on which a Purchase Money Notes Trigger Event is continuing, interest on an amount equal to the lesser of (i) the amount, if any, necessary to be added to the Defeasance Account (without giving effect to any net losses thereon arising from the investment of such amounts in accordance with the Custodial and Paying Agency Agreement) to cure the Purchase Money Notes Trigger Event and (ii) any amount remaining unpaid by Debtor under clause (i) of this Section 2.1 for each day unpaid, from the occurrence of a Purchase Money Notes Trigger Event until the earlier of (I) the day such Purchase Money Notes Trigger Event is cured and (II) the day all amounts owing to the Purchase Money Notes Guarantor under clause (i) of this Section 2.1 are reimbursed in full (both before and after judgment), payable in accordance with Section 5.1 of the Custodial and Paying Agency Agreement at a rate per annum equal to the Reimbursement Interest Rate. All payments by the Debtor to the Purchase Money Notes Guarantor hereunder shall be made free and clear of set-off or counterclaim in lawful currency of the United States and in immediately available funds.

Section 2.2 Obligations Absolute. The obligations of Debtor pursuant to this Agreement shall be absolute, unconditional and irrevocable, and shall be discharged strictly in accordance with the terms set forth herein, under all circumstances whatsoever, including, without limitation, the following circumstances:

(a) any lack of validity or enforceability of this Agreement, any Purchase Money Note, the Guaranty Agreement, or any other agreement or instrument relating thereto;

(b) any amendment or waiver of or any consent to departure from all or any of the provisions of this Agreement, any Purchase Money Notes or the Guaranty Agreement;

(c) the existence of any claim, setoff, defense or other right that Debtor may have at any time against the Purchase Money Notes Guarantor, Receiver or any other Person, whether in connection with this Agreement, any Purchase Money Note, or any unrelated transaction;

(d) payment by the Purchase Money Notes Guarantor pursuant to any Guaranty Agreement against demand of the Receiver that does not comply with the terms of the Guaranty Agreement; and

(e) any other act or omission to act or delay of any kind by the Purchase Money Notes Guarantor or any other Person or any other event or circumstance whatsoever that might, but for the provisions of this Section, constitute a legal or equitable discharge of or defense to Debtor's obligations hereunder.

### **ARTICLE III** **Security Interest**

Section 3.1 Granting of Security Interest. To secure Debtor's payment and performance of the Secured Obligations and each Subsidiary Grantor's guaranty of payment of the Secured Obligations, each Grantor hereby transfers, assigns, sets over, conveys, mortgages

and grants to the Secured Parties, subject to the terms of this Agreement and the Purchase Money Notes (and any substitute Purchase Money Notes that may be issued), a continuing security interest in, Lien on and right of setoff against all of its right, title and interest in and to all accounts, chattel paper, deposit accounts, documents (as defined in the UCC), equipment, fixtures, general intangibles, Intellectual Property, instruments, insurance, inventory, investment property, letter-of-credit rights, money (as defined in the UCC) and other personal property and any supporting obligations related thereto, in each case, whether now owned or hereafter acquired, regardless of whether such property is in the future subdivided into one or more groups to separately secure the Debtor's and each Subsidiary Grantor's obligations hereunder, including:

- (a) the Assets, including all future advances made with respect thereto;
- (b) the Asset Documents;
- (c) all amounts payable to such Grantor pursuant to the Asset Documents and all obligations owed to such Grantor in connection with the Assets and the Asset Documents;
- (d) all Collateral, including all Acquired Property;
- (e) all claims, suits, causes of action and any other right of such Grantor, whether known or unknown, against any Borrower, any Obligor or other obligor or any of their respective Affiliates, agents, representatives, contractors, advisors or any other Person arising under or in connection with the Assets or the Asset Documents or that is in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at Law or in equity arising under or in connection with the Asset Documents or the transactions related thereto or contemplated thereby;
- (f) all cash, securities and other property received or applied by or for the account of such Grantor under the Assets, including all distributions received through any redemption, consummation of a plan of reorganization, restructuring, liquidation or otherwise of any Borrower, Obligor or other obligor under or with respect to the Assets, and any securities, interest, dividends or other property that may be distributed or collected with respect to any of the foregoing;
- (g) the Debtor Accounts and any other accounts established by Debtor pursuant to the Custodial and Paying Agency Agreement, and all amounts on deposit therein; provided, however, that the security interest in, Lien on and right of setoff against the Defeasance Account and all amounts on deposit therein shall only secure the payment and performance of the Guaranteed Obligations;
- (h) the equity interests in all Ownership Entities;
- (i) all of such Grantor's right, title and interest in and to all insurance policies; and

(j) any and all distributions on, or proceeds or products of or with respect to, any of the foregoing, and the rights to receive such proceeds and products (all of the foregoing property described in this Section 3.1, the “**Secured Parties Collateral**”).

This grant of a security interest in the Secured Parties Collateral is expressly intended to remain in full force and effect from the Closing Date until the Secured Obligations, as such may be modified in connection with the amendment of this Agreement, the Guaranty Agreement or any Transaction Document, and have been satisfied in full.

All of the Notes and other Custodial Documents shall be held by the Custodian/Paying Agent as set forth in Section 8.4 (except and to the extent the same are permitted to be removed from the Custodian/Paying Agent’s possession as provided in the Custodial and Paying Agency Agreement). The Collateral Agent shall retain possession of the Notes and other Custodial Documents with respect to the Assets until such time as the Debtor retains the Custodian/Paying Agent pursuant to the provisions of Section 8.4 and, at such time, shall cause the Custodian/Paying Agent to take possession of the Notes and other Custodial Documents with respect to the Assets on behalf of Collateral Agent. The Debtor shall deliver to the Collateral Agent within sixty (60) days after the Closing Date, (x) for each Asset, an allonge, endorsed in blank, and executed by Debtor (an “**Allonge**”), and (y) for each Asset, a Mortgage Assignment, in blank, and executed by Debtor. Such Allonges and Mortgage Assignments shall be held by the Custodian/Paying Agent with the Notes and other Custodial Documents. Reasonable and customary expenses paid to third parties actually incurred by the Debtor in preparing and delivering such Allonges and Mortgage Assignments shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. The Collateral Agent may use the Allonge to effect the endorsement of a Note or the Mortgage Assignment to effect the assignment of a mortgage to the Collateral Agent at any time if an Event of Default occurs and is continuing. Notwithstanding anything in this Agreement to the contrary, if the Debtor (acting by and through the Manager in accordance with the applicable provisions of the LLC Operating Agreement) elects to remove any MERS Registered Mortgage from the MERS System in accordance with the LLC Operating Agreement and the Contribution Agreement, then the Debtor must execute and deliver to the Collateral Agent or the Custodian/Paying Agent, as the case might be, the Allonge and Mortgage Assignment described above in this Section 3.1 promptly after the removal of such MERS Registered Mortgage from the MERS System and take such other action so as to cause such MERS Registered Mortgage and all Collateral relating to such MERS Registered Mortgage to be and remain subject to the first priority security granted pursuant to this Agreement.

### Section 3.2 Asset Defaults; Acquisition of Collateral.

(a) Discretion of Debtor in Responding to Defaults of Borrower. 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, the Debtor shall cause to be determined the response to such default and course of action with respect to such default, including (i) the selection of attorneys to be used in connection with any action, whether judicial or otherwise, to protect the respective interests of the Debtor and the Collateral Agent in the applicable 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 the Asset Documents

securing the Asset pursuant to the power of sale contained therein or through a judicial action, (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.

(b) Acquisition of Collateral. Nothing in this Section 3.2 or anything else in this Agreement shall be deemed to affirmatively require any Grantor to cause to be acquired all or any portion of any Collateral with respect to which there exists any Environmental Hazard. Except as otherwise directed by the Debtor, the Debtor shall not permit the Servicer or any Subservicer to acquire or otherwise cause the Debtor or any Subsidiary or other entity in which the Debtor owns any interest to acquire all or any portion of any Collateral having any actual or threatened Environmental Hazard known to the Debtor by foreclosure, deed in lieu of foreclosure, power of sale or sale pursuant to the UCC or otherwise. Prior to acquisition of title to any Collateral (whether by foreclosure, deed in lieu of foreclosure, by power of sale or by sale pursuant to the UCC, or otherwise), the Debtor shall cause to be commissioned with respect to such Collateral either (i) a transaction screen process consistent with ASTM Standard E 1528-06, by an environmental professional or (ii) such other site inspections and assessments by a Person who regularly conducts environmental audits using customary industry standards as would customarily be undertaken or obtained by a prudent lender in order to ascertain whether there are any actual or threatened Environmental Hazards (a "Site Assessment"), and the cost of such Site Assessment shall be reimbursable as if it were a Servicing Expense as long as the costs for such Site Assessment were not paid to any Affiliate of the Debtor, or any Affiliate of any Servicer or Subservicer. If title to any Collateral with respect to which there exists any Environmental Hazard is to be acquired by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the UCC, or otherwise, title to such Collateral shall be taken and held in the name of an Ownership Entity, whether already in existence or formed by the Debtor for such purpose, provided that each Ownership Entity may only hold title to a single property constituting Collateral with respect to which there exists any Environmental Hazard. The purposes of the Ownership Entity shall be to hold the Acquired Property pending sale, to complete construction of such Acquired Property and to operate the Acquired Property as efficiently as possible in order to minimize financial loss to the Debtor and the Collateral Agent and to sell the Acquired Property as promptly as practicable in a way designed to minimize financial loss to the Debtor and the Collateral Agent, in each case, in conformity with any applicable Business Plan.

(c) Acquired REO Property. If title to any Acquired REO Property is to be acquired by Debtor by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the UCC, or otherwise, title to such Acquired REO Property shall be taken and held in the name of one or more Ownership Entities, whether already in existence or formed by the Debtor for such purpose. The Debtor shall be the sole member of any Ownership Entity. The purposes of the Ownership Entity shall be to hold the Acquired REO Property pending sale, to complete construction of such Acquired REO Property, if applicable and solely in accordance with the provisions of the Transaction Documents and to operate the Acquired REO Property as efficiently as possible in order to minimize financial loss to the Debtor and the Collateral Agent

and to sell the Acquired REO Property as promptly as practicable in a way designed to minimize financial loss to the Debtor and the Collateral Agent, in each case, in conformity with any applicable Business Plan.

Section 3.3 Continuing Security Interest. This Agreement shall create a continuing security interest in any and all of the Secured Parties Collateral and shall remain in full force and effect until the termination of the Guaranty Agreement in accordance with their respective terms and the satisfaction and discharge of all Secured Obligations in full. It is the intent of each Grantor and the Collateral Agent to create a continuing, perfected first priority security interest in the Secured Parties Collateral for the benefit of the Secured Parties. The release of the security interest in any or all of the Secured Parties Collateral, the taking or acceptance of additional security, or the resort by the Collateral Agent to any security it may have in any order it may deem appropriate, shall not affect the liability of any Person on the Secured Obligations secured hereby or the security interest and Lien granted hereby (other than in respect of the released Secured Parties Collateral).

Section 3.4 Destruction of Secured Parties Collateral. No injury to, or loss or destruction of, the Secured Parties Collateral or any part thereof shall relieve any Grantor of any of its obligations hereunder or any of the Secured Obligations.

Section 3.5 Releases of Secured Parties Collateral. Each Grantor is authorized to cause the release or assignment of any Lien granted to or held by such Grantor on any Secured Parties Collateral, solely to the extent necessary, (a) upon a final, nonappealable order of a court of competent jurisdiction permitting or directing disposition thereof, (b) upon payment of any Asset in full and satisfaction in full of all of the secured obligations with respect to an Asset or upon receipt of a discounted payoff as payment in full of an Asset, (c) as is necessary in connection with the foreclosure on a Mortgaged Property, acceptance of a deed in lieu thereof or modification or restructuring of the terms thereof, (d) in connection with such Grantor's sale of an Asset or any Collateral or (e) in the case of condominium units, individual land parcels and similar portions of the Collateral, as are permitted in, and to the extent required by, the applicable Asset Documents; provided, however, that any such transaction is consistent with the Business Plan and the proceeds of such sale or disposition are applied in accordance with the Priority of Payments set forth in Section 5.1 of the Custodial and Paying Agency Agreement and the other terms thereof.

Section 3.6 Financing Statements. Each Grantor hereby irrevocably authorizes, and ratifies and retroactively authorizes any filing made on or prior to the Closing Date, the filing, at any time and from time to time, of any financing statements or continuation statements, and amendments to such financing statements or any similar document in such jurisdictions and with such filing offices as the Collateral Agent may determine are necessary or advisable to perfect the security interest granted to it hereunder. Such financing statements may indicate the Secured Parties Collateral as all assets of such Grantor or words of similar effect as being of any equal or lesser scope or with greater detail or in any other manner as the Collateral Agent may determine is necessary, advisable or prudent to ensure the perfection of the security interest in the Secured Parties Collateral granted to Collateral Agent herein pursuant to the terms hereof.



Section 3.7 Power of Attorney. Each Grantor hereby irrevocably appoints the Collateral Agent its lawful attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, and with full power of substitution in the premises (which power of attorney, being coupled with an interest, is irrevocable for so long as this Agreement shall be in effect), from time to time in the Collateral Agent's discretion, following a failure by Debtor to satisfy promptly its obligations pursuant to Section 3.1, Section 3.2, Section 4.10 or Section 4.11 of the Contribution Agreement as it relates to the preparing, furnishing, executing and/or recording of all relevant Transfer Documents and other documents as might be reasonably necessary to satisfy the transfer and recording obligations of the Debtor pursuant to Section 3.1, Section 3.2, Section 4.10 or Section 4.11, to execute, furnish and record all relevant Transfer Documents and other documents as might be reasonably necessary to satisfy such transfer and recording obligations of the Debtor.

#### **ARTICLE IV** **Events of Default**

Section 4.1 Events of Default. 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) shall constitute an "Event of Default" hereunder:

(a) the receipt by the Debtor or Private Owner or Manager, as applicable, from the Initial Member of notice of the occurrence and continuance beyond any applicable cure periods of an "Event of Default" (pursuant to and as set forth in the LLC Operating Agreement); or

(b) the occurrence of any Insolvency Event (without any cure period other than as may be provided for in the definition of Insolvency Event) (i) with respect to (A) the Debtor or (B) the Private Owner; or (ii) with respect to any Servicer (or any Subservicer); provided, that such Insolvency Event under this clause (ii) (that is not otherwise an Insolvency Event under clause (i) above) shall not be an Event of Default pursuant to this Agreement (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 (30) days after the occurrence of such Insolvency Event; or

(c) the occurrence of any Dissolution Event with respect to the Private Owner; or

(d) any failure of the Debtor to pay any Servicing Expense when due, which failure continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to Debtor; or

(e) the failure of Debtor or the Manager to comply in any material respect with the provisions of the LLC Operating Agreement, which continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Debtor or the Manager (in any capacity); or

(f) the occurrence of either (i) a failure by the Servicer to perform in any material respect its obligations pursuant to the Servicing Agreement, which continues unremedied for a period of thirty (30) 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 the Manager to the Servicer or by the Purchase Money Notes Guarantor or the Collateral Agent to the Debtor, or (ii) a failure by the Manager (in its individual capacity) to replace the Servicer upon the occurrence of either an Event of Default pursuant to this Agreement as a result of the Servicer's acts or omissions or a material breach of or event of default pursuant to the Servicing Agreement by the Servicer, in either case which continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Manager (in any capacity); or

(g) the failure of the Manager (in any capacity) to comply in any material respect with its obligations pursuant to the Servicing Agreement or the Debtor to comply in any material respect with its obligations pursuant to the Custodial and Paying Agency Agreement (including any failure to pay fees or expenses due thereunder) which, in either case, remains unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Manager (in any capacity) or the Debtor, as applicable; or

(h) there shall be a change in of the Manager or the Private Owner, there shall occur a Change of Control with respect to the Manager or the Private Owner, or the Manager or the Private Owner sells or pledges (or engages in any transaction with a similar effect) any direct or indirect interest in the Private Owner or the Manager, as the case may be, in each of the foregoing cases which results change in Control without the consent of the Required Consenting Parties; or

(i) the failure of the Manager or the Private Owner to remit or cause to be remitted all Asset Proceeds to the Custodian/Paying Agent as and when required; or

(j) the failure at any time of the Private Owner to maintain the Private Owner Pledged Amount in the form of (i) cash deposited in the Private Owner Pledged Account, (ii) one or more Qualifying Letters of Credit, or (iii) a combination of the foregoing, aggregating, in any case, the Private Owner Pledged Amount, or, if applicable, any failure of the bank issuing the Qualifying Letter of Credit to comply with its terms; or

(k) any material breach of a representation or warranty made by the Debtor in this Agreement, which remains unremedied for a period of thirty (30) days or more after the date on which written notice of such breach requiring the same to be remedied shall have been given to the Debtor; or

(l) the failure of the Debtor or the Manager to cause the liquidation of the Assets in accordance with Section 11.2 upon the exercise of the rights of Initial Member and the Purchase Money Notes Guarantor in Section 11.1; or

(m) any failure by the Debtor or the Private Owner to pay or to cause the payment of any fees and expenses of the Custodian/Paying Agent when due, which failure continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Debtor or the Private Owner, as applicable; or

(n) any failure by the Debtor to cause any Discretionary Funding Advances to be repaid in full to the extent Asset Proceeds from the applicable Asset are available for such repayment; or

(o) the occurrence of a Purchase Money Notes Trigger Event unless such Purchase Money Notes Trigger Event is cured within ten (10) Business Days; or

(p) any other failure (other than those specified in any of subsections (a) through (o) above) on the part of the Debtor duly to observe or perform in any material respect any other covenants or agreements on the part of the Debtor contained in this Agreement (including any obligations imposed upon any Servicer or Subservicer but excluding any failure to pay any amount payable pursuant to Section 2.1), which continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Debtor; provided, however, that in the case of a failure that cannot be cured within thirty (30) days, the cure period shall be extended for an additional thirty (30) days if the Debtor can demonstrate to the reasonable satisfaction of the Purchase Money Notes Guarantor that the Debtor is diligently pursuing remedial action.

## **ARTICLE V** **Remedies**

### Section 5.1 Remedies.

(a) If an Event of Default shall have occurred and be continuing:

(i) The Purchase Money Notes Guarantor shall, upon the occurrence of such Event of Default, notify the Custodian/Paying Agent thereof, and Purchase Money Notes Guarantor may in its sole discretion cause the Noteholders to declare the applicable Class of Purchase Money Notes to be immediately due and payable, by a notice in writing to the Debtor and the Custodian/Paying Agent, and upon any such declaration the unpaid principal amount of such Class of Purchase Money Note, together with all other accrued and unpaid amounts in respect thereof through the date of acceleration, shall become immediately due and payable; provided, however, that with respect to an Event of Default under Section 4.1(b)(i)(A), the unpaid principal amount of, and such amounts in respect of, each Purchase Money Notes shall automatically become immediately due and payable;

(ii) The Purchase Money Notes Guarantor may institute Proceedings for the collection of all amounts then payable by the Debtor pursuant to Section 2.1 of this Agreement and the Collateral Agent may institute Proceedings for the collection of all other amounts then payable by the Debtor pursuant to this Agreement, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Debtor moneys adjudged due;

(iii) The Collateral Agent may institute Proceedings from time to time for the complete or partial foreclosure of the Secured Parties Collateral or Collateral pursuant to any other Secured Parties Collateral Document;

(iv) The Collateral Agent may exercise any rights or remedies, upon the occurrence of an Event of Default pursuant to this Agreement and/or any one or more of the other Secured Parties Collateral Documents and/or any rights or remedies of a secured party under the NY UCC and take any other appropriate action to protect and enforce the rights and remedies of the Collateral Agent;

(v) The Collateral Agent may sell the Secured Parties Collateral or any portion thereof or rights or interest therein;

(vi) If an “Event of Default” pursuant to and as defined in the LLC Operating Agreement has occurred, the Controlling Party may direct the Initial Member to exercise its right, and the Initial Member shall exercise such right, pursuant to the LLC Operating Agreement to terminate the Servicer (and any Subservicers) and cause the Manager to enter into a new Servicing Agreement with a servicer (a “**Successor Servicer**”) selected by the Initial Member (in its sole and absolute discretion);

(vii) If an “Event of Default” pursuant to and as defined in the LLC Operating Agreement has occurred, the Controlling Party may direct the Initial Member to exercise its right, and Initial Member shall exercise its right, pursuant to the LLC Operating Agreement to terminate the existing Manager and appoint a new Manager selected by the Initial Member (in its sole and absolute discretion);

(viii) The Initial Member may institute Proceedings from time to time for the complete or partial foreclosure of any equity interests in the Debtor that have been pledged to Initial Member pursuant to the LLC Operating Agreement to secure the Debtor’s obligations thereunder;

(ix) If an “Event of Default” pursuant to and as defined in the LLC Operating Agreement has occurred, the Controlling Party may direct the Initial Member to exercise its right, and the Initial Member shall exercise its right, pursuant to the LLC Operating Agreement, to require the Private Owner to sell its equity interest of the Debtor to the Initial Member or its designee for fair market value in accordance with Section 3.14 of the LLC Operating Agreement;

(x) The Collateral Agent may institute Proceedings for the collection of all amounts then payable by any Subsidiary Grantor pursuant to Article VI of this Agreement

for the enforcement of any judgment and for the collection from such Subsidiary Grantor of any monies adjudged due;

(xi) If an “Event of Default” pursuant to and as defined in the LLC Operating Agreement has occurred, the Purchase Money Notes Guarantor may draw on the Qualifying Letter of Credit or exercise its rights to the Private Owner Pledged Account;

(xii) The Collateral Agent may institute Proceedings for the collection of all amounts then payable pursuant to the Guaranty Agreement for the enforcement of any judgment and for the collection of any monies adjudged due pursuant to the Purchase Money Note;

(xiii) The Collateral Agent may institute Proceedings for the collection of all amounts then payable to the Noteholders for the enforcement of any judgment and for the collection of any monies adjudged due pursuant to any Purchase Money Note; and

(xiv) Each of the rights and remedies of the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member pursuant to this Section 5.1(a) of this Agreement shall be in addition to, and not in limitation or exclusion of, any other rights and remedies that they might have (whether by operation of Law, in equity, pursuant to contract or otherwise) and without prejudice and in addition to any right to which they are at any time entitled under the Transaction Documents.

Notwithstanding any provision in this Section 5.1 to the contrary, the Purchase Money Notes Guarantor shall have the right to exercise the rights and remedies of the Noteholders of the Purchase Money Notes so long as the Guaranty Agreement applies to any Purchase Money Notes or the reimbursement obligation to the Purchase Money Notes Guarantor on account of any Guaranty Payment.

(b) Appointment of Successor Servicer. If the Initial Member exercises its right to appoint a Successor Servicer pursuant to Section 5.1(a)(vi), the costs and expenses associated with such Successor Servicer (including any servicing fees) shall be borne by the Manager (and not the Initial Member or the Debtor), and no termination or other fee shall be due to Manager or the Servicer or any Subservicer in connection with or as a result of any such action. All authority and power of the Manager to act with respect to the terminated Servicer shall pass to and be vested in the Initial Member pursuant to this Article V and, without limitation, the Initial Member is hereby authorized and empowered, as attorney-in-fact or otherwise, to execute and deliver, on behalf of and at the expense of the Manager, any and all documents and other instruments and to do or take any and all acts necessary or appropriate to effect the termination of the Servicer and the replacement of the Servicer with a Successor Servicer.

(c) Cooperation to Facilitate Transfer. In any event, if a Servicer or Subservicer is terminated pursuant to the provisions of this Article V, Manager shall, and shall cause any Servicer (and any Subservicer) to, provide the Initial Member and the Purchase Money Notes Guarantor and any Successor Servicer in a timely manner with all documents, records and data (including electronic documents, records and data) requested by the Initial Member, the

Purchase Money Notes Guarantor or any Successor Servicer to enable it and any Successor Servicer to assume the responsibilities as servicer, and to cooperate with the Initial Member and the Purchase Money Notes Guarantor in effecting the termination of any Servicer (or Subservicer), including (i) the transfer within one (1) Business Day of all cash amounts that, at the time, shall be or should have been credited to the Collection Account or are thereafter received with respect to any Asset, (ii) 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 or the Purchase Money Notes Guarantor might specify, and (iii) the assignment to Collateral Agent of the right to access all such lockbox accounts, the Debtor Accounts and any other account into which Asset Proceeds or Borrower escrow or other payments are deposited or held; provided, however, that the documents, records and data delivered by the Servicer (and any Subservicer) to the Initial Member and the Purchase Money Notes Guarantor and any Successor Servicer pursuant to this Section 5.1(c) shall be limited to those documents in such Servicer's possession at the time of such transfer or which the Servicer acquires thereafter and shall not include or be deemed to include any documents, records or data in the possession of the Custodian/Paying Agent. The Manager shall be liable for all costs and expenses incurred by the Initial Member, the Purchase Money Notes Guarantor and the Collateral Agent (I) associated with the complete transfer of the servicing data, (II) 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 Collateral Agent and any Successor Servicer (and Subservicers) to service the Assets properly and effectively, and (III) to retain and maintain the services of a Successor Servicer (and any Subservicers). Within a reasonable time after receipt of a written request of the Manager for the same, the Initial Member, the Purchase Money Notes Guarantor and the Collateral Agent shall provide reasonable documentation evidencing such costs and expenses.

Section 5.2 Application of Proceeds. If the Collateral Agent collects any money or property pursuant to Section 5.1 of this Agreement, it shall pay out the money in the order set forth in Section 5.1 of the Custodial and Paying Agency Agreement, notwithstanding anything in any Purchase Money Note, the Guaranty Agreement, the Servicing Agreement or the Contribution Agreement to the contrary; provided, however, that if the Collateral Agent collects any money or property pursuant to Section 5.1 of this Agreement in respect of the Defeasance Account, it shall pay out the money pursuant to directions received from the Purchase Money Notes Guarantor.

Section 5.3 Sale of Secured Parties Collateral.

(a) The power to effect any sale or other disposition (a "Sale") of any portion of the Secured Parties Collateral shall not be exhausted by any one or more Sales as to any portion of the Secured Parties Collateral remaining unsold, but shall continue unimpaired until the entire Secured Parties Collateral shall have been sold or all Secured Obligations shall have been paid. The Collateral Agent from time to time may postpone any public Sale by public announcement made at the time and place of such Sale. The Collateral Agent hereby expressly waives its right to any amount fixed by Law as compensation for any Sale.

(b) In connection with a Sale of all or any portion of the Secured Parties Collateral:

(i) The Collateral Agent may bid for and purchase the property offered for Sale, and upon compliance with the terms of Sale may hold, retain and possess and dispose of such property, without further accountability;

(ii) The Collateral Agent may bid for and acquire the property offered for Sale in connection with any Sale thereof, and, subject to any requirements of, and to the extent permitted by, applicable Law in connection therewith, may purchase all or any portion of the Secured Parties Collateral in a private Sale, and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting the gross Sale price against the sum of (A) the amount which would be distributable to the Collateral Agent as a result of such Sale in accordance with Section 5.2 on the Distribution Date next succeeding the date of such Sale and (B) the expenses of the Sale and of any Proceedings in connection therewith which are reimbursable to it;

(iii) The Collateral Agent shall execute and deliver an appropriate instrument of conveyance prepared by the Servicer transferring its interest in any portion of the Secured Parties Collateral in connection with a Sale thereof;

(iv) The Collateral Agent is, pursuant to Section 13.1 of this Agreement, appointed the agent and attorney-in-fact of each Grantor to transfer and convey its interest in any portion of the Secured Parties Collateral in connection with a Sale thereof, and to take all action necessary to effect such Sale; and

(v) No purchaser or transferee at such a Sale shall be bound to ascertain the Collateral Agent's authority, inquire into the satisfaction of any conditions precedent or see to the application of any monies.

Section 5.4 No Impairment of Action. The Collateral Agent's right to seek and recover judgment pursuant to this Agreement shall not be affected by the seeking, obtaining or application of any other relief under or with respect to this Agreement. Neither the Lien of this Agreement nor any rights or remedies of the Collateral Agent shall be impaired by the recovery of any judgment by the Collateral Agent against any Grantor or by the levy of any execution under such judgment upon any portion of the Secured Parties Collateral or upon any of the assets of such Grantor. Any money or property collected by the Collateral Agent shall be applied in accordance with Section 5.2.

Section 5.5 Remedies Cumulative; Waiver. The rights of each of the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member pursuant to this Agreement shall be in addition to, and not in limitation or exclusion of, any other rights and remedies that it may have (whether by operation of Law, in equity, under contract or otherwise) and without prejudice and in addition to any right of setoff, recoupment, combination of accounts, Lien or other right to which it is at any time entitled. Each of the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member may enforce any of its remedies pursuant to this Agreement successively or concurrently in its sole discretion. No delay or failure on the part of

the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member to exercise any right or remedy to which it may become entitled hereunder upon an Event of Default shall constitute abandonment or waiver of any such right and the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member shall be entitled to exercise such right or remedy at any time during the continuance of a Event of Default.

Section 5.6 Waiver of Certain Rights and Remedies. To the extent permitted under applicable Law, each Grantor hereby waives all rights and remedies of a debtor or grantor under the NY UCC or other applicable Law, and all formalities prescribed by Law relative to the Sale or disposition of the Secured Parties Collateral (other than notice of Sale and any other formalities expressly provided in this Agreement), after the occurrence and during the continuation of an Event of Default and, except as otherwise set forth herein, all other rights and remedies of such Grantor with respect thereto.

## **ARTICLE VI** **Guaranty**

### Section 6.1 Guaranty.

(a) Each Grantor hereby, jointly and severally, unconditionally and irrevocably, guaranties to the Collateral Agent, for the benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Debtor when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations.

(b) Anything in this Agreement or in any other Transaction Document to the contrary notwithstanding, the maximum liability of each Grantor hereunder and under the Transaction Documents shall in no event exceed the amount which can be validly guarantied by such Grantor, if any, under applicable federal and state Laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 6.2 of this Agreement).

(c) Each Grantor agrees that the Secured Obligations may at any time and from time to time exceed the amount of the liability of such Grantor hereunder without impairing the guaranty contained in this Section 6.1 or affecting the rights and remedies of the Secured Parties pursuant to this Agreement.

(d) The guaranty contained in this Section 6.1 shall remain in full force and effect until the termination of this Agreement, notwithstanding that from time to time prior thereto Debtor may be free from any Secured Obligations.

(e) No payment made by the Debtor, any Grantor, any other guarantor or any other Person or received or collected by the Secured Parties from the Debtor, any Grantor, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability



of any Grantor pursuant to this Agreement, which shall remain, notwithstanding any such payment (other than any payment made by such Grantor in respect of the Secured Obligations or any payment received or collected from such Grantor in respect of the Secured Obligations), liable for the Secured Obligations up to the maximum liability of such Grantor pursuant to this Agreement until the termination of this Agreement.

Section 6.2 Right of Contribution. Each Grantor hereby agrees that to the extent that a Grantor shall have paid more than its proportionate share of any payment made hereunder, such Grantor shall be entitled to seek and receive contribution from and against any other Grantor hereunder which has not paid its proportionate share of such payment. Each Grantor's right of contribution shall be subject to the terms and conditions of Section 6.3. The provisions of this Section 6.2 shall in no respect limit the obligations and liabilities of any Grantor to the Secured Parties and each Grantor shall remain liable to the Secured Parties for the full amount guaranteed by such Grantor pursuant to this Agreement.

Section 6.3 No Subrogation. Notwithstanding any payment made by any Grantor hereunder or any set-off or application of funds of any Grantor by the Secured Parties, no Grantor shall be entitled to be subrogated to any of the rights of the Secured Parties against Debtor or any other Grantor or any collateral security or guaranty or right of offset held by any Secured Party for the payment of the Secured Obligations, nor shall any Grantor seek or be entitled to seek any contribution or reimbursement from the Debtor or any other Grantor in respect of payments made by such Grantor hereunder, until the termination of this Agreement and the indefeasible satisfaction in full in cash of the Secured Obligations. If any amount shall be paid to any Grantor on account of such subrogation, contribution or reimbursement rights at any time when all of the Secured Obligations shall not have been paid in full, such amount shall constitute Asset Proceeds and shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor, and shall, immediately upon receipt by such Grantor, be deposited into the Collection Account, to be applied in accordance with the Priority of Payments.

Section 6.4 Amendments, etc. with Respect to the Secured Obligations. Each Grantor shall remain obligated pursuant to this Agreement notwithstanding that, without any reservation of rights against any Grantor and without notice to or further assent by any Grantor, any demand for payment of any of the Secured Obligations made by the Collateral Agent or the Purchase Money Notes Guarantor may be rescinded by such Person and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guaranty therefor or right of offset with respect thereto, may be, from time to time, in whole or in part, renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Collateral Agent or the Purchase Money Notes Guarantor, and the Guaranty Agreement, any Purchase Money Notes and the other Transaction Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Collateral Agent or the Purchase Money Notes Guarantor may deem reasonably advisable from time to time, and any collateral security, guaranty or right of offset at any time held by the Collateral Agent for the payment of the Secured Obligations may be sold (in the case of any such collateral security), exchanged, waived, surrendered or released. The Collateral Agent shall not have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the

Secured Obligations or for the guaranty contained in this Article VI or any property subject thereto.

Section 6.5 Guaranty Absolute and Unconditional. Each Grantor waives any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by the Collateral Agent upon the guaranty contained in this Article VI or acceptance of the guaranty contained in this Article VI; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended, modified or waived, in reliance upon the guaranty contained in this Article VI and the grant of the security interests pursuant to Section 3.1; and all dealings between the Debtor and any of the Grantors, on the one hand, and the Collateral Agent, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guaranty contained in this Article VI and the grant of the security interests pursuant to Section 3.1. Each Grantor waives diligence, presentment, protest, and demand for payment and notice of default or nonpayment to or upon Debtor or any of the Grantors with respect to the Secured Obligations. Each Grantor understands and agrees that the guaranty contained in this Article VI and the grant of the security interests pursuant to Section 3.1 shall be, and shall be construed to be, a continuing, absolute and unconditional guaranty of payment and performance without regard to (a) the validity or enforceability of the Guaranty Agreement, any Purchase Money Notes or any other Transaction Document, any of the Secured Obligations or any other collateral security therefor or guaranty or right of offset with respect thereto at any time or from time to time held by the Collateral Agent, for the benefit of the Secured Parties, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by Debtor or any other Person against the Collateral Agent, or (c) any other circumstance whatsoever (with or without notice to or knowledge of Debtor or such Grantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of Debtor for the Secured Obligations, or of such Grantor under the guaranty contained in this Article VI and the grant of the security interests pursuant to Section 3.1, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, the Collateral Agent may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against Debtor, any Grantor or any other Person or against any collateral security or guaranty for the Secured Obligations or any right of offset with respect thereto, and any failure by the Collateral Agent to make any such demand, to pursue such other rights or remedies or to collect any payments from Debtor, any Grantor or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release Debtor, any Grantor or any other Person or any such collateral security, guaranty or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of Law, of the Collateral Agent against any Grantor. For the purposes of this Agreement, "demand" shall include the commencement and continuance of any legal proceedings.

Section 6.6 Reinstatement. The guaranty contained in this Article VI shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of

Debtor or any Grantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Debtor or any Grantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

Section 6.7 Payments. Each Grantor hereby guaranties that payments pursuant to this Article VI will constitute Asset Proceeds and will be deposited into the Collection Account, to be applied in accordance with the Priority of Payments.

Section 6.8 Information. Each Grantor assumes all responsibility for being and keeping itself reasonably informed of the Debtor's and each other Grantor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Secured Obligations and the nature, scope and extent of the risks that such Grantor assumes and incurs hereunder, and agrees that neither the Collateral Agent nor any other Secured Party will have any duty to advise such Grantor of information known to it or any of them regarding such circumstances or risks.

## **ARTICLE VII**

### **Representations And Warranties**

Section 7.1 Representations and Warranties. Each Grantor hereby represents and warrants to the Purchase Money Notes Guarantor and the Collateral Agent as of the date hereof and at all times while the Secured Obligations remain unsatisfied and undischarged in full, that:

(a) This Agreement has been duly executed by such Grantor and constitutes a legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity;

(b) There are no actions, suits, Proceedings, claims or disputes pending or, to the knowledge of the Manager or such Grantor, threatened in writing, at Law, in equity, in arbitration or before any Governmental Authority affecting such Grantor or any of its properties or revenues that may adversely affect the grant by such Grantor, or the perfection, of the security interest purported to be created hereby in the Secured Parties Collateral, or the exercise by the Collateral Agent or the Purchase Money Notes Guarantor of any of its rights or remedies hereunder;

(c) The Grantors are and will be at all times the sole and exclusive owners of or otherwise have and will have rights in, the Secured Parties Collateral free and clear of any Lien other than Liens in favor of the Collateral Agent and other Liens expressly permitted pursuant to the Transaction Documents. No effective financing statement or other instrument similar in effect covering all or any part of the Secured Parties Collateral (except in favor of the Collateral Agent) is on file in any recording or filing office;

(d) The transactions provided for in this Agreement (i) have been duly authorized by all requisite limited liability company action, and (ii) do not and will not (A) violate (1) any applicable provision of any Law or of the certificate of formation or operating

agreement of such Grantor, (2) any order of any Governmental Authority or arbitrator or (3) any material provision of any indenture or any agreement or other instrument to which such Grantor is a party or by which it or the Secured Parties Collateral is or may be bound, (B) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default pursuant to any such indenture or agreement or other instrument, (C) result in the creation or imposition of any security interest in or Lien upon the Secured Parties Collateral (other than the security interest and Lien created thereon pursuant to this Agreement) or (D) require the consent of any party for the granting of the security interest created hereby;

(e) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other regulatory body, or any other Person, is required on the date hereof for (i) the due execution, delivery and performance by such Grantor of this Agreement, (ii) the grant by such Grantor of the security interest purported to be created hereby in the Secured Parties Collateral or (iii) the exercise by the Collateral Agent or the Purchase Money Notes Guarantor of any of its rights and remedies hereunder. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other regulatory body, or any other Person, is required for the perfection of the security interest purported to be created hereby in the Secured Parties Collateral, except for (A) the filing of a UCC-1 financing statement properly describing the Secured Parties Collateral and identifying such Grantor and Collateral Agent in the applicable jurisdiction required pursuant to the UCC, (B) execution and delivery of the Account Control Agreements pursuant to the UCC, (C) execution and delivery by the Custodian/Paying Agent of the Custodial and Paying Agency Agreement containing an acknowledgment by the Custodian/Paying Agent that it holds possession of the Custodial Documents for the Collateral Agent's benefit, and (D) the taking of any action required to maintain continuing perfection with respect to proceeds which cannot be perfected by the filing of financing statements under the UCC (subclauses (A), (B), (C) and (D), each a "**Perfection Requirement**" and collectively, the "**Perfection Requirements**"); and

(f) This Agreement creates a legal, valid and enforceable security interest in favor of the Collateral Agent, for the benefit of the Secured Parties, in the Secured Parties Collateral, as security for the Secured Obligations. The compliance with the Perfection Requirements will result in the perfection of such security interests. After compliance with the Perfection Requirements, such security interests, including in the case of Secured Parties Collateral in which such Grantor obtains rights after the date hereof, will be perfected, first priority security interests. Such Perfection Requirements and all other action necessary or desirable to perfect and protect such security interest have been duly made or taken, except for the other filings and recordations and actions described in Section 7.1(e) above.

## **ARTICLE VIII**

### **Covenants**

Section 8.1 Debtor Accounts. The Debtor shall establish and maintain with the Custodian/Paying Agent the Debtor Accounts (excluding the Escrow Accounts, which shall be established and maintained by the Servicer).

Section 8.2 Grantor Status; Licensing. The Debtor shall, at all times, constitute a limited liability company organized under the Laws of the State of Delaware and a Single Purpose Entity. Each Subsidiary Grantor shall at all times be a Single Purpose Entity. As soon as reasonably practical after the Closing Date, Debtor (on its own behalf or, if applicable, on behalf of the Ownership Entities that hold Acquired REO Property) shall apply for and, thereafter, use its reasonable best efforts to obtain as quickly as possible, and maintain, all such licenses as are required to conduct its business, including qualifications to conduct business in jurisdictions other than Delaware and licenses to purchase, own or service the Assets and, if applicable, operate, manage, lease and dispose of Acquired REO Property, if the failure to so obtain such licenses would reasonably be expected to result in the imposition of fines, penalties or other liabilities on the Debtor, claims and defenses being asserted against the Debtor (including counterclaims and defense asserted by Borrowers), or materially adversely affect the Debtor or the Debtor's ability to foreclose on the Collateral securing or otherwise realize the full value of any Asset.

Section 8.3 LLC Operating Agreement. The Debtor (a) shall at all times have in effect and be subject to the LLC Operating Agreement, (b) except as is otherwise expressly permitted therein, shall not amend or modify in any material respect the LLC Operating Agreement without the prior written approval of the Purchase Money Notes Guarantor, and (c) shall not enter into or allow itself to become subject to any other constituent documents inconsistent with any terms of the LLC Operating Agreement.

Section 8.4 Custodian/Paying Agent. The Debtor shall retain the Custodian/Paying Agent and shall enter into and at all times be a party to a Custodial and Paying Agency Agreement with the Custodian/Paying Agent. The Custodian/Paying Agent at all times shall have custody and possession of the Notes and other Custodial Documents to the extent required pursuant to the Custodial and Paying Agency Agreement. At no time shall Debtor have more than one Custodian/Paying Agent. The fees and expenses paid to the Custodian/Paying Agent shall be no more than market rates and the Custodian/Paying Agent shall be terminable by the Controlling Party upon no more than thirty (30) days notice without cause thereunder. In the event that the Debtor (or any Servicer or Subservicer) removes any Notes or other Custodial Documents from the possession of the Custodian/Paying Agent (which shall be done only in accordance with the Custodial and Paying Agency Agreement), (a) any loss or destruction of or damage to such Notes or Custodial Documents shall be the liability of the Debtor (who, along with the Servicer and any Subservicer shall be responsible for safeguarding such Notes and Custodial Documents), and (b) such Notes shall be returned to the Custodian/Paying Agent within the time provided under the UCC to maintain the Collateral Agent's perfection thereof by possession. If any Notes or other Custodial Documents are removed in connection with the modification or restructuring of an Asset, the modified or restructured Notes and other Custodial Documents removed in connection therewith shall be returned to the Custodian/Paying Agent as soon as possible following the completion of the restructuring or modification (and, in any event, in accordance with clause (b) of the immediately preceding sentence). Debtor shall ensure that the Purchase Money Notes Guarantor receives a copy of each demand, notice or other communication given pursuant to the Custodial and Paying Agency Agreement at the time that such notice or other communication is given thereunder.

Section 8.5 Compliance with Law. Each Grantor shall, at all times, comply with applicable Law in connection with the performance of its obligations pursuant to this Agreement.

Section 8.6 Servicer. Debtor shall at all times cause the Servicing Obligations to be performed by a Servicer or a Subservicer, each of which shall be a Qualified Servicer.

Section 8.7 Certain Restrictions. Debtor shall not:

(a) at any time, without limiting its obligation to constitute a Single Purpose Entity, incur any Indebtedness (other than the Excess Working Capital Advances, Discretionary Funding Advances and Indebtedness evidenced by the Purchase Money Notes and pursuant to this Agreement);

(b) dissolve or liquidate at any time prior to such time as the Debtor makes the Final Distribution and this Agreement is terminated;

(c) (i) file a voluntary petition for bankruptcy, (ii) file a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution 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 or 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 (A) a petition filed against it in any proceeding described in clause (i) through (iv), or (B) any order adjudging it a bankrupt or insolvent or for relief against it in any bankruptcy or insolvency proceeding, or (vi) allow itself to become unable to pay its obligations as they become due or allow the sum of its debts to be greater than all of its property, at a fair valuation; or

(d) place or permit (voluntarily or involuntarily) any Lien to be placed on any of the Secured Parties Collateral (other than the security interest granted to Collateral Agent hereunder and Liens expressly permitted pursuant to the Transaction Documents), and shall not take any action to interfere with Collateral Agent's rights as a secured party with respect to the Secured Parties Collateral.

Section 8.8 Change in Jurisdiction, Name, Location or Identity. Each Grantor agrees to provide the Collateral Agent with not less than ten (10) days' prior written notice of any change (a) in the jurisdiction in which it is organized, (b) in its company name, (c) in the location of its principal place of business, or (d) in its federal taxpayer identification number. Each Grantor agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Collateral Agent to continue following such change to have a valid, legal and perfected first priority security interest in the Secured Parties Collateral to the extent a security interest therein may be perfected by filing pursuant to the UCC.

Section 8.9 Payment of Principal on Purchase Money Note; Reimbursement of Collateral Agent. The Debtor will duly and punctually pay, or cause the Custodian/Paying Agent to pay, the principal of the Purchase Money Notes in accordance with the terms of the Purchase Money Note, this Agreement and the Custodial and Paying Agency Agreement and from moneys

on deposit in the Defeasance Account. On each Distribution Date, Debtor will direct the Custodian/Paying Agent to distribute amounts on deposit in the Distribution Account to Collateral Agent in payment of any amounts owed by Debtor to Purchase Money Notes Guarantor or Collateral Agent pursuant to this Agreement, subject to the priority of payments set forth in Section 5.1 of the Custodial and Paying Agency Agreement and the other terms thereof.

Section 8.10 Protection of Secured Parties Collateral; Further Assurances. From time to time, at its cost and expense, each Grantor promptly shall execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that Collateral Agent may reasonably request, in order to perfect, to ensure the continued perfection of, and to protect the assignment and security interest granted or intended to be granted hereby or to enable Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Secured Parties Collateral.

Section 8.11 Guaranties and Mortgages. If any Ownership Entity acquires any Acquired REO Property, then, the Debtor shall comply with the requirements set forth in the North CRE Venture 2010-2 Structured Transaction Checklist for Acquired Properties attached hereto as Exhibit B (the "REO Checklist") and within fifteen (15) Business Days after the (i) the foreclosure, conveyance in lieu of foreclosure or other event that resulted in such property becoming Acquired REO Property or (ii) for Company Acquired Property, within thirty (30) days after the Closing Date, the Debtor promptly shall cause such Ownership Entity to execute and deliver to the Collateral Agent or its designee (in addition to the Joinder Agreement provided for in Section 8.12) an REO Mortgage substantially in the form attached as Tab 1 or Tab 2 to the REO Checklist, as applicable, and an Assignment of Leases and Rents substantially as Tab 3 to the REO Checklist, each with respect to such Acquired REO Property in favor of the Collateral Agent or its designee for the benefit of the Secured Parties (which REO Mortgage shall (a) secure all of the Secured Obligations (or, in jurisdictions with a mortgage recording Tax that would be payable on the full amount of the Secured Obligations, an amount equal to 105% of the Total Asset Valuation of the Asset to which such Acquired REO Property relates) or, (b) provide for a Release Price (or, in the case of Acquired REO Property consisting of condominiums or cooperative units or separate land parcels, release prices for individual units or parcels) based on the Business Plan or otherwise satisfactory to the Collateral Agent and (c) shall contain such other customary provisions (in addition to those included in the Asset Documents) as the Collateral Agent shall require in light of the particular nature or characteristics of such Acquired REO Property). Such REO Mortgage shall be accompanied by such related documentation and deliveries as the Collateral Agent reasonably may request, each in form and substance satisfactory to the Collateral Agent, including, without limitation, the REO Collateral Documents. Such REO Mortgage shall be duly recorded or filed in such manner and in such places as are required by applicable Law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent granted pursuant to such REO Mortgage, and all Taxes, fees and other charges payable in connection therewith shall be paid in full. The cost of preparing, negotiating and recording such REO Mortgage (including mortgage recording Taxes) and the costs associated with such additional documentation and deliverables shall be Servicing Expenses. Notwithstanding anything to the contrary contained in the foregoing, with respect to Acquired REO Property (I) acquired on the Closing Date, the Debtor shall deliver (and/or shall cause the applicable Ownership Entity to deliver) to the Collateral Agent or its designee the REO

Collateral Documents and other items required to be delivered pursuant to this Section 8.11 within thirty (30) days after the Closing Date, or (II) acquired on any date after the Closing Date, the Debtor shall deliver (and/or shall cause the applicable Ownership Entity to deliver) to the Collateral Agent or its designee the REO Collateral Documents and other items required to be delivered pursuant to this Section 8.11 (x) within ten (10) days following the execution and delivery of such instrument or (y) within ten (10) days following receipt of such instrument, as the case might be.

Section 8.12 Additional Grantors. If Debtor shall form, acquire or otherwise have any Subsidiary, Debtor shall cause such Subsidiary to become a Subsidiary Grantor pursuant to this Agreement, such Subsidiary shall execute and deliver to Collateral Agent a Joinder Agreement substantially in the form of Exhibit A, which Joinder Agreement will be enforceable against such Subsidiary whether or not formally acknowledged or accepted by the Purchase Money Notes Guarantor, the Collateral Agent or the Initial Member, and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Grantor party hereto on the Closing Date. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of the Collateral Agent not to cause any Subsidiary of the Debtor to become a Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

Section 8.13 Transaction with Affiliates. No Grantor shall enter into any transaction with any Affiliate, except as expressly permitted pursuant to Section 3.5 of the LLC Operating Agreement, without the prior written consent of the Collateral Agent.

Section 8.14 Books and Records; Reports; Certifications; Audits.

(a) Maintenance of Books and Records. The Debtor shall cause to be kept and maintained (including by the Servicer and any Ownership Entity and including records transferred by the Receiver to the Debtor in connection with its conveyance of the Assets to the Debtor pursuant to the Contribution Agreement), at all times, at the Debtor's chief executive office, a complete and accurate set of files, books and records regarding the Collateral, the Secured Parties Collateral and the Assets and the Debtor's, any Ownership Entity's and the Collateral Agent's interests in the Collateral, the Secured Parties Collateral and the Assets, including records relating to the Debtor Accounts and the disbursement of all Asset Proceeds. This obligation to maintain a complete and accurate set of records shall encompass all files in the Debtor's custody, possession or control pertaining to the Collateral, the Secured Parties Collateral and the Assets, including (except as required to be held by the Custodian/Paying agent pursuant to the Custodial and Paying Agency Agreement) all original and other documentation pertaining to the Collateral, the Secured Parties Collateral and the Assets, all documentation relating to items of income and expense pertaining to the Collateral, the Secured Parties Collateral and the Assets, and all of Debtor's (and the Servicer's and each Subservicer's) internal memoranda pertaining thereto. The books of account shall be maintained in a manner that provides sufficient assurance that: (i) transactions of Debtor are executed in accordance with the general or specific authorization of the Manager consistent with the provisions of the LLC



Operating Agreement and the other Transaction Documents; and (ii) transactions of the Debtor are recorded in such form and manner as will (A) permit preparation of federal, state and local income and franchise Tax returns and information returns in accordance with the LLC Operating Agreement and the other Transaction Documents and as required by Law; (B) permit preparation of the Debtor's financial statements in accordance with GAAP and as otherwise set forth in the LLC Operating Agreement and the other Transaction Documents; and (C) maintain accountability for the Debtor's assets.

(b) Retention of Books and Records. The Debtor shall cause all such books and records to be maintained and retained until the date that is the later of ten (10) years after the Closing Date or three (3) years after the date on which the Final Distribution is made. All such books and records shall be available during such period for inspection by the Collateral Agent or the Purchase Money Notes Guarantor or their respective representatives (including any Governmental Authority) and agents at the chief executive office of Debtor at all reasonable times during business hours on any Business Day (or, in the case of any such inspection after the term hereof, at such other location as is provided by notice to the Collateral Agent and the Purchase Money Notes Guarantor), in each instance upon not less than two (2) Business Days' prior notice to the Debtor unless an Event of Default shall have occurred and be continuing. Upon request by the Collateral Agent or the Purchase Money Notes Guarantor, the Debtor, at the sole cost and expense of the Collateral Agent or the Purchase Money Notes Guarantor, as the case might be, promptly shall send copies (the number of copies of which shall be reasonable) of such books and records to the Collateral Agent or the Purchase Money Notes Guarantor. The Debtor shall provide the Collateral Agent and the Purchase Money Notes Guarantor with reasonable advance notice of the Debtor's intention to destroy or dispose of any documents or files relating to the Assets and, upon the request of the Collateral Agent or the Purchase Money Notes Guarantor, shall allow such Person, at its own expense, to recover the same from the Debtor.

(c) Reporting.

(i) As soon as practicable following, but no later than ninety (90) days immediately after, the end of each Fiscal Year (commencing with respect to the 2011 Fiscal Year), Debtor shall deliver, subject to the provisions of subsection (h) below, to each of the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor an audited consolidated balance sheet of the Debtor and its Subsidiaries as at the end of such Fiscal Year, and audited consolidated statements of operations and cash flow of the Debtor and its Subsidiaries for such Fiscal Year, each prepared in accordance with GAAP and accompanied by the Accountants' report thereon, which shall be certified in the customary manner by the Accountants.

(ii) As soon as practicable following, but no later than forty-five (45) 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 March 31, 2011), Debtor shall deliver, subject to the provisions of subsection (h) below, to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor an unaudited consolidated balance sheet of Debtor and its Subsidiaries as at the end of such calendar quarter and an unaudited consolidated statements of operations and cash flow of Debtor and its

Subsidiaries for such calendar quarter (and, 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.

(iii) The Debtor shall cause to be delivered, subject to the provisions of subsection (h) below, to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor such information as is specified in Exhibit B of the LLC Operating Agreement and such other information relating to the Assets, the Secured Parties Collateral, the Debtor, the Servicers and any Subservicers as the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor may reasonably request from time to time and, in any case, shall ensure that the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor are promptly advised, in writing, of any matter of which the Manager, any Servicer or any Subservicer becomes aware relating to the Assets, the Secured Parties Collateral, the Collection Account, the Escrow Accounts, the Working Capital Reserve Account, the Defeasance Account, or any Borrower or Obligor that materially and adversely affects the interests of the Initial Member, the Collateral Agent, the Purchase Money Notes Guarantor or of any Secured Party pursuant to this Agreement. In addition to such other reports as are required to be provided under this Agreement, the Debtor (x) shall cause to be delivered to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor such information relating to compliance by the Private Owner with the requirements of clause (v) of Section 10.1(a) of the LLC Operating Agreement, as the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor may reasonably request from time to time and, (y) in any case, shall (in good faith) immediately advise, in writing, the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor of (i) any capital contribution to the Private Owner under a Qualifying Letter of Credit or Private Owner Control Account or (ii) any failure or cessation of the Private Owner to satisfy the requirements of clause (v) of Section 10.1(a) of the LLC Operating Agreement, provided that any failure of the Debtor to so provide such immediate notice under this clause (y) 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 capital contribution or failure occurred (so long as such Monthly Report is timely delivered in accordance herewith).

(d) Monthly Reports. The Debtor shall cause to be furnished to each of the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor on or prior to the fifteenth (15th) day of each month (or if the fifteenth (15th) day is not a Business Day, then the first Business Day thereafter), commencing on the fifteenth (15th) day of the first month following the calendar month in which the Initial Servicing Transfer Date occurs (and with respect to each Asset, including relevant information with respect thereto for all periods from and after the Servicing Transfer Date for such Asset), the Monthly Report with respect to the relevant Due Period and (ii) the related Distribution Date Report with respect to such Due Period, which report shall specify the amounts and recipients of all funds to be distributed by the Paying Agent on the relevant Distribution Date. Each of the Monthly Report and the Distribution Date Report shall be certified by the chief financial officer (or an equivalent officer) of the Manager. The Monthly Report also shall 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.

For the Distribution Date immediately preceding the Maturity Date for each Class of Purchase Money Note, the Debtor shall also deliver to the Initial Member and the Purchase Money Notes Guarantor, and the Debtor shall also cause to be furnished to each of the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor, the Custodian and Paying Agent Report in accordance with the terms of the Custodial and Paying Agency Agreement.

(e) Annual Compliance Certificates. The Debtor shall, and shall cause the Servicer and any Subservicer to deliver to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor on or before March 15 of each year, commencing in the year 2011, an officer's certificate stating, as to the signer thereof, that (i) a review of such party's activities during the preceding calendar year (or portion thereof) and of its performance pursuant to this Agreement (or, as applicable, the Servicing Agreement or any Subservicing Agreement) 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 has fulfilled all of its obligations pursuant to this Agreement (or, as applicable, the Servicing Agreement or any Subservicing Agreement) in all material respects throughout such year or portion thereof 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, with respect to any Asset, the period commencing on the Closing Date (and with respect to each Asset, including relevant information with respect thereto for the period commencing on the Servicing Transfer Date for such Asset) and continuing through the end of the 2011 calendar year. In the event the Servicer or any Subservicer was terminated, resigned or otherwise performed in such capacity for only part of a year, such party shall provide an officer's certificate pursuant to this Section 8.14(e) with respect to such portion of the year.

(f) Annual Compliance Report. On or before March 15 of each year, commencing in the year 2011, the Debtor shall cause the Servicer and any Subservicer, at its own expense or the expense of the Manager, to provide to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor the annual reports (including the independent accountant report) for the prior Fiscal Year (or other applicable period as set forth below) required under Section 1122 of Regulation AB (regardless of whether any such requirements apply, by their terms, only to companies registered or required to file reports with the Securities and Exchange Commission) with respect to the relevant servicing criteria provisions of Section 1122 (d)(l) of Regulation AB that are applicable to the servicing being conducted under the LLC Operating Agreement (and the Servicing Agreement). The first such reports shall cover the period commencing on the Closing Date (and for each Asset, covering the period from the applicable Servicing Transfer Date) and continuing through the end of the 2011 Fiscal Year.

(g) Audits. Until the later of the date that is ten (10) years after the Closing Date or the date that is three (3) years after the Final Distribution, the Debtor shall, and shall cause the Servicer and any Subservicer to (i) provide any representative of the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor (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 Secured Parties Collateral, the Collateral, the Servicing Obligations, the Debtor Accounts, or any other matters relating to this Agreement or the rights or obligations hereunder or under the Transaction Documents, (ii) permit such representatives to make copies of and extracts from the same, (iii) allow the Initial Member, the

Collateral Agent and the Purchase Money Notes Guarantor to cause such books to be audited by accountants selected by the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor and (iv) allow representatives of the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor to discuss Debtor's and the Servicer's or Subservicer's affairs, finances and accounts, as they relate to the Secured Parties Collateral, the Assets, the Collateral, the Servicing Obligations, the Debtor Accounts or any other matters relating to this Agreement, the Secured Obligations or the rights or obligations hereunder, with its officers, directors, employees, accountants (and by this provision Debtor hereby authorizes such accountants to discuss such affairs, finances and accounts with such representatives), the Servicer, any Subservicer, and attorneys. Any expense incurred by the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor and any reasonable out-of-pocket expense incurred by Debtor in connection with the exercise by the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor of its rights in this Section 8.14(g) shall be borne by such party; provided, however, that any expense incident to the exercise by the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor of its rights pursuant to this Section 8.14(g) as a result of or during the continuance of an Event of Default shall be borne in all cases by the Private Owner (except to the extent such 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 Subservicers) having been engaged by the Initial Member, the Debtor 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).

(h) No Duplicate Reports. Notwithstanding any provision in subsections (c) through (f) above to the contrary, the Debtor (i) shall not be required to deliver duplicate copies of the reports as described in such subsections to the Receiver, so long as the Receiver is acting in its capacity as the Collateral Agent and the Initial Member and (ii) shall only be required to deliver one copy of each such reports addressed to the Receiver with a notation on the envelope that such report is being delivered to the Receiver in its dual capacities as both the Initial Member and the Collateral Agent.

#### Section 8.15 Insurance.

(a) The Debtor shall cause insurance coverage to be maintained for the Collateral and Acquired Property from an insurer (unless provided for in the then-applicable Business Plan) reasonably acceptable to the Purchase Money Notes Guarantor for any Asset with respect to which the Borrower has failed to maintain required fire, hurricane, flood and hazard insurance with extended coverage as is customary in the area in which the Collateral or Acquired Property is located and in such amounts and with such deductibles as, from time to time, are approved by the Purchase Money Notes Guarantor (unless provided for in the then-applicable Business Plan).

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by the Collateral Agent of written notice thereof, (ii) with respect to any policy insuring a Grantor or Collateral, name the Collateral Agent as additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance).

Section 8.16 Recovery of Expenses; Interest. The Debtor shall cause commercially reasonable efforts to be used to recover from Borrowers and Obligors those Servicing Expenses that such Borrowers or Obligors are obligated to pay. No Servicing Expenses shall bear interest chargeable in any way to the Collateral Agent or the Purchase Money Notes Guarantor.

Section 8.17 Debtor's Duty To Advise Collateral Agent and Purchase Money Notes Guarantor; Delivery of Certain Notices. In addition to such other reports and access to records and reports as are required to be provided to the Collateral Agent and the Purchase Money Notes Guarantor, the Debtor shall cause to be delivered to the Collateral Agent or the Purchase Money Notes Guarantor such information relating to the Assets, the Collateral, the Secured Parties Collateral, Debtor and the Servicer and any Subservicer as the Collateral Agent or the Purchase Money Notes Guarantor may reasonably request from time to time and, in any case, shall ensure that the Collateral Agent and the Purchase Money Notes Guarantor are promptly advised, in writing, of any matter of which Debtor, the Servicer or any Subservicer becomes aware relating to the Assets, the Secured Parties Collateral, the Collateral, the Debtor Accounts or any Borrower or Obligor that materially and adversely affects the interests of the Collateral Agent or the Purchase Money Notes Guarantor hereunder. Without limiting the generality of the foregoing, the Debtor shall cause to be delivered to the Collateral Agent and the Purchase Money Notes Guarantor information indicating any possible Environmental Hazards with respect to any Collateral or the Secured Parties Collateral and any notice or report provided to the Debtor or the Manager pursuant to Section 5.5 of the Servicing Agreement as in effect on the Closing Date. To the extent the Collateral Agent requests information that is dependent upon obtaining such information from an Borrower, Obligor or other third party, the Debtor shall cause to be made commercially reasonable efforts to obtain such information but it shall not be a breach by the Debtor of this Agreement if the Debtor fails to cause such information to be provided to Collateral Agent because an Borrower, Obligor or other Person (other than the Servicer or any Subservicer) has failed to provide such information after such efforts have been made.

Section 8.18 Administration of Acquired REO Properties. Notwithstanding any other provision of this Agreement to the contrary, in operating, managing, leasing or disposing of any Acquired REO Property, the Debtor and the Manager shall act in the best interests of the Debtor and the Members and creditors of the Debtor (including the FDIC in its various capacities) in accordance with the Servicing Standards pursuant to the LLC Operating Agreement, in accordance with the specific provisions of the LLC Operating Agreement relating to REO Properties and in general conformance with the Business Plan. The Debtor shall furnish to the Collateral Agent such reports regarding the operation, management, leasing or disposition of any Acquired REO Property as the Collateral Agent reasonably shall request.

Section 8.19 Payment of Purchase Money Notes Issuance/Guaranty Fee.

(a) In consideration of the Purchase Money Notes Guarantor agreeing to act as the agent of the Noteholders of the Purchase Money Notes and to guaranty certain obligations of Debtor pursuant to the Purchase Money Notes in accordance with the Guaranty Agreement, the Receiver, for and on behalf of Debtor, shall pay to the Purchase Money Notes Guarantor on the Closing Date a fee equal to 3.5% of the aggregate original principal amount of the Purchase Money Notes (the "**Purchase Money Notes Issuance/Guaranty Fee**"). To effect reimbursement and repayment of the Purchase Money Notes Issuance/Guaranty Fee to the Receiver, the

Purchase Money Notes Issuance/Guaranty Fee will be added to the aggregate principal amount of the Purchase Money Note.

(b) Notwithstanding any provision of this Agreement or in the other Transactions Documents, no additional Purchase Money Notes Issuance/Guaranty Fee or Purchase Money Notes Reissuance Fee shall be due upon the exercise of the guaranty pursuant to the Guaranty Agreement.

Section 8.20 Purchase Money Notes Reissuance Fee. In consideration of the Purchase Money Notes Guarantor agreeing to continue its guaranty of certain obligations of the Debtor following reissuance of any Purchase Money Note, including any Reissued Purchase Money Note, the Purchase Money Notes Guarantor will receive (in the manner specified in the following sentence) a reissuance fee from the Debtor in an amount equal to 0.50% of the principal amount of the Reissued Purchase Money Notes (the "Purchase Money Notes Reissuance Fee"), which Purchase Money Notes Reissuance Fee is to be based on the then principal amount of the Maturing Purchase Money Notes without taking into account the increase in the amount due to the Purchase Money Notes Reissuance Fee. To effect payment of the Purchase Money Notes Reissuance Fee to the Purchase Money Notes Guarantor, the Purchase Money Notes Reissuance Fee will be added to the principal balance of the Reissued Purchase Money Note.

## **ARTICLE IX**

### **Required Consent; Limits Liability**

Section 9.1 Required Consents; Limits Liability. Notwithstanding anything to the contrary contained in this Agreement (other than the last sentence of this Section 9.1), the Debtor shall not permit to be taken any action enumerated in Section 6.1 of the Servicing Agreement, any action described in the LLC Operating Agreement as requiring the consent of the Required Consenting Parties, including but not limited to the actions enumerated in Sections 3.4 and Section 8.1 of the LLC Operating Agreement) or any action enumerated below without the prior written consent of the Required Consenting Parties, which consent may be withheld or conditioned in the Collateral Agent's sole and absolute discretion:

(a) any sale, assignment, transfer, pledge, hypothecation or other encumbrance or disposition, either directly or indirectly (each a "**Transfer**") of the Private Owner Interest; provided that any such Transfer must be of all (and not less than all) of the Private Owner Interest; provided, further, any indirect Transfer of the Private Owner Interest is permitted as long as such indirect Transfer does not result in a Change of Control;

(b) any financing of any Sale or Transfer with respect to any of the Assets;

(c) any Transfer of any Asset that provides for any recourse against the Initial Member, the Purchase Money Notes Guarantor or the Receiver;

(d) any disbursement of amounts from the Working Capital Reserve Account other than to fund Working Capital Expenses;

(e) any disbursement of any funds in the Collection Account or the Distribution Account, except as expressly contemplated by the Transaction Documents;

(f) any reimbursement for any expense or cost incurred (or paid) to any Affiliate of the Private Owner, the Debtor, the Servicer or any Subservicer, except as permitted pursuant to the Transaction Documents;

(g) any amendment or modification to, or waiver of, any terms of the LLC Operating Agreement that relate to the manner in which the Servicer services the Assets, including, without limitation, the Servicing Obligations and the Servicing Standard;

(h) the replacement of the Servicer;

(i) the payment of any fees to, or entering into any transaction with, any Affiliate of Debtor or Private Owner or Servicer or any Subservicer, except as expressly contemplated by the Transaction Documents;

(j) any amendment, modification to or change in any material respect, or material waiver of any provision of, the Organization Documents of Debtor;

(k) any Change of Control;

(l) the incursion, creation or assumption of any Indebtedness other than in respect of the Purchase Money Note, this Agreement, the Discretionary Funding Advances and Excess Working Capital Advances.

Notwithstanding the foregoing, the Debtor may permit to be taken any action enumerated in Section 6.1(g) of the Servicing Agreement without the approval of the Initial Member, the Purchase Money Notes Guarantor or the Collateral Agent, as applicable.

## Section 9.2 Limitation of Liability.

(c) Liability Generally. Neither the Collateral Agent, the Purchase Money Notes Guarantor nor any other Secured Party nor any of their respective Affiliates, nor any of their respective officers, directors, employees, partners, principals or agents, including the Servicer and any Subservicer, shall be liable for any action taken or omitted to be taken by them or any one of them under this Agreement or in connection with any Secured Parties Collateral or any portion thereof, except for any act or omission constituting gross negligence, bad faith or willful misconduct (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law). In the event the Collateral Agent, the Purchase Money Notes Guarantor or any Secured Party exercises its rights pursuant to Article V of this Agreement, none of the Collateral Agent, the Purchase Money Notes Guarantor or any Secured Party, nor any of their respective Affiliates, nor any of their respective officers, directors, employees, partners, principals or agents, including the Servicer and any Subservicer when acting as an agent of any of the foregoing, shall be liable for any action taken or omitted to be taken by them or any one of them pursuant to this Agreement or in connection with any Collateral or any portion thereof, except for any act or omission constituting willful misconduct.

(d) Reliance on Notices, etc. Neither Debtor nor the Collateral Agent or the Purchase Money Notes Guarantor shall incur any liability to the other by acting in good faith upon any notice, consent, certificate or other instrument or writing (including telegram, cable, telex or telecopy) that is reasonably believed by Debtor or the Collateral Agent or the Purchase Money Notes Guarantor as applicable, to be genuine and to have been signed or sent by the proper party and that on its face is properly executed.

(e) No Consequential Damages. Regardless of the legal theory upon which any claim by or against the Debtor or the Collateral Agent or the Purchase Money Notes Guarantor is based, including any claim based on contract, tort, strict liability, or fraud, none of the Collateral Agent or the Purchase Money Notes Guarantor or the Debtor shall be liable for, or may recover from the other, any amounts other than actual losses, costs and expenses (including reasonable attorneys' fees and litigation and similar costs to pursue such recovery) incurred by the party asserting the claim. Without limiting the foregoing, neither party shall be liable for, or entitled to recover from the other party, any consequential, special, indirect, punitive, treble, nominal or exemplary damages, business interruption costs or expenses, or damages for lost profits, operating losses or lost investment opportunity (regardless of whether any such damages are characterized as direct or indirect), each of which is and all of which are hereby excluded by agreement of the Collateral Agent, the Purchase Money Notes Guarantor and the Debtor, regardless of whether the party against whom such damages may be claimed has been advised of the possibility of any such damages, unless (in each case) such losses are incurred by the party asserting the claim as a direct result of a claim asserted against such party by a third party. For purposes of this Section 9.2, the following claims shall not constitute claims asserted by a third party: (i) with respect to the Debtor, any claims asserted by (A) the Servicer or any Subservicer, (B) any Affiliate of the Debtor or the Servicer or any Subservicer, and (C) any officer, director, employee, partner, principal or agent of the Debtor or the Servicer or any Subservicer, or any Affiliate of the Debtor or the Servicer or any Subservicer; and (ii) with respect to Collateral Agent, any claims asserted by any Affiliate or officer, director, employee, partner, principal or agent of the Collateral Agent, the Purchase Money Notes Guarantor or any Affiliate of any of them.

## **ARTICLE X**

### **Release of Secured Parties Collateral**

The Purchase Money Notes Guarantor hereby authorizes the Collateral Agent to, and Collateral Agent agrees that it shall, release its Lien on any Secured Parties Collateral, solely to the extent necessary, (a) upon a final, nonappealable order of a court of competent jurisdiction permitting or directing disposition thereof, (b) upon payment of any Asset in full and satisfaction in full of all of the secured obligations with respect to an Asset or upon receipt of a discounted payoff as payment in full of an Asset, (c) as is necessary in connection with the foreclosure on a Mortgaged Property, acceptance of a deed in lieu thereof or modification or restructuring of the terms thereof, or (d) in connection with the Debtor's sale of an Asset or any Collateral to the extent permitted under the Transaction Documents, provided, that the proceeds of such sale or disposition are applied in accordance with the priority of payments set forth in Section 5.1 of the Custodial and Paying Agency Agreement and the other terms thereof.



**ARTICLE XI**  
**Liquidation of Assets**

Section 11.1 Rights to Liquidate Assets and Secured Parties Collateral. Each of the Initial Member and, so long as any Purchase Money Notes is outstanding and not fully discharged, the Purchase Money Notes Guarantor shall have the right, exercisable in its sole and absolute discretion, to require the liquidation and sale, for cash consideration, of any remaining Assets or other Secured Parties Collateral held by Debtor or any Ownership Entity at any time after the earlier to occur of (a) the seventh anniversary of the Closing Date or (b) the date on which the then Unpaid Principal Balance is ten percent (10%) or less of the Unpaid Principal Balance as of the Cut-Off Date as set forth on the Asset Schedule.

Section 11.2 Exercise of Rights to Liquidate Assets and Secured Parties Collateral. In order to exercise its rights under Section 11.1, the Initial Member or, (a) if the Guaranty Notice is provided as set forth in the Guaranty Agreement, then until the repayment in full of and the discharge of the Purchase Money Notes (and the satisfaction of the reimbursement obligation to the Purchase Money Notes Guarantor on account of any Guaranty Payment), the Receiver or (b) if the Guaranty Notice is not provided as set forth in the Guaranty Agreement or after the repayment in full of and the discharge of the Purchase Money Notes (and the satisfaction of the reimbursement obligations to the Purchase Money Notes Guarantor), the Purchase Money Notes Guarantor acting on behalf of the Noteholders shall give notice in writing to the Collateral Agent, the Custodian/Paying Agent and the Debtor (with copies thereof to the Initial Member or the Purchase Money Notes Guarantor, as applicable), setting forth the date by which the remaining Assets or other Secured Parties Collateral are to be liquidated by the Collateral Agent. Debtor shall, and shall cause the Custodian/Paying Agent to, cooperate and assist the Collateral Agent with any and all aspects of the liquidation of the remaining Assets and other Secured Parties Collateral to the extent reasonably requested by the Collateral Agent. In the event the Debtor or any Affiliate thereof desires to bid to acquire the remaining Assets or other Secured Parties Collateral, then the Collateral Agent shall be entitled to liquidate the remaining Assets and other Secured Parties Collateral in its discretion. In the event the Collateral Agent undertakes to liquidate the remaining Assets and other Secured Parties Collateral pursuant to this Section 11.2, the proceeds thereof shall be applied on the Distribution Date following any such liquidation in accordance with the priority of payments set forth in Section 5.1 of the Custodial and Paying Agency Agreement and the other terms thereof; provided, however, that, notwithstanding such priority of payments, no portion of such proceeds shall be paid pursuant to Section 5.1(b)(vii) of the Custodial and Paying Agency Agreement until the Secured Obligations have been repaid in full.

**ARTICLE XII**  
**Collateral Agent**

Section 12.1 Appointment and Authorization of Collateral Agent. The Purchase Money Notes Guarantor hereby irrevocably appoints, designates and authorizes the Receiver to act as the Collateral Agent pursuant to this Agreement to act as the agent of (and to hold any security interest to the Secured Parties Collateral Documents for and on behalf of or on trust for) the Purchase Money Notes Guarantor and each other Secured Party for purposes of acquiring,

holding and enforcing any and all Liens on the Secured Parties Collateral granted by any Grantor to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this capacity, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent for purposes of holding or enforcing any Lien on the Secured Parties Collateral (or any portion thereof) granted pursuant to the Secured Parties Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent), shall be entitled to the benefits of all provisions of this Article XII as though such co-agents, sub-agents and attorneys-in-fact were the Collateral Agent hereunder. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Transaction Document, the Collateral Agent shall have no duties or responsibilities, except those expressly set forth herein, nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with any Secured Party or participant of a Secured Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Transaction Document or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Transaction Documents with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 12.2 Delegation of Duties. The Collateral Agent may execute any of its duties under this Agreement or any other Secured Parties Collateral Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Secured Parties Collateral Documents or of exercising any rights and remedies thereunder) by or through agents, sub-agents, employees or attorneys-in-fact as shall be deemed necessary by the Collateral Agent and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Collateral Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct (as determined in the final judgment of a court of competent jurisdiction).

Section 12.3 Liability of Collateral Agent. Neither the Collateral Agent, nor any of its Affiliates or officers, directors, employees, agents, sub-agents or attorneys-in-fact of any of them shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Transaction Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Secured Party for any recital, statement, representation or warranty made by any Grantor or any officer thereof, contained herein or in any other Transaction Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Agreement or any other Transaction Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Transaction Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Secured Parties Collateral Documents, or for any failure of any

Grantor or any other party to any Transaction Document to perform its obligations pursuant to this Agreement or any other Transaction Document.

Section 12.4 Reliance by Collateral Agent.

(a) The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Debtor), independent accountants and other experts selected by the Collateral Agent. The Collateral Agent shall be fully justified in failing or refusing to take any action under any Secured Parties Collateral Document unless it shall first receive such advice or concurrence of the Controlling Party as it deems appropriate. The Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Secured Parties Collateral Document in accordance with a request or consent of the Controlling Party and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Parties.

(b) Each of the Purchase Money Notes Guarantor and the Receiver, by its execution of this Agreement, shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required to be consented to or approved by or acceptable or satisfactory to the Collateral Agent unless the Collateral Agent shall have received notice from the Purchase Money Notes Guarantor prior to the proposed Closing Date specifying its objection thereto.

Section 12.5 Liability of Collateral Agent. The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent shall have received written notice from a Grantor or any Secured Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a “notice of default.” The Collateral Agent will notify the Purchase Money Notes Guarantor of its receipt of any such notice. The Collateral Agent shall take such action with respect to any Event of Default as may be directed by the Controlling Party in accordance with Article V; provided, however, that unless and until the Collateral Agent has received any such direction, the Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Secured Parties.

Section 12.6 Successor Collateral Agent.

The Collateral Agent may resign as the Collateral Agent upon thirty (30) days’ notice to the Purchase Money Notes Guarantor and Debtor; provided, however, that the prior written consent of the Purchase Money Notes Guarantor and this Debtor will be required prior to the effectiveness of any such resignation. If the Collateral Agent resigns under this Agreement, the Controlling Party, with the written consent of the Debtor, shall appoint a successor collateral agent for the Secured Parties. If no successor collateral agent is appointed prior to the effective date of the resignation of the Collateral Agent, the retiring Collateral Agent may appoint, after

consulting with the Purchase Money Notes Guarantor and Debtor, a successor collateral agent. Upon the acceptance of its appointment as successor collateral agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "Collateral Agent" shall mean such successor collateral agent, and the retiring Collateral Agent's appointment, powers and duties as the Collateral Agent shall be terminated.

### **ARTICLE XIII** **Miscellaneous**

Section 13.1 Attorney-in-Fact. Each Grantor hereby constitutes and appoints the Collateral Agent the true and lawful attorney-in-fact of such Grantor, with full power and authority in the place and stead of such Grantor and in the name of such Grantor, Collateral Agent or otherwise, subject to the terms of this Agreement and applicable Law, to enforce all rights, interests and remedies of such Grantor with respect to the Secured Parties Collateral; provided, however, that the Collateral Agent shall not exercise any of the aforementioned rights unless an Event of Default has occurred and is continuing. This power of attorney is a power coupled with an interest and shall be irrevocable until the termination of this Agreement in accordance with the terms hereof; provided, however, that nothing in this Agreement shall prevent such Grantor from, prior to the exercise by the Collateral Agent of any of the aforementioned rights, utilizing the Secured Parties Collateral to transact Grantor ordinary course business operations.

Section 13.2 No Petition. Each of the Collateral Agent and the Purchase Money Notes Guarantor hereby covenants and agrees that it will not at any time institute against the Debtor, or join in any institution against the Debtor of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or other proceedings under any United States federal or state bankruptcy or similar Law in connection with any obligation relating to any Purchase Money Note, the Guaranty Agreement or this Agreement.

Section 13.3 Reimbursement of Expenses. Except as prohibited by Law, if at any time the Collateral Agent or the Purchase Money Notes Guarantor employs counsel in connection with the creation, perfection, preservation, or release of the security interest of the Collateral Agent in the Secured Parties Collateral or the enforcement of any of the Collateral Agent's, or the Purchase Money Notes Guarantor's rights or remedies hereunder, all of the Collateral Agent's and the Purchase Money Notes Guarantor's attorneys' fees arising from such services and all other expenses, costs, or charges relating thereto shall become part of the Secured Obligations secured hereby and be paid by the Debtor on demand.

Section 13.4 Termination of Security Interest. Upon the indefeasible satisfaction and discharge in full of the Secured Obligations, the security interest and all other rights granted hereby shall terminate and all rights to the Secured Parties Collateral shall revert to the Debtor. Upon any such indefeasible satisfaction, and discharge of the Secured Obligations, the Collateral Agent (a) upon the written request of the Debtor shall promptly execute and deliver all such documentation, UCC termination statements and instruments as are necessary to release the Liens created pursuant to this Agreement and to terminate this Agreement, and (b) agrees, at the

reasonable request of the Debtor, to furnish, execute and deliver such documents, instruments, certificates, notices or further assurances as the Debtor may reasonably request as necessary or desirable to effect such termination and release, all at the Debtor's sole cost and expense.

### Section 13.5 Indemnification.

(a) Each Grantor shall indemnify, defend and hold harmless the Collateral Agent, the Purchase Money Notes Guarantor and each of their respective Affiliates, and their respective officers, directors, employees, partners, principals, agents and contractors (the "**Indemnified Parties**"), from and against any losses, damages, liabilities, 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 of the foregoing), deficiencies, claims, interest, awards, judgments, penalties and fines (collectively, "**Indemnified Losses**") arising out of or resulting from (i) any breach by any Grantor or any of its Affiliates or any of their respective officers, directors, employees, partners, principals, agents or contractors (including the Servicer and any Subservicer) (collectively, "**Related Entities**") of any of their respective obligations under or covenants or agreements contained in this Agreement, the Secured Parties Collateral Documents or the Servicing Agreement (including any claim asserted by the Collateral Agent, the Purchase Money Notes Guarantor against Debtor to enforce its rights pursuant to Article V), or any third-party allegation or claim based upon facts alleged that, if true, would constitute such a breach, or (ii) any gross negligence, bad faith or willful misconduct of any of the Related Entities (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law). Such indemnity shall survive the termination of this Agreement. In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving an Indemnified Loss or a claim or demand made by any Person against the Indemnified Party (a "**Third Party Claim**"), such Indemnified Party shall deliver notice thereof to Debtor promptly after receipt by such Indemnified Party of written notice of the Third Party Claim, describing in reasonable detail the facts giving rise to any claim for indemnification hereunder, the amount of such claim (if known) and such other information with respect thereto as is available to the Indemnified Party and as Debtor may reasonably request. The failure or delay to provide such notice, however, shall not release any Grantor from any of its obligations under this Section 13.5 except to the extent that it is materially prejudiced by such failure or delay.

(b) If for any reason the indemnification provided for herein is unavailable or insufficient to hold harmless the Indemnified Parties, Debtor shall contribute to the amount paid or payable by the Indemnified Parties as a result of the Indemnified 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 Debtor or any Subsidiary Grantor (including the Servicer and any Subservicer), on the other hand in connection with a breach of the Debtor's or any Subsidiary Grantor's obligations under this Agreement.

(c) If the Debtor confirms in writing to the Indemnified Party within fifteen (15) days after receipt of a Third Party Claim the Debtor's responsibility to indemnify and hold harmless the Indemnified Party therefor, Debtor may elect to assume control over the compromise or defense of such Third Party Claim at Debtor's own expense and by Debtor's

own counsel, which counsel must be reasonably satisfactory to the Indemnified Party; provided, however, 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) Debtor shall keep the Indemnified Party advised of all material events with respect to any Third Party Claim; (iii) Debtor 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 any Indemnified Party or any of its or his Affiliates; and (iv) no Grantor will, without the prior written consent of each 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 such Grantor to satisfy the full amount of the liability in connection with such Third Party Claim and includes an unconditional release of the Indemnified Party from all liability arising out of such Third Party Claim.

(d) Notwithstanding anything contained in this Agreement to the contrary, the Debtor 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 Debtor shall nevertheless be required to pay all Indemnified 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 Debtor or any Subsidiary Grantor (or any Affiliate) and the Indemnified Party are named as parties and either the Debtor or such Subsidiary Grantor (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. If the Debtor elects not to assume the compromise or defense against the asserted liability, 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, compromise or defend against such asserted liability (but the Debtor shall nevertheless be required to pay all Indemnified Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise). In connection with any defense of a Third Party Claim (whether by Debtor, a Subsidiary Grantor 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.

Section 13.6 Governing Law. EACH PARTY TO THIS AGREEMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE

THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW 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. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 13.6, HOWEVER, (a) THE UNIFORM COMMERCIAL CODE AS IN EFFECT FROM TIME TO TIME IN THE JURISDICTION WHERE EACH GRANTOR IS LOCATED IS TO GOVERN THE PERFECTION OR NON-PERFECTION AND THE PRIORITY OF ANY SECURITY INTERESTS GRANTED BY SUCH GRANTOR TO THE SECURED PARTIES PURSUANT TO THIS AGREEMENT AND (b) THE APPLICABLE LAWS IN EFFECT FROM TIME TO TIME IN THE JURISDICTION WHERE ANY ACQUIRED REO PROPERTY IS LOCATED ARE TO GOVERN THE CREATION, PERFECTION OR NON-PERFECTION, PRIORITY AND ENFORCEMENT OF ANY SECURITY INTERESTS GRANTED BY THE APPLICABLE GRANTOR TO THE SECURED PARTIES PURSUANT TO THIS AGREEMENT IN AND TO SUCH ACQUIRED REO PROPERTY. NOTHING IN THIS AGREEMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS AGREEMENT.

Section 13.7 Jurisdiction, Venue and Service.

(a) Each Grantor, for 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 or any of its Affiliates commenced by the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member 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 court or dispute-resolution forum other than the court in which the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member, as applicable, files the suit, action or proceeding without the consent of the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member, as applicable;

(B) assert that venue is improper in 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 Supreme Court of the State of New York for any suit, action or proceeding against it or any of its Affiliates commenced by the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member arising out of,

relating to, or in connection with this Agreement or any other Transaction Document (other than the LLC Operating Agreement), 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 Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member, as applicable;

(B) assert that venue is improper in the Supreme Court of the State of New York; or

(C) assert that the Supreme Court of the State of New York is an inconvenient forum.

(iii) agrees to bring any suit, action or proceeding by any Grantor or its Affiliates against the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member arising out of, relating to, or in connection with this Agreement or any Transaction Document in only either 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 Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member, 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 Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member, 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 13.7(a)(iii), to bring that suit, action or proceeding in only the Supreme Court of the State of New York, 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 Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member, as applicable.

(b) Each Grantor, 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 13.7(a) may be enforced in any court of competent jurisdiction;

(c) Subject to the provisions of Section 13.7(d), each Grantor, on behalf of itself and its Affiliates, Collateral Agent, Purchase Money Notes Guarantor and Initial Member hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 13.7(a) or Section 13.7(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 13.9 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 13.7(c) shall affect the right of any party to serve process in any other manner permitted by Law;



(d) Nothing in this Section 13.7 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Section 13.7(a)(iii) and Section 13.7(a)(iv), or in any way limit the FDIC's right to remove, transfer, seek to dismiss, or otherwise respond to any suit, action, or proceeding against it in any forum.

Section 13.8 Waiver of Jury. EACH GRANTOR (ON BEHALF OF ITSELF AND IT AFFILIATES), THE COLLATERAL AGENT, THE PURCHASE MONEY NOTES GUARANTOR 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 AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

Section 13.9 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 mailed or delivered to the applicable address or electronic mail address of the parties specified below for such Person or to such other address or electronic mail address as shall be designated by such party in a notice to the other parties. All such notices 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; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; and (C) if delivered by electronic mail, when delivered. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

Address for notices or communications to Debtor and any Subsidiary Grantor:

North CRE Venture 2010-2, LLC  
2450 Broadway, 6<sup>th</sup> Floor  
Santa Monica, California 90404  
Attention: Paul A. Fuhrman  
E-mail: [REDACTED]

with a copy to:

Colony Capital, LLC  
660 Madison Avenue  
New York, New York 10065  
Attn: Ronald M. Sanders  
E-mail: [REDACTED]

Address for notices or communications to any of the Collateral Agent, the Initial Member and the Purchase Money Notes Guarantor:

Assistant Director for Structured Transactions – Resolutions and Receiverships  
c/o Federal Deposit Insurance Corporation

550 17th Street, NW (Room F-7014)  
Washington, D.C. 20429-0002  
Attention: Ralph Malami  
Email Address: RMalami@fdic.gov

with a copy to:

Senior Counsel  
FDIC Legal Division  
Litigation and Resolutions Branch, Receivership Section  
Special Issues Unit  
3501 Fairfax Drive (Room E-7056)  
Arlington, Virginia 22226  
Attention: David Gearin  
Email Address: DGearin@fdic.gov

Section 13.10 Assignment. This Agreement shall inure to the benefit of and be binding on and enforceable against each Grantor, the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member; provided, however, that no Grantor shall assign its rights hereunder in whole or in part without the prior written consent of the Collateral Agent and the Purchase Money Notes Guarantor.

Section 13.11 Entire Agreement. This Agreement contains the entire agreement among the Grantors, the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member with respect to the subject matter hereof and supersedes any and all other prior agreements, whether oral or written, provided 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 shall remain in full force and effect to the extent provided therein, except that the Debtor's rights under Article VI of the Contribution Agreement shall not be deemed a repurchase option for purposes of Section 2 of any such Confidentiality Agreement.

Section 13.12 Amendments and Waivers. No provision of this Agreement may be amended or waived except in writing executed by all of the parties to this Agreement, except for Article II, any provision of which may be amended and waived in writing executed by the Debtor and the Purchase Money Notes Guarantor.

Section 13.13 Confidentiality. Each Grantor shall keep confidential and shall not divulge to any Persons, without the prior written consent of the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member, any information pertaining to this Agreement and the other Transaction Documents except as reasonably necessary to carryout the intent of this Agreement and except to the extent that it is necessary and appropriate for such Grantor to do so in working with legal counsel, auditors, Taxing authorities, regulatory authorities or any other Governmental Authority; provided, however, that, to the extent that disclosure should be required by Law, rule, regulation (including any securities listing requirements or the requirements of any self-regulatory organization), subpoena, arbitration or other dispute resolution process or in connection with any legal or regulatory proceeding (including in

connection with or pursuant to any action, suit, subpoena, arbitration or other dispute resolution process or other legal proceedings, whether civil or criminal, and including before any court or administrative or legislative body), such Grantor will use all reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by Law) notify the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member within one (1) Business Day after its knowledge of such legally required disclosure so that the Collateral Agent, the Purchase Money Notes Guarantor and/or the Initial Member may seek an appropriate protective order. Notice shall be by telephone, by email and in writing. In the absence of a protective order or waiver, such Grantor may make such required disclosure if, in the written opinion of its outside counsel (which opinion shall be provided to the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member prior to disclosure pursuant to this Section 13.13), failure to make such disclosure would subject such Grantor to liability for contempt, censure or other legal penalty or liability.

Section 13.14 Reinstatement. This Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment pursuant to this Agreement is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, reorganization, liquidation of any Grantor or upon the dissolution of, or appointment of any intervenor or conservator or, or trustee or similar official for, any Grantor or any substantial part of any Grantor's assets, or otherwise, all as though such payments had not been made, and Debtor shall pay the Collateral Agent or the Purchase Money Notes Guarantor on demand all reasonable costs and expenses (including reasonable fees of counsel) incurred by the Collateral Agent or the Purchase Money Notes Guarantor in connection with such rescission or restoration.

Section 13.15 Interpretation; No Presumption. Headings are intended solely for convenience of reference and shall not affect the meaning or interpretation of the provisions of this Agreement. This Agreement shall be construed fairly as to each party to this Agreement and if at any time any such term or condition is desired or required to be interpreted or construed, no consideration shall be given to the issue of who actually prepared, drafted or requested any term or condition of this Agreement or any agreement or instrument subject to this Agreement.

Section 13.16 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (a) 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; (b) without limitation of clause (a), 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 (c) without limitation of clauses (a) or (b), 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, (p) modify such provision (including without limitation,

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 (q) enforce such provision, as so modified pursuant to clause (p), in such proceeding. Nothing in this Section 13.16 is intended to, or shall, limit (x) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (y) the intended effect of Section 13.6.

Section 13.17 Survival. All obligations made herein shall survive the execution and delivery of this Agreement. Except as otherwise provided in this Agreement or implied by applicable Law, the obligations of each Grantor set forth in this Agreement shall terminate only upon the satisfaction and discharge in full of the Secured Obligations.

Section 13.18 No Third Party Beneficiaries. This Agreement is made for the sole benefit of the Collateral Agent, the Purchase Money Notes Guarantor, the Secured Parties and the Grantors and their respective successors and permitted assigns, and no other Person or Persons (including Borrowers or any co-lender or other Person with any interest in or liability under any of the Assets) shall have any rights or remedies under or by reason of this Agreement.

Section 13.19 Counterparts; Facsimile Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Agreement and any amendments to this Agreement, 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.

**[Remainder of Page Intentionally Left Blank]**

**IN WITNESS WHEREOF**, the parties hereto, by their officers duly authorized, intending to legally bound, have caused this Agreement to be duly executed.

**NORTH CRE VENTURE 2010-2, LLC**

By: ColFin Milestone North Funding LLC, its manager

By: \_\_\_\_\_

Name: *Mark M. Hedstrom*

Title: *Authorized Representative*

**FEDERAL DEPOSIT INSURANCE CORPORATION**, in its corporate capacity, as Purchase Money Notes Guarantor

By: \_\_\_\_\_

Name: Heidi Silverberg

Title: Attorney-in-Fact

**FEDERAL DEPOSIT INSURANCE CORPORATION**, in its capacity as Receiver for various failed financial institutions listed on Schedule I hereto, as Collateral Agent

By: \_\_\_\_\_

Name: Heidi Silverberg

Title: Attorney-in-Fact

[Signature Page to Reimbursement Security Guaranty Agreement]

IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to legally bound, have caused this Agreement to be duly executed.

**NORTH CRE VENTURE 2010-2, LLC**

By: ColFin Milestone North Funding, LLC, its manager

By: \_\_\_\_\_

Name:

Title:

**FEDERAL DEPOSIT INSURANCE CORPORATION**, in its corporate capacity, as Purchase Money Notes Guarantor

By: \_\_\_\_\_

Name: Heidi Silverberg

Title: Attorney-in-Fact

**FEDERAL DEPOSIT INSURANCE CORPORATION**, in its capacity as Receiver for various failed financial institutions listed on Schedule I hereto, as Collateral Agent

By: \_\_\_\_\_

Name: Heidi Silverberg

Title: Attorney-in-Fact

[Signature Page to Reimbursement Security Guaranty Agreement]

**FEDERAL DEPOSIT INSURANCE CORPORATION**, as receiver for various failed financial institutions listed on Schedule I hereto, as Initial Member, solely for purposes of Sections 4.1(a), 4.1(e), 4.1(f), 4.1(k), 4.1(l), 5.1(a)(vi) – (ix), 5.1(b), 5.1(c), 5.5, 8.14(c)-(h), 9.1, 11.1, 11.2 and 13.6 – 13.19

By: \_\_\_\_\_

Name: Heidi Silverberg  
Title: Attorney-in-Fact

[Signature Page to Reimbursement Security Guaranty Agreement]

## SCHEDULE I

### List of Various Failed Financial Institutions

#### North CRE Venture 2010-2, LLC

<u>Bank Name</u>	<u>City</u>	<u>State</u>	<u>Fund</u>	<u>Closing Date</u>
Independent Bankers' Bank	Springfield	IL	10166	12/18/2009
Michigan Heritage Bank	Farmington	MI	10056	4/24/2009
AmTrust Bank	Cleveland	OH	10155	12/4/2009
Irwin Union Bank & Trust Company	Columbus	IN	10120	9/18/2009
Irwin Union Bank F.S.B.	Columbus	IN	10121	9/18/2009
Warren Bank	Warren	MI	10125	10/02/2009
Citizens State Bank	New Baltimore	MI	10162	12/18/2009
Bank of Leeton	Leeton	MO	10174	1/22/2010
Broadway Bank	Chicago	IL	10219	4/23/2010
Citizens Bank & Trust Company of Chicago	Chicago	IL	10220	4/23/2010
CF Bancorp (Citizens First)	Port Huron	MI	10226	4/30/2010
Arcola Homestead Savings Bank	Arcola	IL	10246	6/04/2010



**SCHEDULE 2**  
**ASSET SCHEDULE**

**[To Be Attached]**

Schedule 2-1

**EXHIBIT A**

**FORM OF JOINDER AGREEMENT**

THIS JOINDER AGREEMENT, dated as of \_\_\_\_\_, 20\_\_, is delivered pursuant to Section 8.12 of the Reimbursement, Security and Guaranty Agreement, dated as of the 15th day of December, 2010, by and among North CRE Venture 2010-2, LLC, a Delaware limited liability company, each of the other entities that becomes a party thereto pursuant to Section 8.12 thereof, the Federal Deposit Insurance Corporation, acting in its corporate capacity, the Federal Deposit Insurance Corporation, as Receiver for various failed financial institutions listed on Schedule I hereto (in such capacity, the “Receiver”), as Collateral Agent for the Secured Parties, and, solely for purposes of Sections 4.1(a), 4.1(e), 4.1(f), 4.1(k), 4.1(l), 5.1(a)(vi) – (ix), 5.1(b), 5.1(c), 5.5, 8.14(c)-(h), 9.1, 11.1, 11.2 and 13.6 – 13.19 thereof, the Federal Deposit Insurance Corporation, as Receiver, as Initial Member under the LLC Operating Agreement (the “Reimbursement, Security and Guaranty Agreement”). Capitalized terms used herein without definition are used as defined in the Reimbursement, Security and Guaranty Agreement.

By executing and delivering this Joinder Agreement, the undersigned, as provided in Section 8.12 of the Reimbursement, Security and Guaranty Agreement, hereby becomes a party to the Reimbursement, Security and Guaranty Agreement as a Grantor thereunder with the same force and effect as if originally named as a Grantor therein and, without limiting the generality of the foregoing, as collateral security for the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations of the undersigned, hereby mortgages, pledges and hypothecates to the Collateral Agent for the benefit of the Secured Parties, and grants to the Collateral Agent for the benefit of the Secured Parties a Lien on and security interest in, all of its right, title and interest in, to and under the Collateral of the undersigned and expressly assumes all obligations and liabilities of a Grantor thereunder. The undersigned hereby agrees to be bound as a Grantor for the purposes of the Reimbursement, Security and Guaranty Agreement.

The undersigned hereby represents and warrants that each of the representations and warranties contained in Article VII of the Reimbursement, Security and Guaranty Agreement applicable to it is true and correct in all material respects with respect to it on and as the date hereof as if made on and as of such date.

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

[ADDITIONAL GRANTOR]

By: \_\_\_\_\_  
Name:  
Title:

ACKNOWLEDGED AND AGREED as of the date first above written:

**FEDERAL DEPOSIT INSURANCE CORPORATION**, as receiver for various failed financial institutions listed on Schedule I to the Reimbursement, Security and Guaranty Agreement, as Collateral Agent

By: \_\_\_\_\_  
Name: Heidi Silverberg  
Title: Attorney-in-Fact

**EXHIBIT B**  
**REO CHECKLIST**

**North CRE 2010-2 Structured Transaction  
Checklist for Acquired Properties**

**Date: December 15, 2010**

This checklist and the attached materials ("Checklist") describe matters to be addressed by Colfin Milestone North Funding, LLC, a Delaware limited liability company (the "Manager"), in connection with the acquisition of title to any real property acquired directly or indirectly by North CRE 2010-2 Venture, LLC ("Company"), whether by transfer of equity interests in a separate entity formed as a Single Purpose Entity to hold such real property ("Ownership Entity") on the Closing Date, or after the Closing Date by foreclosure or deed in lieu of foreclosure ("Deed-in-Lieu"), power of sale or otherwise, of title to a property (identified as an "Acquired Property"). The procedures set forth herein are dictated by the Transaction Documents among the Federal Deposit Insurance Company in several capacities (including without limitation as Receiver for various failed financial institutions (the "Failed Banks") and as Collateral Agent for the benefit of the Secured Parties (the "Collateral Agent") (in any or all such capacities unless otherwise indicated, the "FDIC"), the Manager and Company and affiliates thereof, including, without limitation, the Reimbursement, Security and Guaranty Agreement dated as of December 15, 2010 (the "Reimbursement, Security and Guaranty Agreement"), the Amended and Restated Limited Liability Company Operating Agreement of Company dated as of December 15, 2010 (the "LLC Operating Agreement"), and the Custodial and Paying Agency Agreement dated as of December 15, 2010. Capitalized terms used and not otherwise defined herein shall have the meaning attributed to such terms in the Reimbursement, Security and Guaranty Agreement and LLC Operating Agreement (including by reference therein).

**The FDIC expressly reserves the right, in its sole discretion, at any time and from time to time, by written notice to the Company or its counsel (including delivered via email or other electronic means to the Company or such counsel and including any such notice in the form of a revised version of this Checklist), to unilaterally modify all or any part of this Checklist (and requirements herein).**

**I. Environmental Site Assessment**

For each Acquired Property obtained after the Closing Date, prior to the acquisition of title, an environmental site assessment ("ESA") prepared by an environmental professional who regularly performs environmental audits must be prepared (Reimbursement, Security and Guaranty Agreement § 3.2(b); LLC Operating Agreement § 12.14(b)). The ESA should be in the form of a Transaction Screen Process consistent with ASTM Standard E-1528-06 or another customary format for such audits.

**II. Ownership Entity**

A. Each Acquired Property acquired after the Closing Date must be acquired by an Ownership Entity (which is a wholly owned subsidiary of Company), the sole purpose of which is to own Acquired Property; provided, however, that for any Acquired Property with respect to which there exists any Environmental Hazard, the Ownership Entity that holds such Acquired Property may hold title only to the relevant Acquired Property with respect to which the Environmental Hazard exists. However, the Manager is not required to cause the Company to

acquire all or any portion of any Acquired Property with respect to which there exists any Environmental Hazard. (Reimbursement, Security and Guaranty Agreement § 3.2(c); LLC Operating Agreement §12.14(a),(b)).

B. Upon formation of any Ownership Entity, the same must execute and deliver to the FDIC a Joinder to the Reimbursement, Security and Guaranty Agreement in the form attached as Exhibit A to the Reimbursement Agreement (Reimbursement, Security and Guaranty Agreement § 8.12).

C. Upon formation of any Ownership Entity (and at the time of execution and delivery of the Joinder by such Ownership Entity), the Company or the Ownership Entity, at the Company's cost, shall prepare and file (and the FDIC shall separately have the right to so prepare and file) with the Secretary of State of the jurisdiction of formation of the Ownership Entity (or other applicable filing office) a UCC-1 Financing Statement, securing all of the assets of such Ownership Entity (and in appropriate form, and with appropriate additional description of assets, if relevant, for filing in the applicable jurisdiction), listing the FDIC, as Receiver, as Secured Party, and the applicable Ownership Entity, as Debtor. (Reimbursement, Security and Guaranty Agreement § 3.6 and § 8.10).

### III. REO Collateral Documents

The following documents and other items ("REO Collateral Documents") must be delivered to the Custodian (as designee of the FDIC as Collateral Agent) by the Company or the Ownership Entity, at the Company's cost. (Reimbursement, Security and Guaranty Agreement § 8.11.)

#### A. REO Mortgages (Mortgage/Deed of Trust and related deliveries)

1. Each Ownership Entity must prepare, execute and then record on behalf of the FDIC a mortgage or deed of trust (as applicable) in favor of the FDIC as Receiver as Collateral Agent (an "REO Mortgage") in accordance with the below terms pursuant to the following time frames: (i) within 30 days after the Closing Date for each Acquired Property acquired on the Closing Date and (ii) within 15 Business Days following the acquisition of each Acquired Property acquired after the Closing Date. (Reimbursement, Security and Guaranty Agreement § 8.11.)

- The REO Mortgage should be in the form of Tab 1 (for a mortgage) or Tab 2 (for a deed of trust), with such modifications necessary to address the intended use of the property and as recommended by the applicable local counsel in order to make the mortgage recordable and enforceable in the applicable jurisdiction.
- To the extent any jurisdiction requires material modifications to the form of REO Mortgage, such modifications shall be provided to the FDIC with appropriate documentation supporting the modifications required by the jurisdiction.
- Each REO Mortgage must (a) secure the full amount of the Secured Obligations under the Reimbursement, Security and Guaranty Agreement, unless there is a

mortgage recording tax or similar tax or fee that is based upon the stated principal

balance of the obligations secured by the REO Mortgage, in which case the FDIC as Collateral Agent via this Checklist specifies that the reasonable amount of the mortgage shall be capped at 105% of the Value (as defined in Section III B below) of the Acquired Property to which such REO Mortgage relates and (b) must provide for a release price (or, in the case of Acquired Property consisting of condominiums or cooperative units or separate land parcels, release prices for individual units or parcels) based on the applicable Business Plan or otherwise satisfactory to the FDIC. (Reimbursement, Security and Guaranty Agreement §8.11(a), (b).)

- If the REO Mortgage secures less than the full amount of the Secured Obligations, prior to any advance or use of any Company funds that enhances the value of the applicable Acquired Property (for any development, construction or improvement thereof), a modification to the REO Mortgage must be filed such that the REO Mortgage, as modified, secures an amount not less than the sum of (i) the amount secured prior to such advance or use of funds, plus (ii) 105% of the amount of additional Company funds to be so advanced or used with respect to such Acquired Property (other than any such additional funds that are funded exclusively through permissible unreimbursed advances by the Private Owner to the Company). (Designated via this Checklist to be a provision that the FDIC as Collateral Agent requires (x) in light of the particular nature or characteristics of the Acquired Property as provided in the Reimbursement, Security and Guaranty Agreement §8.11(c), and (y) as further actions pursuant to Reimbursement, Security and Guaranty Agreement §8.10.)
- Subsequent to recordation the original recorded REO Mortgage should be delivered to the Custodian as Collateral Agent's designee.

2. Local counsel retained by the Company should be asked whether a separate fixture filing is required under applicable law or if the REO Mortgage may also serve as a fixture filing. If a fixture filing is required, the Company or the Ownership Entity, at the Company's cost, shall file a fixture filing UCC-1 Financing Statement, securing all of the personal property situated on or about the Acquired Property, listing the FDIC, as Receiver, as Secured Party, and the applicable Ownership Entity, as Debtor, with the applicable filing office within the jurisdiction of the Acquired Property's location. (Designated by the FDIC via this Checklist to be part of the REO Collateral Documents.)

3. Local counsel retained by the Company should be asked whether a separate assignment of leases and rents is required under applicable law or if it can be incorporated into the REO Mortgage. If an assignment of leases and rents is required, it should be in the form attached hereto as Tab 3, and provided to the title company to record with the applicable mortgage or deed of trust. (Designated by the Collateral Agent via this Checklist to be part of the REO Collateral Documents.)

B. Appraisals and Other Measurements of Value of Acquired Property.

1. For Acquired Property, the Company (or the applicable Ownership Entity)



must determine, and deliver to the FDIC as Collateral Agent applicable evidence as to, the price for which such Acquired Property may be sold in an orderly transaction between market participants (the “Value”), which Value shall be determined (i) by an appraisal (the “Appraisal”) or (ii) to the extent permitted below, a (x) broker’s price opinion (the “BPO”), in each case dated no more than six (6) months prior to the date the Company acquires title to the Acquired REO Property or (y) to the extent the Manager reasonably determines (consistent with the Servicing Standard and any applicable value as set forth in the most recent Business Plan) that the Value (including as would be rendered by an Appraisal or a BPO) is less than a stated amount approved by the FDIC (including any such amount designated as the “Value Below Which Manager Valuation is Permissible” in Schedule A hereto), the Value shall be as so determined by the Manager (“Manager’s Valuation”). (Designated by the FDIC via this Checklist to be part of the REO Collateral Documents.)

2. Any Appraisal must be prepared by an appraiser who regularly performs appraisals in the jurisdiction where the Acquired Property is located consistent with the customary standards for an appraisal of property of similar type and location.

3. A BPO may be used in lieu of an Appraisal only if (i) BPOs are customarily used for the assets of such type and at such location as the Acquired Property, (ii) the value of such Acquired Property as determined by the BPO is less than an amount determined by the FDIC (including any such amount designated as the “Value Below Which BPO is Permissible” in Schedule A hereto) and (iii) such BPO is prepared by a real estate broker licensed in the jurisdiction where the Acquired Property is located and be consistent with the customary standards for BPOs for property of similar type and location. For purposes of clarification, (a) a BPO may be used in lieu of an Appraisal to determine the Value of an Acquired Property only if such method is specifically approved by the FDIC (including by designating an applicable “Value Below Which BPO is Permissible” in Schedule A hereto), and (b) a Manager’s Valuation may be used in lieu of an Appraisal or a BPO to determine the Value of an Acquired Property only if such method is specifically approved by the FDIC (including by designating an applicable “Value Below Which Manager’s Valuation is Permissible” in Schedule A hereto).

C. Title Insurance. A Lender’s title insurance policy, on the 2006 ALTA form, naming Federal Deposit Insurance Company, as Receiver, as Collateral Agent as insured, should be obtained for each new Acquired Property, at the Company’s cost. (Designated by the FDIC via this Checklist to be part of the REO Collateral Documents.)

1. The title insurance policy shall be for an insured amount equal to not less than 105% of the Value of the Acquired Property. To the extent any Company funds are to be advanced or used for the applicable Acquired Property, such title insurance policy shall, prior to or concurrently with such advance or use, be endorsed to (i) amend the date of the title policy to the date such funds are advanced or used, (ii) increase the insured amount to be not less than the sum of (x) the insured amount prior to such advance or use plus (y) 105% of the amount so being advanced or used for such Acquired Property (other than any such amounts funded exclusively through permissible advances from the Private Owner to the Company which are not reimbursed by the Company), and (iii) confirm the first priority status of the REO Mortgage.

2. No other mortgages should encumber the applicable Acquired Property, other than any mortgages that will be subordinated via a subordination agreement (see Section

III(D) below). Further if the Acquired Property was acquired by the applicable Ownership Entity pursuant to a foreclosure action, the Acquired Property should not be subject to any matters that should have been wiped out by the foreclosure action.

3. Endorsements. The following endorsements (including endorsements with respect to future advances), and such other endorsements as shall be reasonable and customary, should be attached to each policy, to the extent issuable in the applicable jurisdiction:<sup>1</sup> (Designated by the FDIC via this Checklist to be part of the REO Collateral Documents.)

- First Loss (ALTA 20)<sup>2</sup> (or other substitute or similar policy authorized in any jurisdiction where such ALTA 20 is not permitted to be issued)
- Future Advance-Letter of Credit (ALTA 14.2-06 without mechanics lien exception)<sup>3</sup> (or other substitute or similar policy authorized in any jurisdiction where such ALTA 14.2-06 is not permitted to be issued)
- Tie-in (ALTA 12) (or other substitute or similar policy authorized in any jurisdiction where such ALTA 12 is not permitted to be issued)<sup>4</sup>

D. Special Provisions Related to Deeds-in-Lieu.

1. Subordination Agreement. If an Acquired Property is being acquired by Deed-in-Lieu (which shall include the “non-merger” language attached hereto as Tab 4) and the Underlying Loan is not being wiped-out, then the Company (as lender under the Underlying Loan) and the FDIC will need to enter into a subordination agreement to subordinate the lien of the remaining Underlying Loan to that of the REO Mortgage. (Designated by the FDIC via this Checklist to be part of the REO Collateral Documents.)

- The subordination agreement should be substantially in the form of Tab 5 hereto, with such modifications as recommended by the applicable local counsel.

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1. Local counsel in all states to confirm whether endorsements are not available, or are otherwise restricted, in their respective states.
  2. The endorsement allows a lender to recover where there is a substantial impairment of a title against one of the parcels without requiring foreclosure against any of the other parcels securing the loan.
  3. This endorsement insures against (1) invalidity or unenforceability of the insured mortgage as security for advances; (2) lack of priority of the lien of the insured mortgage as security for advances; and (3) invalidity or unenforceability of the mortgage because of re-advances and repayments, lack of outstanding debt before an advance, and failure to comply with legal requirements for advances.
  4. The endorsement allows the coverage for the individual policies to be aggregated in case there is a loss as to one of the parcels and a gain on another.

- To the extent any state requires material modifications to the form of subordination agreement, such modifications shall be provided to the FDIC with evidence supporting the modification so required by the state.

E. Legal Opinion. The FDIC reserves the right to require the Company or an Ownership Entity to provide the FDIC as Collateral Agent with a legal opinion under the following circumstances: (Designated by the FDIC via this Checklist to be part of the REO

Collateral Documents.)

1. If the Value of an Acquired Property exceeds a stated amount approved by the FDIC (including any such amount designated as the “Value Above Which REO Mortgage Legal Opinion is Required” in Schedule A hereto) or upon the request of the FDIC as Collateral Agent, the Company will provide the FDIC as Collateral Agent with a legal opinion, acceptable to the FDIC in its sole discretion, addressed to the FDIC as Collateral Agent (and its successors and assigns) from the applicable local counsel with respect to the execution, due authorization for and enforceability of the REO Mortgage in the applicable state and covering such other opinions as reasonably requested by the FDIC as Collateral Agent. The FDIC reserves the right to provide a form opinion in which case to the extent any legal opinion omits or qualifies in any material way the opinions in such form or local counsel makes any material modifications to such form, such omissions, qualifications and modifications must first be approved by the FDIC as Collateral Agent.

2. If the Value of an Acquired Property acquired by means of a Deed-in-Lieu exceeds a stated amount approved by the FDIC (including any such amount designated as the “Value Above Which Deed-in Lieu Legal Opinion is Required” in Schedule A hereto) or upon the request of the Collateral Agent, the Company will provide the FDIC as Collateral Agent with a legal opinion, acceptable to the FDIC in its sole discretion, addressed to the FDIC from the applicable local counsel regarding the execution, due authorization for and enforceability of the Deed-in-Lieu, the subordination agreement and any other applicable documents in the applicable state and covering such other opinions as reasonably requested by the Collateral Agent. The FDIC reserves the right to provide a form opinion in which case to the extent any legal opinion omits or qualifies in any material way the opinions in such form or local counsel makes any material modifications to such form, such omissions, qualifications and modifications must first be approved by the FDIC as Collateral Agent.

F. Property and Casualty Insurance Each Ownership Entity should obtain liability and property insurance covering the Acquired Property and deliver evidence to the FDIC of such insurance in accordance with the notice provisions of section 13.6 of the LLC Operating Agreement. (LLC Operating Agreement §12.15)

1. Such insurance should be from financially sound and reputable insurers, in such amounts, with such deductibles and covering such risks and otherwise on such terms and conditions as are customarily maintained by property owners for other real property similar to the Acquired Property in the area in which it is located, as determined by the Manager in accordance with the Servicing Standard and the provisions of the Transaction Documents. Such insurance should also satisfy the requirements for liability and property insurance set forth in the loan documents encumbering such Acquired Property immediately prior to the acquisition of the Acquired Property by the Ownership Entity. The FDIC as Collateral Agent and Advance Lender, the Company and the Manager should be listed as additional insured, loss payee, or mortgagee thereunder, as applicable.

2. The FDIC should be added as an additional insured to each of the liability insurance policies maintained by the Ownership Entities as follows:

- Federal Deposit Insurance Corporation, in its corporate capacity, as Purchase

Money Notes Guarantor, ISAOA,<sup>5</sup> under that certain Guaranty Agreement dated as of July 21, 2010 between Federal Deposit Insurance Corporation and Federal Deposit Insurance Corporation, as Receiver.

- The FDIC as Collateral Agent, ISAOA, under that certain Reimbursement, Security and Guaranty Agreement dated as of December 15, 2010 among the Company, the other Grantors party thereto from time to time, including the FDIC in various capacities.
- The named insured language that names the applicable Ownership Entity as named insured should be broad enough to cover the FDIC as a 60%<sup>6</sup> member of the Company (which is the 100% owner of each Ownership Entity).

3. The FDIC should be listed as the loss payee to each of the property insurance policies maintained by the Ownership Entities as follows:

- Federal Deposit Insurance Corporation, as Receiver as Collateral Agent, ISAOA, under that certain Reimbursement, Security and Guaranty Agreement dated as of December 15, 2010 among the Company, the other Grantors party thereto from time to time, including the FDIC in various capacities.

4. Each policy must provide that the policy may not be cancelled or materially changed except upon 30 days prior notice to the FDIC as Collateral Agent and the Company and shall further provide that no act or thing done by the applicable Ownership Entity shall invalidate any policy as against the FDIC as Collateral Agent.

G. Releases/Limited Power of Attorney

1. The FDIC reserves the right to provide one or more limited powers of attorney (each an “LPOA”) to the Manager (giving certain designated representatives of the Manager the power to act on behalf of the FDIC ), each for a limited period and exercisable only so long as there shall not have occurred any Event of Default, for the sole purpose of executing on behalf of the FDIC as Collateral Agent all routine releases with respect to the lien of the REO Mortgages related to Dispositions of Acquired Property or portions thereof permitted under the Transaction Documents subject to such additional conditions as may be set forth on the LPOA or otherwise imposed by the FDIC. (Designated by the FDIC via this Checklist to be part of the REO Collateral Documents.)

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<sup>5</sup>. “ISAOA” is an industry acronym that means “Its Successors And/Or Assigns” and is often inserted in policies as such.

<sup>6</sup>. Percentage Interest subject to increase as provided in the LLC Operating Agreement.

2. Such LPOA may also grant the Manager authority to release UCCs granted in favor of the Collateral Agent with respect to the applicable Acquired Property and/or Ownership Entity (in the event of a permitted Disposition of an Ownership Entity).



**Schedule A to  
Checklist for Acquired Properties  
Certain FDIC Stated Amounts**

Date: December 15, 2010

The FDIC expressly reserves the right, in its sole discretion, at any time and from time to time, by written notice to the Company or its counsel (including delivered via email or other electronic means to the Company or such counsel and including any such notice in the form of a revised version of this Schedule A), to unilaterally modify all or any part of this Schedule (and amounts set forth herein).

If any amount set forth below is left blank (or filled in with "n/a" or other words indicating that the same is not applicable), then, for purposes of the Checklist, the FDIC shall be deemed to have not stated such applicable amount herein (such that, unless otherwise provided by the FDIC, no applicable maximum, minimum or other amount shall be deemed to exist). FDIC expressly advises that the Schedule below shall be a subject of the initial business meeting between it and the Company at which time the values set forth below will be established.

1. Value Above Which REO Mortgage Legal Opinion is Required: \$ \_\_\_\_\_
2. Value Above Which Deed-in-Lieu Legal Opinion is Required: \$ \_\_\_\_\_
3. Value Below Which Manager's Valuation is Permissible: \$ \_\_\_\_\_
4. Value Below Which BPO is Permissible: \$ \_\_\_\_\_

**Tab 1 to  
Checklist for Acquired Properties**

**Form of Mortgage**

AFTER RECORDING, RETURN TO:  
[CUSTODIAN]  
[ADDRESS]  
Attention: [\_\_\_\_\_] ]  
Reference: North CRE Venture 2010-2, LLC

MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT, FIXTURE FILING  
AND ASSIGNMENT OF LEASES, RENTS [, HOTEL REVENUE] AND SECURITY  
DEPOSITS

THIS MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES, RENTS[, HOTEL REVENUE] AND SECURITY DEPOSITS (the "**Security Instrument**") is made as of the \_\_\_ day of [ ], 201[ ] by [INSERT NAME OF OWNERSHIP ENTITY] a [\_\_\_\_\_] (herein referred to as "**Grantor**"), having an address at [ ], in favor of Federal Deposit Insurance Corporation, as Receiver and as Collateral Agent (hereinafter referred to as "**Grantee**"), having an address at 550 17th Street NW (Room F-7014), Washington, DC 20429-0002.

RECITALS:

Reference is made to that certain Reimbursement, Security and Guaranty Agreement dated as of December 15, 2010, by and among North CRE Venture 2010-2, LLC (the "**Debtor**"), each other Subsidiary Grantor that becomes a party thereto, Grantee and other parties thereto (the "**Reimbursement, Security and Guaranty Agreement**").

Grantor is a wholly owned subsidiary of Debtor, and by acquiring the Property defined below (being an Acquired Property, as defined in the Reimbursement, Security and Guaranty Agreement) Grantor is required by the Reimbursement, Security and Guaranty Agreement to execute and deliver to Grantee (a) a Joinder Agreement to become a Subsidiary Grantor under the Reimbursement, Security and Guaranty Agreement, among other things, to guaranty the payment and performance by Debtor of the Secured Obligations (also as defined in the Reimbursement, Security and Guaranty Agreement), and (b) this Security Instrument (referred to as an "REO Mortgage" in the Reimbursement, Security and Guaranty Agreement).

[Intangible Tax

Note to Clerk: This Security Instrument secures a guaranty obligation, and is made in favor of the FDIC, an agency of the government of the United States; accordingly no intangible tax is due in connection with the recordation hereof, pursuant to [state statute section].]

North CRE Venture 2010-2  
Checklist for Acquired Properties  
Mortgage  
Reimbursement, Security and Guaranty Agreement  
EXECUTION VERSION

**Capitalized terms used in this Security Instrument and which are not otherwise defined herein shall have the meanings ascribed to such terms in the North CRE Venture 2010-2 Structured Transaction – Agreement of Common Definitions dated as of December 15, 2010 (including by reference therein).**

#### GRANTING CLAUSES

NOW, THEREFORE, THIS SECURITY INSTRUMENT WITNESSETH: that for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the indebtedness and other obligations of Grantor hereinafter set forth, Grantor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, hypothecate, pledge, deliver, set over, warrant and confirm unto Grantee, its successors and assigns forever all right, title and interest of Grantor in and to the following described property (collectively, the **“Property”**):

(A) the real property lying and being in [\_\_\_\_\_] County, [State] and described in **Exhibit “A”** attached hereto and incorporated herein by reference (the **“Land”**);

(B) all additional lands, estates and development rights hereafter acquired by Grantor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise, be expressly made subject to the Lien of this Security Instrument;

(C) the buildings, foundations, structures, improvements and fixtures now or hereafter located or erected on the Land (the **“Improvements”**);

(D) (i) all streets, avenues, roads, alleys, passages, places, sidewalks, strips and gores of land and ways, existing or proposed, public or private, adjacent to the Land, and all reversionary rights with respect to the vacation of said streets, avenues, roads, alleys, passages, places, sidewalks and ways in the land lying thereunder; (ii) all air, light, lateral support, development, drainage, oil, gas and mineral rights, options to purchase or lease, waters, water courses and riparian rights now or hereafter pertaining to or used in connection with the Land and/or the Improvements; (iii) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land and/or the Improvements; and (iv) all estate, right, title, claim or demand whatsoever, either at Law or in equity, in possession or expectancy, of, in and to the Land and/or the Improvements (collectively, the **“Appurtenances”**);

(E) the machinery, appliances, apparatus, equipment, fittings, fixtures, materials and supplies now or hereafter located on the Property, articles of personal property including, without limitation, any of the personal property superior in Lien to the Lien of this Security Instrument and goods of every kind and nature whatsoever used in connection with the Land and/or the Improvements and all additions to and renewals and replacements thereof, and all substitutions therefor, now or hereafter affixed to, attached to, placed upon or located upon or in

the Land and/or the Improvements, or any part thereof, and used in connection with the use, ownership, management, maintenance, enjoyment or operation of the Land and/or the

Improvements in any present or future occupancy or use thereof and now owned or leased (to the extent permitted by the applicable Lease) or hereafter owned or leased by Grantor, including, but without limiting the generality of the foregoing, all heating, lighting, laundry, cooking, incinerating, loading, unloading and power equipment, boilers, dynamos, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, air cooling and air conditioning apparatus, building materials and equipment, elevators, escalators, carpeting, shades, draperies, awnings, screens, doors and windows, blinds, furnishings (other than equipment and personal property of tenants or guests of the Land and/or the Improvements, or any part thereof) (hereinafter collectively called "**Building Equipment**");

(F) all leases, subleases, underlettings, concession agreements and licenses of the Property or any part thereof, including, without limitation, all guarantees, letters of credit and any other credit support given by any guarantor now existing or hereafter entered into by Grantor including, without limitation, any cash and securities deposited thereunder (collectively, "**Leases**"), the grant of such cash and securities hereunder being expressly subject to the provisions of the applicable Leases and, subject to the provisions of Section 2 below, and the right to receive and collect the revenues, income, rents, issues, profits, royalties and other benefits payable under any of the Leases, [all revenues, income, rents, issues, profits, termination or surrender fees, penalties and other amounts arising from the use or enjoyment of all or any portion of the Property, including, without limitation, the rental or surrender of any office space, retail space, parking space, halls, stores, and offices of every kind, the rental or licensing of signs, sign space or advertising space and all rentals, revenues, receipts, income, accounts, accounts receivable, cancellation fees, penalties, credit card receipts and other receivables relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, conference and banquet rooms, food and beverage facilities, health clubs, vending machines, parking facilities, telephone and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System of Accounts for Hotels, 9<sup>th</sup> Edition, International Association of Hospitality Accountants (1996), as from time to time amended (collectively, "**Hotel Revenue**")]<sup>1</sup> and all revenues, income, rents, issues and profits otherwise arising from the use or enjoyment of all or any portion of the Property (collectively, "**Rents**");

(G) all proceeds, judgments, claims, compensation, awards or payments hereafter made or to be made to Grantor for (i) the taking, whether permanent or temporary, by condemnation, eminent domain, or for any conveyance made in lieu of such taking, of the whole or any part of the Property, including, without limitation, all proceeds, judgments, claims, compensation awards or payments for changes of grade of streets or (ii) any other injury to or decrease in the value of the Property, whether direct or consequential, all of which awards and payments are hereby assigned to Grantee (including, without limitation, any claim and the

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<sup>1</sup> Use in hotel transactions

proceeds of any claim against the “BP Oil Spill Disaster Fund” or any such similar claim), who

is hereby authorized to collect and receive the proceeds thereof and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the indebtedness in such order as Grantee may determine in accordance with the provisions of the Reimbursement, Security and Guaranty Agreement without regard to the adequacy of Grantee's security hereunder and notwithstanding the fact that the amount thereof may not then be due and payable, and toward the payment of reasonable counsel fees, costs and disbursements incurred by Grantee in connection with the collection of such awards or payments; and Grantor hereby agrees, upon request, to make, execute and deliver any and all further assignments and other instruments sufficient for the purpose of confirming this assignment of said proceeds, judgments, claims, compensation awards or payments to Grantee, free, clear and discharged of any encumbrances of any kind or nature whatsoever other than any permitted encumbrances; the foregoing shall include any claim and the proceeds of any claim against the "BP Oil Spill Disaster Fund;"

(H) all refunds, rebates or credits in connection with a reduction in real estate Taxes and assessments charged against the Property as a result of Tax certiorari or any applications or proceedings for reduction;

(I) all unearned premiums paid under insurance policies now or hereafter obtained by Grantor to the extent the same insure the Property and any other insurance policies required to be maintained to the extent the same insure the Property, including, without limitation, liability insurance policies and Grantor's interest in and to all proceeds of the conversion (and the interest payable thereon, voluntary or involuntary), of the Property, or any part thereof, into cash or liquidated claims including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on or with respect to the Property (other than liability insurance);

(J) all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and Appurtenances to, the Property, hereafter acquired by or released to Grantor or constructed, assembled or placed by Grantor on the Property, and all conversions of the security constituted thereby; immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, to the extent permitted by Law, without any further mortgage, conveyance, assignment or other act by Grantor, all such extensions, improvements, betterments, renewals, substitutes and replacements shall become subject to the Lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein;

(K) to and under, to the extent the same may be encumbered or assigned by Grantor pursuant to the terms thereof without occurrence of a breach or default thereunder and to the extent permitted by applicable Law, and without impairment of the validity or enforceability thereof, (i) any reciprocal easement agreements and all contracts and agreements relating to the Property (other than the Leases), and other documents, books and records related to the ownership and operation of the Property; (ii) to the extent permitted by Law, all licenses (including, without limitation, to the extent permitted by Law, any licenses held by Grantor permitting the sale of liquor at any of the Property, the transfer and/or assignment of which is permitted by Law without filing or other qualification), warranties, guaranties, building permits and government approvals relating to or required for the construction, completion, occupancy and operation of the Property; (iii) all plans and specifications for the construction of the



Improvements, including, without limitation, installations of curbs, sidewalks, gutters,

landscaping, utility connections and all fixtures and equipment necessary for the construction, operation and occupancy of the Improvements; and (iv) all such other contracts and agreements (other than the Leases) from time to time executed by Grantor relating to the ownership, management, leasing, construction, maintenance, operation, occupancy or sale of the Property, together with all rights of Grantor to compel performance of the terms of such contracts and agreements;

(L) to the extent the same may be encumbered or assigned by Grantor pursuant to the terms thereof and to the extent permitted by Law, to and under documents, instruments, and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code as in effect in the jurisdiction in which the Property is located (the “UCC”), and credit card receivables and escrows, in any case which now or hereafter relate to, are derived from, or are used in connection with the Property, and all contract rights, franchises, books, records, plans, specifications, licenses, actions and causes of action which now or hereafter relate to, are derived from or used in connection with the Property or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the property described in the foregoing paragraphs (F), (G), (I), (K) and this paragraph (L), the “**Intangibles**”);

(M) all proceeds, both cash and noncash, of the foregoing which may be sold or otherwise be disposed of pursuant to the terms hereof; and

(N) all Secured Parties Collateral, as defined in Section 3.1 of the Reimbursement, Security and Guaranty Agreement, pertaining to the Property described herein.

TO HAVE AND TO HOLD THE PROPERTY hereby conveyed, or mentioned and intended so to be, whether now owned or held or hereafter acquired, with power of sale, unto Grantee, its successors and assigns, forever, upon the terms and conditions set forth herein and to secure the performance of, and compliance with, the obligations, covenants and conditions of the Reimbursement, Security and Guaranty Agreement, this Security Instrument and the other Secured Parties Collateral Documents, all as herein set forth.

THIS INSTRUMENT IS A MORTGAGE and is also a security agreement granting a present and continuing security interest and security title in the portion of the Property constituting personal property or fixtures. Grantee may file any and all UCC financing statements to perfect the security interest granted to Grantee pursuant to this Security Instrument.

This Security Instrument is given to secure Grantor’s guaranty of the payment of a portion of the Secured Obligations, said portion being limited to the principal amount of \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_) (collectively, the “**Grantor Secured Obligations**”). [Subject to the provisions of the Reimbursement, Security

and Guaranty Agreement, the maturity date of the Grantor Secured Obligations is the earlier to occur of the termination of the Debtor or the 10<sup>th</sup> anniversary of the date hereof.]<sup>2</sup>

Should the indebtedness secured hereby be paid according to the tenor and effect thereof when the same shall become due and payable, and should Grantor perform all covenants herein contained, then this Security Instrument shall be cancelled and surrendered, it being intended by the parties hereto that this Security Instrument shall operate as a mortgage.

1. COVENANTS

Grantor covenants and agrees, so long as any of the Grantor Secured Obligations secured hereby shall remain unpaid or unperformed:

(A) to pay all Taxes and assessments that may be Liens upon the Property, as they become due;

(B) to the extent property insurance proceeds or condemnation awards are made available to Grantor in the event of a casualty or condemnation affecting the Property, promptly to restore the Improvements to as nearly as is practicable their condition prior to such casualty or condemnation, provided that the distribution of any such casualty or condemnation proceeds to the Grantor shall be made in accordance with the terms and conditions governing the distribution of cash flow from the Property under the Reimbursement, Security and Guaranty Agreement;

(C) to perform the obligations of the Manager (as defined in the LLC Operating Agreement) set forth in Section 12.15 of the LLC Operating Agreement or cause Manager to perform such obligations to the extent same are applicable to the Property; and

(D) to perform the obligations of the Servicer (as defined in the Servicing Agreement, as hereinafter defined) set forth in Section 3.4 of the Servicing Agreement or cause Servicer to perform such obligations to the extent the same are applicable to the Property. As used herein, "Servicing Agreement" shall have the meaning given in the LLC Operating Agreement.

Grantor hereby further covenants and agrees upon an Event of Default, then and in that event, the entire amount of the Grantor Secured Obligations shall, at the option of Grantee, then and thereby become and be due and payable forthwith without presentment, demand, protest or notice of any kind, all of which are expressly waived by Grantor.

2. LICENSE TO COLLECT RENTS[ AND HOTEL REVENUE]

Grantee and Grantor hereby confirm that for so long as no Event of Default shall have occurred and is continuing, Grantee has granted to Grantor a revocable license to collect and use

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<sup>2</sup> To be determined if necessary and adequate on a case by case basis.

the Rents [and Hotel Revenue] as they become due and payable in accordance with the provisions of the Reimbursement, Security and Guaranty Agreement; provided that the existence of such right shall not be subordinate to any subsequent assignment, in whole or in part, by Grantor, and any such subsequent assignment shall be subject and subordinate to Grantee's rights under this Security Instrument. Grantor further agrees to execute and deliver such assignments of leases and rents as Grantee may from time to time reasonably request in order to better assure, transfer and confirm to Grantee the rights intended to be granted to Grantee with respect thereto. Upon the occurrence and during the continuance of an Event of Default (1) Grantor agrees that Grantee may, but shall not be obligated to, assume the management of the Property, and collect the Rents [and Hotel Revenue], applying the same upon the Obligations, and (2) Grantor hereby authorizes and directs all tenants, purchasers or other Persons occupying, utilizing or acquiring any interest in any part of the Property to pay all Rents [and Hotel Revenue] to Grantee upon Grantee's request. Upon the occurrence and during the continuance of an Event of Default, Grantee shall have and hereby expressly reserves the right and privilege (but assumes no obligation), to demand, collect, sue for, receive and recover the Rents [and Hotel Revenue], or any part thereof, now existing or hereafter made, and apply the same in accordance with the Reimbursement, Security and Guaranty Agreement and applicable Law. By exercising such right and privilege or taking any of the other actions authorized under this Section 2, Grantor shall not become a mortgagee-in-possession or otherwise assume any obligations or liabilities thereby.

3. SECURITY AGREEMENT

This Security Instrument constitutes a security agreement under applicable Law.

4. LEASE SUBORDINATION AND ATTORNMENT

(A) Leases To Be Subordinate. All new Leases and Lease modifications entered into by Grantor after the date hereof shall by their express terms be subject and subordinate to the lien of this Security Instrument, the Reimbursement, Security and Guaranty Agreement and each of the other Secured Parties Collateral Documents (through a subordination provision contained in such Lease or otherwise) and shall provide that the Person holding any rights thereunder shall attorn to Grantee or any other Person succeeding to the interests of Grantee upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Security Instrument.

(B) Attornment. Each new Lease and Lease modification entered into from and after the date hereof shall provide that in the event of the enforcement by Grantee of any remedy under this Security Instrument or the Reimbursement, Security and Guaranty Agreement, the tenant under such Lease shall, at the option of Grantee or of any other Person succeeding to the interest of Grantee as a result of such enforcement, attorn to Grantee or to such Person and shall recognize Grantee or such successor in the interest as lessor under such lease without change in the provisions thereof; provided, however, Grantee or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent which may have been made more than 30 days before the due date of such installment, (ii) any act or omission of or default by Grantor under any such Lease (but the Grantee, or such successor, shall

be subject to the continuing obligations of the landlord to the extent arising from and after such

succession to the extent of Grantee's, or such successor's, interest in the Property), (iii) any credits, claims, setoffs or defenses which any tenant may have against Grantor, (iv) any obligation on Grantor's part, pursuant to such Lease, to perform any tenant improvement work or (v) any obligation on Grantor's part, pursuant to such Lease, to pay any sum of money to any tenant. Each such new Lease shall also provide that, upon the reasonable request by Grantee or such successor in interest, such tenant shall execute and deliver an instrument or instruments confirming such attornment.

5. WARRANTY OF TITLE

Grantor warrants that it has good and marketable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same, that Grantor possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all Liens, encumbrances and charges whatsoever except for those shown as exceptions in [the title insurance policy insuring the Lien of this Security Instrument or Exhibit B hereto]. Grantor shall forever warrant, defend and preserve the title and the validity and the priority of the Lien of this Security Instrument and shall forever warrant and defend the same to Grantee against the claims of all persons whomsoever.

6. EVENT OF DEFAULT

The Grantor Secured Obligations shall be immediately due and payable, without further notice or demand, upon the occurrence of any of the following (each an "**Event of Default**"): (a) Grantor sells, assigns, conveys, transfers or otherwise disposes of any legal, beneficial or equitable interest in all or any part of the Land without Grantee's consent or in violation of this Security Instrument or any of the Transaction Documents or Secured Parties Collateral Documents; or (b) the occurrence of an "Event of Default" as defined in Section 4.1 of the Reimbursement, Security and Guaranty Agreement, continuing beyond any applicable cure period; or (c) any other failure (other than those specified in subparts (a) or (b) above) on the part of Grantor duly to observe or perform in any material respect any other covenants or agreements on the part of Grantor contained in this Security Instrument which continues unremedied for a period of 30 days or more after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to Grantor (in accordance with Section 13.9 of the Reimbursement, Security and Guaranty Agreement); provided, however, that in the case of a failure that cannot be cured within 30 days, the cure period shall be extended for an additional 30 days if Grantor can demonstrate to the reasonable satisfaction of Grantee that Grantor has commenced and is diligently pursuing remedial action.

7. REMEDIES

Upon the occurrence and during the continuation of an Event of Default hereunder, Grantee may take such actions against Grantor and/or against the Property or any portion thereof as Grantee determines is necessary to protect and enforce its rights hereunder, without notice or demand except as set forth below or as required under applicable Law. Any such actions taken by Grantee shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Grantee may determine in

its sole discretion, to the fullest extent permitted by Law, without impairing or otherwise

affecting the other rights and remedies of Grantee permitted by Law, equity or contract or as set forth herein or in the other Secured Parties Collateral Documents. Grantee's determination of appropriate action may be based on an appropriate real estate or other consultant and/or counsel, and Grantee may rely conclusively on such advice. Grantor shall pay such consultants' and reasonable attorneys' fees and expenses incurred by Grantee pursuant to this Section 7. Such actions may include, without limitation, the following:

(A) Entry. Subject to the provisions and restrictions of applicable Law, Grantee, personally, or by its agents or attorneys, at Grantee's election, may enter into and upon all or any part of the Property (including, but not limited to, the Land and the Improvements and any part thereof), and may exclude Grantor, its agents and servants therefrom (but such entry shall be subject to any non-disturbance agreements then in effect); and Grantee, having and holding the same, may use, operate, manage and control the Property or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receiver. Upon every such entry, Grantee may, at the reasonable expense of the Property and/or Grantor, from time to time, either by purchase, repair or construction, maintain and restore the Property or any part thereof, and may insure and reinsure the same in such amount and in such manner as may seem to them to be advisable. Similarly, from time to time, Grantee may, at the expense of Grantor (which amounts may be disbursed by Grantee from the Property on behalf of Grantor), make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements to and on the Property or any part thereof as it may deem advisable. Grantee or its designee shall also have the right to manage and operate the Property or any part thereof and to carry on the business thereof and exercise all rights and powers of Grantor with respect thereto, either in the name of Grantor or otherwise, as may seem to them to be advisable. In confirmation of the grant made in Granting Clause (F) hereof, in the case of the occurrence and continuation of an Event of Default, Grantee shall be entitled to collect and receive all rents to be applied in the order of priorities and amounts as shall be provided for in this Section 7. Grantee shall be liable to account only for rents and other proceeds actually received by Grantee.

(B) Foreclosure.

(i) Grantee, with or without entry, personally or by its agents or attorneys, insofar as applicable, and in addition to any and every other remedy, may (a) sell to the extent permitted by Law and pursuant to the power of sale granted herein, all and singular, the Property, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales, as an entirety or in parcels, and at such times and places as required or permitted by Law and as are customary in the county in which the Property is located and upon such terms as Grantee may fix and specify in the notice of sale to be given to Grantor (and in such other notice published or otherwise given as provided by Law), or as may be required by Law; (b) institute proceedings for the complete or partial foreclosure of this Security Instrument under the provisions of the Laws of the jurisdiction or jurisdictions in which the Property or any part thereof is located, or under any other applicable provision of Law; or (c) take all steps to protect and enforce the rights of Grantee, whether by action, suit or proceeding in equity or at Law (for the specific performance of any covenant, condition or agreement



contained in this Security Instrument, or in aid of the execution of any power herein granted, or

for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy), or otherwise, as Grantee, being advised by counsel and its financial advisor, shall deem advisable to protect and enforce any of their rights or duties hereunder.

(ii) Grantee may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more such sales as to any part of the Property remaining unsold, but shall continue unimpaired until the entire Property shall have been sold.

(iii) Upon taking title to the Property (whether by foreclosure, deed in lieu or otherwise) by Grantee or any other purchaser or assignee of the Property after an Event of Default, Grantor shall assign and transfer all of its right, title and interest in and to the Property to Grantee or such other purchaser or assignee, as appropriate. Grantor hereby irrevocably appoints Grantee as its attorney-in-fact to execute all documents and take all actions necessary to effectuate such assignment and transfer, provided that such power may only be exercised by Grantee while an Event of Default exists and is continuing.

(C) Specific Performance. Grantee, in its sole and absolute discretion, may institute an action, suit or proceeding at Law or in equity for the specific performance of any covenant, condition or agreement contained herein or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(D) Sale of Property.

(i) Grantee may postpone any sale of all or any part of the Property to be made under or by virtue of this Section 7 by public announcement at the time and place of such sale, or by publication, if required by Law, and, from time to time, thereafter, may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement.

(ii) Upon the completion of any sale made by Grantee under or by virtue of this Section 7, Grantee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds or other appropriate instruments, conveying, assigning and transferring all its estate, right, title and interest in and to the property and rights so sold. Grantee is hereby appointed the true and lawful irrevocable attorney-in-fact of Grantor in its name and stead or in the name of Grantee to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and, for that purpose, Grantee may execute all necessary deeds and other instruments of assignment and transfer, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that such attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof; provided, however, that such power of attorney shall be effective only for so long as an Event of Default shall exist and be continuing. Grantor shall, nevertheless, if so requested in writing by Grantee, ratify and confirm any such sale or sales by executing and delivering to Grantee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Grantee, for such purposes and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 7 shall operate to divest all the estate, right, title, interest, claim and demand, whether at Law or in equity, of Grantor in and to the property and rights so

sold, and shall be a perpetual bar, at Law and in equity, against Grantor, its successors and assigns and any Person claiming through or under Grantor and its successors and assigns.

(iii) The receipt of Grantee for the purchase money paid as a result of any such sale shall be a sufficient discharge therefor to any purchaser of the property or rights, or any part thereof, so sold. No such purchaser, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Security Instrument, or shall be answerable, in any manner, for any loss, misapplication or non-application of any such purchase money or any part thereof, nor shall any such purchaser be bound to inquire as to the authorization, necessity, expediency or regularity of such sale.

(iv) Upon any sale made under or by virtue of this Section 7, Grantee may bid for and acquire the Property or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Grantor Secured Obligations secured by this Security Instrument the net proceeds of sale, after deducting therefrom the expense of the sale and the costs of the action and any other sums which Grantee is authorized to deduct under this Security Instrument. The person making such sale shall accept such settlement without requiring the production of this Security Instrument, and there shall be deemed credited to the indebtedness and Grantor Secured Obligations under this Security Instrument the net proceeds of such sale. Grantee, upon acquiring the Property or any part thereof, shall be entitled to own, hold, lease, rent, operate, manage or sell the same in any manner permitted by applicable Laws.

(E) Voluntary Appearance; Receivers. Upon the occurrence and during the continuance of any Event of Default hereunder, and immediately upon commencement of (i) any action, suit or other legal proceeding by Grantee to obtain judgment for the principal and interest on the Grantor Secured Obligations and any other sums required to be paid pursuant to the Reimbursement, Security and Guaranty Agreement, or (ii) any action, suit or other legal proceeding by Grantee of any other nature in aid of the enforcement of the Secured Parties Collateral Documents or any of them, Grantor will (a) enter its voluntary appearance in such action, suit or proceeding, and (b) if required by Grantee, consent to the appointment of one or more receivers of the Property and all of the Rents [and Hotel Revenue]. After the occurrence of any Event of Default, or upon the filing of a bill in equity to foreclose this Security Instrument or to enforce the specific performance hereof or in aid thereof, or upon the commencement of any other judicial proceeding to enforce any right of Grantee, Grantee shall be entitled, subject to applicable state Law, as a matter of right, if it shall so elect, without notice to any other party and without regard to the adequacy of the security of the Property, forthwith, either before or after declaring the principal and interest on the Grantor Secured Obligations to be due and payable, to the appointment of such a receiver or receivers. Any receiver or receivers so appointed shall have such powers as a court or courts shall confer, which may include, without limitation, any or all of the powers which Grantee is authorized to exercise by the provisions of this Section 7, and shall have the right to incur such obligations and to issue such certificates therefor as the court shall authorize. Notwithstanding the foregoing, Grantee as a matter of right may appoint or secure the appointment of a receiver, trustee, liquidator or similar official of the Property or any

portion thereof, and Grantor hereby irrevocably consents and agrees to such appointment,

without notice to Grantor and without regard to the value of the Property or adequacy of the security for the indebtedness secured hereby and without regard to the solvency of the Grantor or any other Person liable for the payment of such indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable Law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Grantee to receive the rents pursuant to the Reimbursement, Security and Guaranty Agreement.

(F) UCC Remedies. Grantee may exercise any or all of the remedies granted to a secured party under the UCC, specifically including, without limitation, the right to recover its reasonable attorneys' fees and disbursements and other expenses incurred by Grantee in the enforcement of this Security Instrument or in connection with Grantor's redemption of its interest in the Improvements or Building Equipment or Intangibles. Grantee may exercise its rights under this Security Instrument independently of any other collateral or guaranty that Grantor may have granted or provided to Grantee in order to secure payment and performance of the Grantor Secured Obligations, and Grantee shall be under no obligation or duty to foreclose or levy upon any other collateral given by Grantor to secure any Grantor Secured Obligation or to proceed against any guarantor before enforcing its rights under this Security Instrument.

(G) Other Rights. Grantee may pursue against Grantor any other rights and remedies of Grantee permitted by Law, equity or contract or as set forth herein or in the other Secured Parties Collateral Documents.

(H) Retention of Possession. Notwithstanding the appointment of any receiver, liquidator or trustee of Grantor, or any of its property, or of the Property or any part thereof, Grantee, to the extent permitted by Law, shall be entitled to retain possession and control of all Property now or hereafter granted to or held by Grantee under this Security Instrument.

(I) Suits by Grantee. All rights of action under this Security Instrument, subject to applicable state Law, may be enforced by Grantee without the possession of any Purchase Money Note or the Guaranty Agreement and without the production thereof or this Security Instrument at any trial or other proceeding relative thereto; provided, however, Grantee shall in any event certify that it is the current holder of any Purchase Money Note. Any such suit or proceeding instituted by Grantee shall be brought in the name of Grantee and any recovery of judgment shall be subject to the rights of Grantee.

(J) Remedies Cumulative. No remedy herein (or pursuant to the Reimbursement, Security and Guaranty Agreement or any Secured Parties Collateral Document) conferred upon or reserved to Grantee shall exclude any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at Law or in equity. No delay or omission of Grantee to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given to Grantee by this Security Instrument or any other Secured Parties Collateral Document may be exercised from time to time and as often as Grantee may deem expedient. Nothing in this Security Instrument shall affect Grantor's obligations to pay the principal of, and interest on, the Grantor

Secured Obligations in the manner and at the time and place expressed in the Reimbursement, Security and Guaranty Agreement.

(K) Waiver of Rights. Grantor agrees that, to the fullest extent permitted by Law, it will not at any time, (1) insist upon, plead or claim or take any benefit or advantage of any stay, extension or moratorium Law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Security Instrument or any Secured Parties Collateral Document, (2) claim, take or insist upon any benefit or advantage of any Law, now or at any time hereafter in force, providing for valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (3) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States or any jurisdiction or otherwise to redeem the Property and rights sold pursuant to such sale or sales or any part thereof. Grantor hereby expressly waives all benefits and advantages of such Laws, and covenants, to the fullest extent permitted by Law, not to hinder, delay or impede the execution of any power herein granted or delegated to Grantee, but will suffer and permit the execution of every power as though no such Laws had been made or enacted. Grantor for itself and all who may claim through or under it, waives, to the extent it lawfully may do so, any and all homestead rights, any and all rights to reinstatement, and any and all right to have the property comprising the Property marshaled upon any foreclosure of the Lien hereof.

#### 8. MISCELLANEOUS

(A) The title, interest, rights and powers granted herein by Grantor to Grantee, particularly the power of sale granted herein, shall inure to the benefit of anyone to whom Grantee shall assign the indebtedness herein secured, or convey the property herein described, as well as to the successors and legal representatives of Grantee.

(B) Grantor, at its own cost and expense, shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that Grantee may reasonably request in order to perfect, to ensure the continued perfection of and to protect the security interest now granted onto the Grantee hereafter intended to be granted to Grantee under this Security Instrument or the other Secured Parties Collateral Documents. Grantor shall notify Grantee in writing no less than 30 days prior to a change of address.

(C) The parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by Law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party paying same.

(D) EACH PARTY TO THIS SECURITY INSTRUMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE

THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS

AGREEMENT TO THE LAW 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, **EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS, SECURITY TITLE AND SECURITY INTERESTS WITH RESPECT TO THE PROPERTY CONSTITUTING REAL PROPERTY CREATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED.** NOTHING IN THIS AGREEMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS AGREEMENT.

(E) In consideration and by accepting the benefits of the Lien and security interest granted on and in the Property by this Security Instrument, Grantee agrees it will fully release its Lien and security interest granted herein upon payment of a Release Price as such term is described on Exhibit C.

(F) In the event of any conflict between the provisions of this Security Instrument and any of the Secured Parties Collateral Documents, the provisions of the Secured Parties Collateral Documents shall control.

(G) Whenever the terms "**Grantor**" or "**Grantee**" are used in this Security Instrument, such terms shall be deemed to include the heirs, administrators, executors, successors and assigns of said parties. All rights and powers herein granted to Grantee shall inure to and include Grantee's heirs, administrators, executors, successors and assigns, and all obligations herein imposed on Grantor shall extend to and include Grantor's heirs, administrators, executors, successors and assigns.



IN WITNESS WHEREOF, Grantor has executed this instrument [under seal,] the day and year first above written.

[\_\_\_\_\_, LLC,  
a \_\_\_\_\_ limited liability company]

By: [\_\_\_\_\_] a \_\_\_\_\_ limited  
liability company, its sole member

By: [\_\_\_\_\_] a [\_\_\_\_\_] its [Managing  
Member][Manager]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[LOCAL COUNSEL TO DETERMINE IF WITNESS IS NECESSARY, IF SEAL IS  
NECESSARY AND TO PROVIDE APPROPRIATE NOTARY BLOCK]

**EXHIBIT "A"**

**Legal Description**

**EXHIBIT "B"**

**Permitted Exceptions**

**EXHIBIT "C"**

**Release Price**

[Release Price to be determined in accordance with the LLC Operating Agreement and the instructions set forth in the REO Mortgage Checklist].

**Tab 2 to  
Checklist for Acquired Properties**

**Form of Deed of Trust**

AFTER RECORDING, RETURN TO:

CUSTODIAN]

[ADDRESS]

Attention: [\_\_\_\_\_]

Reference: North CRE Venture 2010-2, LLC

DEED OF TRUST SECURITY AGREEMENT, FINANCING STATEMENT, FIXTURE  
FILING AND ASSIGNMENT OF LEASES, RENTS[, HOTEL REVENUE] AND SECURITY  
DEPOSITS

THIS DEED OF TRUST SECURITY AGREEMENT, FINANCING STATEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES, RENTS[, HOTEL REVENUE] AND SECURITY DEPOSITS (the "**Security Instrument**") is made as of the \_\_\_ day of [ ], 201[] by [INSERT NAME OF OWNERSHIP ENTITY], a [\_\_\_\_\_] (herein referred to as "**Grantor**"), having an address at [\_\_\_\_\_] , in favor of [\_\_\_\_\_] as trustee ("**Trustee**"), having an address at [\_\_\_\_\_] , for the benefit of Federal Deposit Insurance Corporation, as Receiver and as Collateral Agent (hereinafter referred to as "**Grantee**"), having an address at 550 17th Street NW (Room F-7014), Washington, DC 20429-0002.

RECITALS:

Reference is made to that certain Reimbursement, Security and Guaranty Agreement dated as of December 15, 2010 by and among North CRE Venture 2010-2, LLC (the "**Debtor**"), each other Subsidiary Grantor that becomes a party thereto, Grantee and other parties thereto (the "**Reimbursement, Security and Guaranty Agreement**").

Grantor is a wholly owned subsidiary of Debtor, and by acquiring the Property defined below (being an Acquired Property, as defined in the Reimbursement, Security and Guaranty Agreement) Grantor is required by the Reimbursement, Security and Guaranty Agreement to execute and deliver to Grantee (a) a Joinder Agreement to become a Subsidiary Grantor under the Reimbursement, Security and Guaranty Agreement, among other things, to guaranty the payment and performance by Debtor of the Secured Obligations (also as defined in the

[Intangible Tax

Note to Clerk: This Security Instrument secures a guaranty obligation, and is made in favor of the FDIC, an agency of the government of the United States; accordingly no intangible tax is due in connection with the recordation hereof, pursuant to [state statute section].]

Checklist for Acquired Properties

2

Deed of Trust

EXECUTION VERSION

Reimbursement, Security and Guaranty Agreement), and (b) this Security Instrument (referred to as a "REO Mortgage" in the Reimbursement, Security and Guaranty Agreement).

**Capitalized terms used in this Security Instrument and which are not otherwise defined herein shall have the meanings ascribed to such terms in the North CRE Venture 2010-2 Structured Transaction – Agreement of Common Definitions dated as of December 15, 2010 (including by reference therein).**

#### GRANTING CLAUSES

**NOW, THEREFORE, THIS SECURITY INSTRUMENT WITNESSETH:** that for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the indebtedness and other obligations of Grantor hereinafter set forth, Grantor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, hypothecate, pledge, deliver, set over, warrant and confirm unto Trustee, in Trust, with the power of sale and right of entry, in trust and possession, for the benefit and use of Grantee, its successors and assigns forever, all right, title and interest of Grantor in and to the following described property (collectively, the "**Property**"):

(A) the real property lying and being in [\_\_\_\_\_] County, [State] and described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Land**");

(B) all additional lands, estates and development rights hereafter acquired by Grantor for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental deed of trust or otherwise, be expressly made subject to the Lien of this Security Instrument;

(C) the buildings, foundations, structures, improvements and fixtures now or hereafter located or erected on the Land (the "**Improvements**");

(D) (i) all streets, avenues, roads, alleys, passages, places, sidewalks, strips and gores of land and ways, existing or proposed, public or private, adjacent to the Land, and all reversionary rights with respect to the vacation of said streets, avenues, roads, alleys, passages, places, sidewalks and ways in the land lying thereunder; (ii) all air, light, lateral support, development, drainage, oil, gas and mineral rights, options to purchase or lease, waters, water courses and riparian rights now or hereafter pertaining to or used in connection with the Land and/or the Improvements; (iii) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land and/or the Improvements; and (iv) all estate, right, title, claim or demand whatsoever, either at Law or in equity, in possession or expectancy, of, in and to the Land and/or the Improvements (collectively, the "**Appurtenances**");

(E) the machinery, appliances, apparatus, equipment, fittings, fixtures, materials and supplies now or hereafter located on the Property, articles of personal property including, without limitation, any of the personal property superior in Lien to the Lien of this Security

Instrument and goods of every kind and nature whatsoever used in connection with the Land and/or the Improvements and all additions to and renewals and replacements thereof, and all substitutions therefor, now or hereafter affixed to, attached to, placed upon or located upon or in the Land and/or the Improvements, or any part thereof, and used in connection with the use, ownership, management, maintenance, enjoyment or operation of the Land and/or the Improvements in any present or future occupancy or use thereof and now owned or leased (to the extent permitted by the applicable Lease) or hereafter owned or leased by Grantor, including, but without limiting the generality of the foregoing, all heating, lighting, laundry, cooking, incinerating, loading, unloading and power equipment, boilers, dynamos, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, air cooling and air conditioning apparatus, building materials and equipment, elevators, escalators, carpeting, shades, draperies, awnings, screens, doors and windows, blinds, furnishings (other than equipment and personal property of tenants or guests of the Land and/or the Improvements, or any part thereof) (hereinafter collectively called "**Building Equipment**");

(F) all leases, subleases, underlettings, concession agreements and licenses of the Property or any part thereof, including, without limitation, all guarantees, letters of credit and any other credit support given by any guarantor now existing or hereafter entered into by Grantor including, without limitation, any cash and securities deposited thereunder (collectively, "**Leases**"), the grant of such cash and securities hereunder being expressly subject to the provisions of the applicable Leases and, subject to the provisions of Section 2 below, and the right to receive and collect the revenues, income, rents, issues, profits, royalties and other benefits payable under any of the Leases, [all revenues, income, rents, issues, profits, termination or surrender fees, penalties and other amounts arising from the use or enjoyment of all or any portion of the Property, including, without limitation, the rental or surrender of any office space, retail space, parking space, halls, stores, and offices of every kind, the rental or licensing of signs, sign space or advertising space and all rentals, revenues, receipts, income, accounts, accounts receivable, cancellation fees, penalties, credit card receipts and other receivables relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, conference and banquet rooms, food and beverage facilities, health clubs, vending machines, parking facilities, telephone and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System of Accounts for Hotels, 9<sup>th</sup> Edition, International Association of Hospitality Accountants (1996), as from time to time amended (collectively, "**Hotel Revenue**")]<sup>1</sup> and all revenues, income, rents, issues and profits otherwise arising from the use or enjoyment of all or any portion of the Property (collectively, "**Rents**");

(G) all proceeds, judgments, claims, compensation, awards or payments hereafter made or to be made to Grantor for (i) the taking, whether permanent or temporary, by condemnation, eminent domain, or for any conveyance made in lieu of such taking, of the whole or any part of the Property, including, without limitation, all proceeds, judgments, claims,

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<sup>1</sup> Use in hotel transactions



compensation awards or payments for changes of grade of streets or (ii) any other injury to or decrease in the value of the Property, whether direct or consequential, all of which awards and payments are hereby assigned to Grantee (including, without limitation, any claim and the proceeds of any claim against the "BP Oil Spill Disaster Fund" or any such similar claim), who is hereby authorized to collect and receive the proceeds thereof and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the indebtedness in such order as Grantee may determine in accordance with the provisions of the Reimbursement, Security and Guaranty Agreement without regard to the adequacy of Grantee's security hereunder and notwithstanding the fact that the amount thereof may not then be due and payable, and toward the payment of reasonable counsel fees, costs and disbursements incurred by Grantee in connection with the collection of such awards or payments; and Grantor hereby agrees, upon request, to make, execute and deliver any and all further assignments and other instruments sufficient for the purpose of confirming this assignment of said proceeds, judgments, claims, compensation awards or payments to Grantee, free, clear and discharged of any encumbrances of any kind or nature whatsoever other than any permitted encumbrances; the foregoing shall include any claim and the proceeds of any claim against the "BP Oil Spill Disaster Fund;"

(H) all refunds, rebates or credits in connection with a reduction in real estate Taxes and assessments charged against the Property as a result of Tax certiorari or any applications or proceedings for reduction;

(I) all unearned premiums paid under insurance policies now or hereafter obtained by Grantor to the extent the same insure the Property and any other insurance policies required to be maintained to the extent the same insure the Property, including, without limitation, liability insurance policies and Grantor's interest in and to all proceeds of the conversion (and the interest payable thereon, voluntary or involuntary), of the Property, or any part thereof, into cash or liquidated claims including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on or with respect to the Property (other than liability insurance);

(J) all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and Appurtenances to, the Property, hereafter acquired by or released to Grantor or constructed, assembled or placed by Grantor on the Property, and all conversions of the security constituted thereby; immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, to the extent permitted by Law, without any further mortgage, conveyance, assignment or other act by Grantor, all such extensions, improvements, betterments, renewals, substitutes and replacements shall become subject to the Lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein;

(K) to and under, to the extent the same may be encumbered or assigned by Grantor pursuant to the terms thereof without occurrence of a breach or default thereunder and to the extent permitted by applicable Law, and without impairment of the validity or enforceability thereof, (i) any reciprocal easement agreements and all contracts and agreements relating to the Property (other than the Leases), and other documents, books and records related to the ownership and operation of the Property; (ii) to the extent permitted by Law, all licenses (including, without limitation, to the extent permitted by Law, any licenses held by Grantor permitting the sale of liquor at any of the Property, the transfer and/or assignment of which is

permitted by Law without filing or other qualification), warranties, guaranties, building permits and government approvals relating to or required for the construction, completion, occupancy and operation of the Property; (iii) all plans and specifications for the construction of the Improvements, including, without limitation, installations of curbs, sidewalks, gutters, landscaping, utility connections and all fixtures and equipment necessary for the construction, operation and occupancy of the Improvements; and (iv) all such other contracts and agreements (other than the Leases) from time to time executed by Grantor relating to the ownership, management, leasing, construction, maintenance, operation, occupancy or sale of the Property, together with all rights of Grantor to compel performance of the terms of such contracts and agreements;

(L) to the extent the same may be encumbered or assigned by Grantor pursuant to the terms thereof and to the extent permitted by Law, to and under documents, instruments, and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code as in effect in the jurisdiction in which the Property is located (the "UCC"), and credit card receivables and escrows, in any case which now or hereafter relate to, are derived from, or are used in connection with the Property, and all contract rights, franchises, books, records, plans, specifications, licenses, actions and causes of action which now or hereafter relate to, are derived from or used in connection with the Property or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the property described in the foregoing paragraphs (F), (G), (I), (K) and this paragraph (L), the "**Intangibles**");

(M) all proceeds, both cash and noncash, of the foregoing which may be sold or otherwise be disposed of pursuant to the terms hereof; and

(N) all Secured Parties Collateral, as defined in Section 3.1 of the Reimbursement, Security and Guaranty Agreement, pertaining to the Property described herein.

TO HAVE AND TO HOLD THE PROPERTY hereby conveyed, or mentioned and intended so to be, whether now owned or held or hereafter acquired, with power of sale, unto Grantee, its successors and assigns, forever, upon the terms and conditions set forth herein and to secure the performance of, and compliance with, the obligations, covenants and conditions of the Reimbursement, Security and Guaranty Agreement, this Security Instrument and the other Secured Parties Collateral Documents, all as herein set forth.

THIS INSTRUMENT IS A DEED OF TRUST and is also a security agreement granting a present and continuing security interest and security title in the portion of the Property constituting personal property or fixtures. Grantee may file any and all UCC financing statements to perfect the security interest granted to Grantee pursuant to this Security Instrument.

This Security Instrument is given to secure Grantor's guaranty of the payment of a portion of the Secured Obligations, said portion being limited to the principal amount of \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_) (collectively, the

**“Grantor Secured Obligations”**). [Subject to the provisions of the Reimbursement, Security and Guaranty Agreement, the maturity date of the Grantor Secured Obligations is the earlier to occur of the termination of the Debtor or the 10th anniversary of the date hereof.]<sup>2</sup>

Should the indebtedness secured hereby be paid according to the tenor and effect thereof when the same shall become due and payable, and should Grantor perform all covenants herein contained, then this Security Instrument shall be cancelled and surrendered, it being intended by the parties hereto that this Security Instrument shall operate as a deed of trust.

1. COVENANTS

Grantor covenants and agrees, so long as any of the Grantor Secured Obligations secured hereby shall remain unpaid or unperformed:

(A) to pay all Taxes and assessments that may be Liens upon the Property, as they become due;

(B) to the extent property insurance proceeds or condemnation awards are made available to Grantor in the event of a casualty or condemnation affecting the Property, promptly to restore the Improvements to as nearly as is practicable their condition prior to such casualty or condemnation, provided that the distribution of any such casualty or condemnation proceeds to the Grantor shall be made in accordance with the terms and conditions governing the distribution of cash flow from the Property under the Reimbursement, Security and Guaranty Agreement;

(C) to perform the obligations of the Manager (as defined in the LLC Operating Agreement) set forth in Section 12.15 of the LLC Operating Agreement or cause Manager to perform such obligations to the extent same are applicable to the Property; and

(D) to perform the obligations of the Servicer (as defined in the Servicing Agreement, as hereinafter defined) set forth in Section 3.4 of the Servicing Agreement or cause Servicer to perform such obligations to the extent the same are applicable to the Property. As used herein, **“Servicing Agreement”** shall have the meaning given in the LLC Operating Agreement.

Grantor hereby further covenants and agrees upon an Event of Default, then and in that event, the entire amount of the Grantor Secured Obligations shall, at the option of Grantee, then and thereby become and be due and payable forthwith without presentment, demand, protest or notice of any kind, all of which are expressly waived by Grantor.

2. LICENSE TO COLLECT RENTS[ AND HOTEL REVENUE]

Grantee and Grantor hereby confirm that for so long as no Event of Default shall have occurred and is continuing, Grantee has granted to Grantor a revocable license to collect and use the Rents [and Hotel Revenue] as they become due and payable in accordance with the

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<sup>2</sup> To be determined if necessary and adequate on a case by case basis.

provisions of the Reimbursement, Security and Guaranty Agreement; provided that the existence of such right shall not be subordinate to any subsequent assignment, in whole or in part, by Grantor, and any such subsequent assignment shall be subject and subordinate to Grantee's rights under this Security Instrument. Grantor further agrees to execute and deliver such assignments of leases and rents as Grantee may from time to time reasonably request in order to better assure, transfer and confirm to Grantee the rights intended to be granted to Grantee with respect thereto. Upon the occurrence and during the continuance of an Event of Default (1) Grantor agrees that Grantee may, but shall not be obligated to, assume the management of the Property, and collect the Rents [and Hotel Revenue], applying the same upon the Obligations, and (2) Grantor hereby authorizes and directs all tenants, purchasers or other Persons occupying, utilizing or acquiring any interest in any part of the Property to pay all Rents [and Hotel Revenue] to Grantee upon Grantee's request. Upon the occurrence and during the continuance of an Event of Default, Grantee shall have and hereby expressly reserves the right and privilege (but assumes no obligation), to demand, collect, sue for, receive and recover the Rents [and Hotel Revenue], or any part thereof, now existing or hereafter made, and apply the same in accordance with the Reimbursement, Security and Guaranty Agreement and applicable Law. By exercising such right and privilege or taking any of the other actions authorized under this Section 2, Grantor shall not become a mortgagee-in-possession or otherwise assume any obligations or liabilities thereby.

### 3. SECURITY AGREEMENT

This Security Instrument constitutes a security agreement under applicable Law.

### 4. LEASE SUBORDINATION AND ATTORNMENT

(A) Leases To Be Subordinate. All new Leases and Lease modifications entered into by Grantor after the date hereof shall by their express terms be subject and subordinate to this Security Instrument, the Reimbursement, Security and Guaranty Agreement and each of the other Secured Parties Collateral Documents (through a subordination provision contained in such Lease or otherwise) and shall provide that the Person holding any rights thereunder shall attorn to Grantee or any other Person succeeding to the interests of Grantee upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Security Instrument.

(B) Attornment. Each new Lease and Lease modification entered into from and after the date hereof shall provide that in the event of the enforcement by Grantee of any remedy under this Security Instrument or the Reimbursement, Security and Guaranty Agreement, the tenant under such Lease shall, at the option of Grantee or of any other Person succeeding to the interest of Grantee as a result of such enforcement, attorn to Grantee or to such Person and shall recognize Grantee or such successor in the interest as lessor under such lease without change in the provisions thereof; provided, however, Grantee or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent which may have been made more than 30 days before the due date of such installment, (ii) any act or omission of or default by Grantor under any such Lease (but the Grantee, or such successor, shall be subject to the continuing obligations of the landlord to the extent arising from and after such succession to the extent of Grantee's, or such successor's, interest in the Property), (iii) any

credits, claims, setoffs or defenses which any tenant may have against Grantor, (iv) any obligation on Grantor's part, pursuant to such Lease, to perform any tenant improvement work or (v) any obligation on Grantor's part, pursuant to such Lease, to pay any sum of money to any tenant. Each such new Lease shall also provide that, upon the reasonable request by Grantee or such successor in interest, such tenant shall execute and deliver an instrument or instruments confirming such attornment.

5. WARRANTY OF TITLE

Grantor warrants that it has good and marketable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same, that Grantor possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all Liens, encumbrances and charges whatsoever except for those shown as exceptions in [the title insurance policy insuring the Lien of this Security Instrument or Exhibit B hereto]. Grantor shall forever warrant, defend and preserve the title and the validity and the priority of the Lien of this Security Instrument and shall forever warrant and defend the same to Grantee against the claims of all persons whomsoever.

6. EVENT OF DEFAULT

The Grantor Secured Obligations shall be immediately due and payable, without further notice or demand, upon the occurrence of any of the following (each an "**Event of Default**"): (a) Grantor sells, assigns, conveys, transfers or otherwise disposes of any legal, beneficial or equitable interest in all or any part of the Land without Grantee's consent or in violation of this Security Instrument or any of the Transaction Documents or Secured Parties Collateral Documents; or (b) the occurrence of an "Event of Default" as defined in Section 4.1 of the Reimbursement, Security and Guaranty Agreement, continuing beyond any applicable cure period; or (c) any other failure (other than those specified in subparts (a) or (b) above) on the part of Grantor duly to observe or perform in any material respect any other covenants or agreements on the part of Grantor contained in this Security Instrument which continues unremedied for a period of 30 days or more after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to Grantor (in accordance with Section 13.9 of the Reimbursement, Security and Guaranty Agreement); provided, however, that in the case of a failure that cannot be cured within 30 days, the cure period shall be extended for an additional 30 days if Grantor can demonstrate to the reasonable satisfaction of Grantee that Grantor has commenced and is diligently pursuing remedial action

7. REMEDIES

Upon the occurrence and during the continuation of an Event of Default hereunder, Grantee (or Trustee, if required by Law) may take such actions against Grantor and/or against the Property or any portion thereof as Grantee (or Trustee, if required by Law) determines is necessary to protect and enforce its rights hereunder, without notice or demand except as set forth below or as required under applicable Law. Any such actions taken by Grantee (or Trustee, if required by Law) shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Grantee (or Trustee, if required by Law) may determine in its sole discretion, to the fullest extent permitted by Law,

without impairing or otherwise affecting the other rights and remedies of Grantee (or Trustee, if required by Law) permitted by Law, equity or contract or as set forth herein or in the other Secured Parties Collateral Documents. Grantee's determination of appropriate action may be based on an appropriate real estate or other consultant and/or counsel, and Grantee may rely conclusively on such advice. Grantor shall pay such consultants' and reasonable attorneys' fees and expenses incurred by Grantee and Trustee pursuant to this Section 7. Such actions may include, without limitation, the following:

(B) Entry. Subject to the provisions and restrictions of applicable Law, Grantee, personally, or by its agents or attorneys, at Grantee's election, may enter into and upon all or any part of the Property (including, but not limited to, the Land and the Improvements and any part thereof), and may exclude Grantor, its agents and servants therefrom (but such entry shall be subject to any non-disturbance agreements then in effect); and Grantee, having and holding the same, may use, operate, manage and control the Property or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receiver. Upon every such entry, Grantee may, at the reasonable expense of the Property and/or Grantor, from time to time, either by purchase, repair or construction, maintain and restore the Property or any part thereof, and may insure and reinsure the same in such amount and in such manner as may seem to them to be advisable. Similarly, from time to time, Grantee may, at the expense of Grantor (which amounts may be disbursed by Grantee from the Property on behalf of Grantor), make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements to and on the Property or any part thereof as it may deem advisable. Grantee or its designee shall also have the right to manage and operate the Property or any part thereof and to carry on the business thereof and exercise all rights and powers of Grantor with respect thereto, either in the name of Grantor or otherwise, as may seem to them to be advisable. In confirmation of the grant made in Granting Clause (F) hereof, in the case of the occurrence and continuation of an Event of Default, Grantee shall be entitled to collect and receive all rents to be applied in the order of priorities and amounts as shall be provided for in this Section 7. Grantee shall be liable to account only for rents and other proceeds actually received by Grantee.

(B) Foreclosure.

(i) Grantee (or Trustee, if required by Law), with or without entry, personally or by its agents or attorneys, insofar as applicable, and in addition to any and every other remedy, may (a) sell to the extent permitted by Law and pursuant to the power of sale granted herein, all and singular, the Property, and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, at one or more sales, as an entirety or in parcels, and at such times and places as required or permitted by Law and as are customary in the county in which the Property is located and upon such terms as Grantee (or Trustee, if required by Law) may fix and specify in the notice of sale to be given to Grantor (and in such other notice published or otherwise given as provided by Law), or as may be required by Law; (b) institute proceedings for the complete or partial foreclosure of this Security Instrument under the provisions of the Laws of the jurisdiction or jurisdictions in which the Property or any part thereof is located, or under any other applicable provision of Law; or (c) take all steps to protect and enforce the rights of Grantee, whether by action, suit or proceeding in equity or at Law (for the

specific performance of any covenant, condition or agreement contained in this Security Instrument, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy), or otherwise, as Grantee (or Trustee, if required by Law), being advised by counsel and its financial advisor, shall deem advisable to protect and enforce any of their rights or duties hereunder.

(ii) Grantee (or Trustee, if required by Law) may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more such sales as to any part of the Property remaining unsold, but shall continue unimpaired until the entire Property shall have been sold.

(iii) Upon taking title to the Property (whether by foreclosure, deed in lieu or otherwise) by Grantee or any other purchaser or assignee of the Property after an Event of Default, Grantor shall assign and transfer all of its right, title and interest in and to the Property to Grantee or such other purchaser or assignee, as appropriate. Grantor hereby irrevocably appoints Grantee (or Trustee, if required by Law) as its attorney-in-fact to execute all documents and take all actions necessary to effectuate such assignment and transfer, provided that such power may only be exercised by Grantee (or Trustee, if required by Law) while an Event of Default exists and is continuing.

(C) Specific Performance. Grantee, in its sole and absolute discretion, may institute an action, suit or proceeding at Law or in equity for the specific performance of any covenant, condition or agreement contained herein or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(D) Sale of Property.

(i) Grantee (or Trustee, if required by Law) may postpone any sale of all or any part of the Property to be made under or by virtue of this Section 7 by public announcement at the time and place of such sale, or by publication, if required by Law, and, from time to time, thereafter, may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement.

(ii) Upon the completion of any sale made by Grantee (or Trustee, if required by Law) under or by virtue of this Section 7, Grantee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds or other appropriate instruments, conveying, assigning and transferring all its estate, right, title and interest in and to the property and rights so sold. Grantee (or Trustee, if required by Law) is hereby appointed the true and lawful irrevocable attorney-in-fact of Grantor in its name and stead or in the name of Grantee (or Trustee, if required by Law) to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and, for that purpose, Grantee may execute all necessary deeds and other instruments of assignment and transfer, and may substitute one or more persons with like power, Grantor hereby ratifying and confirming all that such attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof; provided, however, that such power of attorney shall be effective only for so long as an Event of Default shall exist and be continuing. Grantor shall, nevertheless, if so requested in writing by

Grantee (or Trustee, if required by Law), ratify and confirm any such sale or sales by executing and delivering to Grantee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Grantee, for such purposes and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 7 shall operate to divest all the estate, right, title, interest, claim and demand, whether at Law or in equity, of Grantor in and to the property and rights so sold, and shall be a perpetual bar, at Law and in equity, against Grantor, its successors and assigns and any Person claiming through or under Grantor and its successors and assigns.

(iii) The receipt of Grantee (or Trustee, if required by Law) for the purchase money paid as a result of any such sale shall be a sufficient discharge therefor to any purchaser of the property or rights, or any part thereof, so sold. No such purchaser, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Security Instrument, or shall be answerable, in any manner, for any loss, misapplication or non-application of any such purchase money or any part thereof, nor shall any such purchaser be bound to inquire as to the authorization, necessity, expediency or regularity of such sale.

(iv) Upon any sale made under or by virtue of this Section 7, Grantee (or Trustee, if required by Law) may bid for and acquire the Property or any part thereof and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Grantor Secured Obligations secured by this Security Instrument the net proceeds of sale, after deducting therefrom the expense of the sale and the costs of the action and any other sums which Grantee (or Trustee, if required by Law) is authorized to deduct under this Security Instrument. The person making such sale shall accept such settlement without requiring the production of this Security Instrument, and there shall be deemed credited to the indebtedness and Grantor Secured Obligations under this Security Instrument the net proceeds of such sale. Grantee (or Trustee, if required by Law), upon acquiring the Property or any part thereof, shall be entitled to own, hold, lease, rent, operate, manage or sell the same in any manner permitted by applicable Laws.

(E) Voluntary Appearance; Receivers. Upon the occurrence and during the continuance of any Event of Default hereunder, and immediately upon commencement of (i) any action, suit or other legal proceeding by Grantee (or Trustee, if required by Law) to obtain judgment for the principal and interest on the Grantor Secured Obligations and any other sums required to be paid pursuant to the Reimbursement, Security and Guaranty Agreement, or (ii) any action, suit or other legal proceeding by Grantee or Trustee of any other nature in aid of the enforcement of the Secured Parties Collateral Documents or any of them, Grantor will (a) enter its voluntary appearance in such action, suit or proceeding, and (b) if required by Grantee, consent to the appointment, of one or more receivers of the Property and all of the Rents [and Hotel Revenue]. After the occurrence of any Event of Default, or upon the filing of a bill in equity to foreclose this Security Instrument or to enforce the specific performance hereof or in aid thereof, or upon the commencement of any other judicial proceeding to enforce any right of Grantee or Trustee, Grantee (or Trustee, if required by Law) shall be entitled, subject to applicable state Law, as a matter of right, if it shall so elect, without notice to any other party and without regard to the adequacy of the security of the Property, forthwith, either before or after declaring the principal and interest on the Grantor Secured Obligations to be due and payable, to



the appointment of such a receiver or receivers. Any receiver or receivers so appointed shall have such powers as a court or courts shall confer, which may include, without limitation, any or all of the powers which Grantee or Trustee is authorized to exercise by the provisions of this Section 7, and shall have the right to incur such obligations and to issue such certificates therefor as the court shall authorize. Notwithstanding the foregoing, Grantee (or Trustee, if required by Law) as a matter of right may appoint or secure the appointment of a receiver, trustee, liquidator or similar official of the Property or any portion thereof, and Grantor hereby irrevocably consents and agrees to such appointment, without notice to Grantor and without regard to the value of the Property or adequacy of the security for the indebtedness secured hereby and without regard to the solvency of the Grantor or any other Person liable for the payment of such indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable Law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Grantee (or Trustee, if required by Law) to receive the rents pursuant to the Reimbursement, Security and Guaranty Agreement.

(F) UCC Remedies. Grantee (or Trustee, if required by Law) may exercise any or all of the remedies granted to a secured party under the UCC, specifically including, without limitation, the right to recover its reasonable attorneys' fees and disbursements and other expenses incurred by Grantee in the enforcement of this Security Instrument or in connection with Grantor's redemption of its interest in the Improvements or Building Equipment or Intangibles. Grantee (or Trustee, if required by Law) may exercise its rights under this Security Instrument independently of any other collateral or guaranty that Grantor may have granted or provided to Grantee in order to secure payment and performance of the Grantor Secured Obligations, and Grantee shall be under no obligation or duty to foreclose or levy upon any other collateral given by Grantor to secure any Grantor Secured Obligation or to proceed against any guarantor before enforcing its rights under this Security Instrument.

(G) Other Rights. Grantee (or Trustee, if required by Law) may pursue against Grantor any other rights and remedies of Grantee permitted by Law, equity or contract or as set forth herein or in the other Secured Parties Collateral Documents.

(H) Retention of Possession. Notwithstanding the appointment of any receiver, liquidator or trustee of Grantor, or any of its property, or of the Property or any part thereof, Grantee or Trustee, to the extent permitted by Law, shall be entitled to retain possession and control of all Property now or hereafter granted to or held by Grantee under this Security Instrument.

(I) Suits by Grantee. All rights of action under this Security Instrument, subject to applicable state Law, may be enforced by Grantee without the possession of any Purchase Money Note or the Guaranty Agreement and without the production thereof or this Security Instrument at any trial or other proceeding relative thereto; provided, however, Grantee shall in any event certify that it is the current holder of any Purchase Money Note. Any such suit or proceeding instituted by Grantee shall be brought in the name of Grantee and any recovery of judgment shall be subject to the rights of Grantee.

(J) Remedies Cumulative. No remedy herein (or pursuant to the Reimbursement, Security and Guaranty Agreement or any Secured Parties Collateral Document) conferred upon or reserved to Grantee or Trustee shall exclude any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at Law or in equity. No delay or omission of Grantee or Trustee to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given to Grantee or Trustee by this Security Instrument or any other Secured Parties Collateral Document may be exercised from time to time and as often as Grantee or Trustee may deem expedient. Nothing in this Security Instrument shall affect Grantor's obligations to pay the principal of, and interest on, the Grantor Secured Obligations in the manner and at the time and place expressed in the Reimbursement, Security and Guaranty Agreement.

(K) Waiver of Rights. Grantor agrees that, to the fullest extent permitted by Law, it will not at any time, (1) insist upon, plead or claim or take any benefit or advantage of any stay, extension or moratorium Law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Security Instrument or any Secured Parties Collateral Document, (2) claim, take or insist upon any benefit or advantage of any Law, now or at any time hereafter in force, providing for valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (3) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States or any jurisdiction or otherwise to redeem the Property and rights sold pursuant to such sale or sales or any part thereof. Grantor hereby expressly waives all benefits and advantages of such Laws, and covenants, to the fullest extent permitted by Law, not to hinder, delay or impede the execution of any power herein granted or delegated to Grantee, but will suffer and permit the execution of every power as though no such Laws had been made or enacted. Grantor for itself and all who may claim through or under it, waives, to the extent it lawfully may do so, any and all homestead rights, any and all rights to reinstatement, and any and all right to have the property comprising the Property marshaled upon any foreclosure of the Lien hereof.

## 8. MISCELLANEOUS

(A) The title, interest, rights and powers granted herein by Grantor to Grantee, particularly the power of sale granted herein, shall inure to the benefit of anyone to whom Grantee shall assign the indebtedness herein secured, or convey the property herein described, as well as to the successors and legal representatives of Grantee.

(B) Grantor, at its own cost and expense, shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that Grantee may reasonably request in order to perfect, to ensure the continued perfection of and to protect the security interest now granted onto the Grantee hereafter intended to be granted to Grantee under this Security Instrument or the other Secured Parties Collateral Documents. Grantor shall notify Grantee in writing no less than 30 days prior to a change of address.

(C) The parties hereto shall in no event be deemed to have contracted for a greater rate of interest than the maximum rate permitted by Law. Should a greater amount be collected, it shall be construed as a mutual mistake of the parties and the excess shall be returned to the party paying same.

(D) EACH PARTY TO THIS SECURITY INSTRUMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS SECURITY INSTRUMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW 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, **EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS, SECURITY TITLE AND SECURITY INTERESTS WITH RESPECT TO THE PROPERTY CONSTITUTING REAL PROPERTY CREATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED.** NOTHING IN THIS AGREEMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS AGREEMENT.

(E) In consideration and by accepting the benefits of the Lien and security interest granted on and in the Property by this Security Instrument, Grantee agrees it will fully release its Lien and security interest granted herein upon payment of a Release Price as such term is described on Exhibit C.

(F) In the event of any conflict between the provisions of this Security Instrument and any of the Secured Parties Collateral Documents, the provisions of the Secured Parties Collateral Documents shall control.

(G) Whenever the terms "Grantor" or "Grantee" are used in this Security Instrument, such terms shall be deemed to include the heirs, administrators, executors, successors and assigns of said parties. All rights and powers herein granted to Grantee shall inure to and include Grantee's heirs, administrators, executors, successors and assigns, and all obligations herein imposed on Grantor shall extend to and include Grantor's heirs, administrators, executors, successors and assigns.

9. TRUSTEE.

(A) Substitute or Successor Trustee. Trustee may resign by an instrument in writing addressed to Grantee, or Trustee may be removed at any time with or without cause by Grantee. In case of death, resignation, removal or disqualification of Trustee or if for any reason Grantee shall deem it desirable to appoint a substitute or successor Trustee to act instead of the herein named Trustee or any substitute or successor Trustee, then Grantee shall have the right and is hereby authorized and empowered to appoint a successor Trustee, or a substitute Trustee,

without other formality than appointment and designation in writing executed and acknowledged by Grantee and, if required by applicable Law to provide constructive notice, recorded in the county or counties where the Property is located, and the authority hereby conferred shall extend to the appointment of other successor and substitute Trustees successively until the indebtedness secured hereby has been paid in full or until the Property is sold hereunder. In the event the indebtedness secured hereby is owned by more than one person or entity, the holder or holders of not less than a majority in the amount of such indebtedness shall have the right and authority to make the appointment of a successor or substitute Trustee provided for in the preceding sentence. Such appointment and designation by Grantee or by the holder or holders of not less than a majority of the indebtedness secured hereby shall be full evidence of the right and authority to make the same and of all facts therein recited. If Grantee is a corporation or a nationally chartered bank and such appointment is executed in its behalf by an officer of such corporation or nationally chartered bank, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Property shall vest in the named successor or substitute Trustee and such successor or substitute shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee; but nevertheless, upon the written request of Grantee or of the successor or substitute Trustee, Trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute Trustee all of the estate and title in the Property of Trustee so ceasing to act, together with all rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver any of the property and monies held by said Trustee hereunder to said successor or substitute Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.

(B) Liability of Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or willful misconduct. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, and shall be segregated from all other monies, and Trustee shall be under no liability for interest on any monies received by him hereunder. Grantor will reimburse Trustee for, and indemnify and save Trustee harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties hereunder.

(C) Grantee and Trustee. Trustee accepts the trusts hereby created and agrees to perform the duties herein required of him upon the terms and conditions hereof. The duties and obligations of the Trustee in respect of this Security Instrument shall be as set forth in this Section 9 including and subject to the following:

(i) Except upon the occurrence and during the continuance of an Event of Default that is actually known to Grantee:

- (1) Trustee shall undertake to perform such duties and obligations and only such duties and obligations as are specifically set forth in this Security Instrument or as otherwise directed by a letter of direction from Grantee, and no implied covenants or obligations shall be read into this Security Instrument or the other Secured Parties Collateral Documents against Trustee; and
- (2) in the absence of bad faith, Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to Trustee and conforming to the requirements of this Security Instrument and the other Secured Parties Collateral Documents; but in the case of any such certificates or opinions which by any provision hereof or thereof are specifically required to be furnished to Grantee, Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Security Instrument and the other Secured Parties Collateral Documents.

(ii) Trustee shall exercise the rights and powers vested in Trustee by this Security Instrument with reasonable care.

(iii) No provision of this Security Instrument shall be construed to relieve the Trustee from liability for its own gross negligence or willful misconduct, including that of its directors, officers, agents and employees, except that:

- (1) Trustee shall not be liable for any error of judgment made in good faith by Trustee, unless it shall be proved that Trustee was negligent in ascertaining the pertinent facts; and
- (2) Trustee shall not be liable with respect to any action taken or omitted to be taken in good faith in accordance with the direction of Grantee relating to the time, method and place of conducting any proceeding for any remedy available to Trustee, or exercising any trust or power conferred upon Trustee under this Security Instrument.

(iv) Whether or not therein expressly so provided, every provision of this Security Instrument relating to the conduct or affecting the liability of or affording protection to Trustee shall be subject to the provisions of this Section 9.

(v) No provision of this Security Instrument shall require Trustee to expend or risk his own funds or otherwise incur any personal financial liability in the performance of any of his duties hereunder, or in the exercise of any of his rights or powers, if Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to him.

(D) Covenants of Grantor. Grantor hereby covenants and agrees with Trustee and Grantee:

(i) to pay to Trustee from time to time reasonable compensation for all services rendered by Trustee hereunder;

(ii) to reimburse each of Grantee and Trustee upon request for all reasonable expenses, disbursements and advances incurred or made by it or them in accordance with any provision of this Security Instrument (including reasonable compensation, expenses and disbursements of agents and counsel), except any such expense, disbursement or advance (i) specifically stated in the Reimbursement, Security and Guaranty Agreement to be payable by Grantee or to be without cost to Grantor, or (ii) attributable to the gross negligence or willful misconduct of Grantee or Trustee, respectively; and

(iii) to indemnify Trustee for, and to hold him harmless against, any loss, liability or expense incurred without gross negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder or the enforcement of remedies hereunder including the costs and expenses of defending against any claim or liability in connection with the exercise or performance of any of the powers or duties hereunder or thereunder (except any liability incurred by Trustee which is attributable to its gross negligence or willful misconduct).

(E) Survival of Grantor Obligations. The obligations of Grantor under this Section 9 to compensate or indemnify Grantee and/or Trustee and to pay or reimburse the same for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Security Instrument. When Trustee or Grantee incur expenses or render services after an occurrence of an Event of Default, such expenses and compensation shall constitute expenses of administration under any applicable bankruptcy Law.

(F) Co-Trustees and Additional Trustees. At any time or times, (i) for the purpose of meeting the Legal Requirements of any jurisdiction in which any part of a Property may at the time be located, or (ii) if Grantee deems it to be necessary or desirable for the protection of its interests, Grantee shall have the power to appoint, and upon written request of Grantee, Grantor shall for such purpose join with Grantee in the execution, delivery and performance of all instruments and agreements reasonably necessary or proper to appoint, one or more Persons approved by Grantee either to act as co-Trustee, jointly with Trustee and/or Grantee, of all or any part of the Property, or to act as separate Trustee of any such property, in either case with such powers as may be provided in the instrument of appointment which shall expressly designate the property affected and the capacity of the appointee as either a co-Trustee or separate Trustee, and

to vest in such person or persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 9. If Grantor does not join in such appointment within fifteen (15) days after the receipt by it of a request so to do, or if an Event of Default shall have occurred and be continuing, Grantee alone shall be entitled to make such appointment without further reference to Grantor. Should any written instrument from Grantor be required by any co-Trustee or separate Trustee so appointed for more fully confirming to such co-Trustee or separate Trustee such property, title, right or power, any and all such instruments shall be executed, acknowledged and delivered by Grantor upon request by Grantee. If Grantor does not execute and deliver such instrument within five (5) Business Days after the receipt by it of a request so to do, or if an Event of Default shall have occurred and be continuing, Grantee is hereby appointed Grantor 's attorney-in-fact and shall be entitled to execute and deliver such instrument for and on behalf of Grantor and in the name of Grantor. Every co-Trustee or separate Trustee shall, to the extent permitted by Law, but to such extent only, be appointed subject to the same terms as hereinabove set forth for the Trustee.

IN WITNESS WHEREOF, Grantor and Trustee have executed this instrument [under seal,] the day and year first above written.

GRANTOR:

[\_\_\_\_\_, LLC,  
a \_\_\_\_\_ limited liability company]

By: [\_\_\_\_\_] a \_\_\_\_\_ limited  
liability company, its sole member

By: [\_\_\_\_\_] a [\_\_\_\_\_] its [Managing  
Member][Manager]r

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRUSTEE:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[LOCAL COUNSEL TO DETERMINE IF WITNESS IS NECESSARY, IF SEAL IS NECESSARY AND TO PROVIDE APPROPRIATE NOTARY BLOCK]



**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT "B"**

**Permitted Exceptions**

**EXHIBIT "C"**

**Release Price**

[Release Price to be determined in accordance with the LLC Operating Agreement and the instructions set forth in the REO Mortgage Checklist].

**Tab 3 to  
Checklist for Acquired Properties**

**Form of Assignment of Leases and Rents**

ASSIGNMENT OF LEASES,  
RENTS, [HOTEL REVENUE] AND SECURITY DEPOSITS

from

[\_\_\_\_\_]

to

[GRANTEE]

Dated as of [\_\_\_\_\_]

Street Address: [\_\_\_\_\_  
[\_\_\_\_\_  
County: [\_\_\_\_\_  
Section: [\_\_\_\_\_  
Block: [\_\_\_\_\_  
Lot: [\_\_\_\_\_]

Record and Return to:

[CUSTODIAN]

[ADDRESS]

Attention: [\_\_\_\_\_]

Reference: North CRE Venture 2010-2, LLC

ASSIGNMENT OF LEASES,  
RENTS [, HOTEL REVENUES] AND SECURITY DEPOSITS

ASSIGNMENT OF LEASES, RENTS [,HOTEL REVENUES] AND SECURITY DEPOSITS, dated as of [ ] (as amended, restated, replaced, supplemented, or otherwise modified from time to time, this "Assignment"), from [INSERT NAME OF OWNERSHIP ENTITY], a registered organization under the laws of the State of [ ] ("Grantor"), having an address at [ ], in favor of Federal Deposit Insurance Corporation, as Receiver and as Collateral Agent (hereinafter referred to as "Grantee"), having an address at 550 17th Street NW (Room F-7014), Washington, DC 20429-0002.

RECITALS:

Reference is made to that certain Reimbursement, Security and Guaranty Agreement dated as of December 15, 2010 by and among North CRE Venture 2010-2, LLC (the "Debtor"), each other Subsidiary Grantor that becomes a party thereto, Grantee and other parties thereto (the "Reimbursement, Security and Guaranty Agreement").

Grantor is a wholly owned subsidiary of Debtor, and by acquiring the property set forth on Exhibit A hereto (being an Acquired Property, as defined in the Reimbursement, Security and Guaranty Agreement) Grantor is required by the Reimbursement, Security and Guaranty Agreement to execute and deliver to Grantee (a) a Joinder Agreement to become a Subsidiary Grantor under the Reimbursement, Security and Guaranty Agreement, among other things, to guaranty the payment and performance by Debtor of the Secured Obligations (also as defined in the Reimbursement, Security and Guaranty Agreement), (b) a [Consolidated, Amended and Restated][Mortgage/Deed of Trust/Security Deed], Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, [Hotel Revenue] and security deposits, dated as of the date hereof (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the "Security Instrument"), from Grantor to [Grantee/Trustee for the benefit of Grantee] and (c) this Assignment.

NOW, THEREFORE, in consideration of the Loan, foregoing premises, Ten Dollars (\$10.00) paid in hand, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor agrees as follows:

1. Definitions. Capitalized terms used in this Assignment and which are undefined shall have the meanings ascribed to such terms in the Reimbursement, Security and Guaranty Agreement (including by reference therein) or the Security Instrument, as applicable.

2. Assignment.

(a) Grantor hereby assigns, transfers and sets over unto Grantee, subject to the terms hereof, all of the right, title and interest of Grantor in and to all Leases, Rents, [Hotel Revenue] and security deposits.

(b) This Assignment is an absolute, present and irrevocable assignment made for the purpose of securing (i) the payment and performance by Grantor of all Secured Obligations; (ii) the payment of all sums with interest thereon becoming due and payable to Grantee under the Reimbursement, Security and Guaranty Agreement; and (iii) the performance and discharge of each and every obligation, covenant, representation, warranty, indemnity and agreement of Grantor under this Assignment and the Reimbursement, Security and Guaranty Agreement.

3. License to Collect Rent.

(a) Prior to the occurrence of an Event of Default (as such term is defined in the Security Agreement), Grantee has granted Grantor a license to cause the Rents [and Hotel Revenue] to be collected and deposited in the [ ] Account in accordance with the terms of Section [ ] of the Reimbursement, Security and Guaranty Agreement. The foregoing license granted to Grantor shall terminate upon the occurrence of an Event of Default.

(b) Any time after the occurrence of an Event of Default, Grantee, without in any way waiving such Event of Default, at its option and without regard to the adequacy of the security for Secured Obligations and the other obligations secured hereby and by any Transaction Document, either in person or by agent or by a receiver appointed by a court, may enter upon and take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Grantee may deem proper. At any time after the occurrence of an Event of Default, Grantee, with or without taking possession of the Property, may, to the extent not prohibited by applicable law, demand, sue for or otherwise collect and receive all Rents, [Hotel Revenue] and security deposits, including any Rent [and Hotel Revenue] past due and unpaid, and to apply such Rents [and Hotel Revenue] to the payment of: (i) all reasonable expenses of managing the Property, including, without limitation, the reasonable salaries, fees and wages of any manager or managing agent and such other employees as Grantee may deem necessary in Grantee's sole and absolute discretion and all expenses of operating and maintaining the Property, including, without limitation, all rents, taxes, charges, claims, assessments, water rents, sewer rents and any other liens, and premiums for all insurance which are due and payable and the cost of all alterations, renovations, repairs or replacements for the Property, provided such fees and expenses shall be subject and subordinate to the Loan, and all expenses incident to taking and retaining possession and managing the Property, including, without limitation, attorneys' fees and disbursements; and (ii) the Secured Obligations.

(c) The exercise by Grantee of the right to collect the Rents [and Hotel Revenue] and the application thereof as herein provided shall not be considered a waiver of any Event of Default under this Assignment or any other Transaction Document. Grantor agrees that the exercise by Grantee of one or more of its rights and remedies hereunder shall in no way be deemed or construed to make Grantee a mortgagee-in-possession unless and until such time as Grantee takes actual possession of the Property.

4. No Other Assignment.

(a) Grantor represents and warrants that (i) there is no outstanding assignment of the Leases, Rents [, Hotel Revenue] or security deposits, except for this Assignment and the Security Instrument; (ii) Grantor has not performed any act or executed any instrument, assignment or agreement, and there is no existing instrument, assignment or agreement, which might prevent Grantee from exercising its rights under any of the terms and conditions of this Assignment or which would limit Grantee in such exercise.

(b) Grantor shall not (i) execute any assignment of the Leases, Rents [, Hotel Revenue] or security deposits to any person other than Grantee; or (ii) perform any act or execute any instrument, assignment or agreement which might prevent Grantee from exercising its rights under any of the terms and conditions of this Assignment or which would limit Grantee in such exercise. Any of the foregoing acts done without the prior written consent of Grantee shall be null and void.

5. No Liability. Grantee shall not be liable for any loss sustained by Grantor resulting from Grantee's failure to let the Property or any portion thereof or any other act or omission of Grantee either in collecting the Rents [and Hotel Revenue] or, if Grantee shall have taken possession of the premises described in the Leases and/or the Security Instrument, in managing such premises after any such Event of Default, unless such loss is caused by the gross negligence or willful misconduct of Grantee, its employees, officers, agents or representatives. Grantee shall not be obligated to perform or discharge, nor does Grantee hereby undertake to perform or discharge, any obligation, duty or liability under any Lease or under or by reason of this Assignment, and Grantor shall, and does hereby agree to, indemnify Grantee for, and hold Grantee harmless prior to the time that Grantee or any Affiliate, nominee or designee of Grantee becomes a mortgagee-in-possession or owner of the Property or otherwise takes possession of the Property, following an Event of Default from, any and all liability, loss or damage which Grantee may incur as a result of or related to said Leases or under or by reason of this Assignment and the exercise of its remedies hereunder and under the other Transaction Documents and from any and all claims and demands whatsoever which may be asserted against Grantee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said Leases. Should Grantee incur any such liability under said Leases or under or by reason of this Assignment or in defense of any such claims or demands, the amount thereof, including costs and expenses and attorneys' fees and expenses actually incurred, shall be secured hereby, and Grantor shall reimburse Grantee therefor immediately upon demand, and upon the failure of Grantor to do so Grantee may, at its option, exercise Grantee's remedies under the Security Instrument as the same relates to the Property. It is further understood that unless and until Grantee or its Affiliate, nominee or designee shall become a mortgagee-in-possession or the owner of the Property, or any portion thereof, or otherwise takes possession or control of the Property, or any portion thereof, following an Event of Default, this Assignment shall not operate to place responsibility upon Grantee for the control, care, management or repair of said premises or for the carrying out of any of the terms and conditions of any Lease; nor shall it operate to make Grantee responsible or liable for any waste committed on the Property by the Tenants or any other parties, or for any dangerous or defective condition of such premises, or for any negligence in the management, upkeep, repair or control of said premises resulting in loss or injury or death to any tenant,



licensee, employee or stranger other than any of the foregoing arising from the gross negligence or willful misconduct of Grantee, its employees, officers, agents or representatives.

6. Tenant Notices. Grantor hereby authorizes and directs all current and future Tenants, upon receipt from Grantee of written notice to the effect that Grantee is then the holder of the Security Instrument and that an Event of Default exists thereunder or under any other Transaction Document, to pay over to Grantee, to the extent not prohibited by applicable Legal Requirements, all Rents [, Hotel Revenue] and security deposits and to continue so to do until otherwise notified by Grantee.

7. Miscellaneous.

(a) Assignments by Grantee. No consent by Grantor shall be required for any assignment or reassignment of the rights of Grantee under this Assignment to any purchaser of the Secured Obligations or any interest in or portion of the Secured Obligations.

(b) No Release. Grantee may take or release other security for the payment of said principal sum, interest and indebtedness, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such principal sum, interest or indebtedness without prejudice to any of its rights under this Assignment.

(c) Conflicts. In the event that any terms or provisions of this Assignment and the Reimbursement, Security and Guaranty Agreement conflict, the terms and provisions of the Reimbursement, Security and Guaranty Agreement shall control.

(d) Further Assurances. Grantor shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Grantee all documents, and take all actions, reasonably required by Grantee from time to time to confirm the rights created or now or hereafter intended to be created under this Assignment and the other Transaction Documents and any security interest created or purported to be created thereunder, to protect and further the validity, priority and enforceability of this Assignment and the other Transaction Documents, to subject to the Transaction Documents any property of Grantor intended by the terms of any one or more of the Transaction Documents to be encumbered by the Transaction Documents, or otherwise carry out the purposes of the Transaction Documents and the transactions contemplated thereunder.

(e) Severability. The provisions of this Assignment are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, and not any other clause or provision of this Assignment.

8. GOVERNING LAW. EACH PARTY TO THIS ASSIGNMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS ASSIGNMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS ASSIGNMENT TO THE LAW OF ANOTHER JURISDICTION, AND EACH PARTY TO

THIS ASSIGNMENT UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS ASSIGNMENT, **EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS, SECURITY TITLE AND SECURITY INTERESTS WITH RESPECT TO THE PROPERTY CONSTITUTING REAL PROPERTY CREATED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE JURISDICTION IN WHICH THE PROPERTY IS LOCATED.** NOTHING IN THIS ASSIGNMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS ASSIGNMENT.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Grantor has duly executed this Assignment of Leases, Rents  
[, Hotel Revenue] and Security Deposits as of the date first hereinabove written.

[\_\_\_\_\_]

By: \_\_\_\_\_

Name:

Title:

[USE STATE-SPECIFIC FORM OF ACKNOWLEDGMENT IF NECESSARY]

STATE OF [        ] )

) ss:

COUNTY OF [        ] )

On \_\_\_\_\_, 20\_\_ before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity, and that by his/her/their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

[Notary Seal]

My commission expires:

EXHIBIT A  
LEGAL DESCRIPTION

**Tab 4 to  
Checklist for Acquired Properties**

**Form of Non-Merger Language (for Deed-in-Lieu)**

NON-MERGER LANGUAGE<sup>1</sup>

*No Merger.* Notwithstanding [Ownership Entity's] acquisition of the [Property], the outstanding balance of the [Loan] and all other amounts due and payable under the [Loan Documents] shall not be cancelled, and shall survive delivery of the [Deed] and other [Deed Documents]<sup>2</sup> under this Agreement; and all of the [Loan Documents] shall remain in full force and effect after the transactions contemplated by this Agreement have been consummated. The parties to this Agreement further agree that the interest of the [Lender] in the Property, after [Ownership Entity's] acquisition of the Property, shall not merge with the interest of the [Lender] in the Property under the Loan Documents. It is the express intention of each of the parties hereto (and all of the conveyances provided for in this Agreement shall so recite) that such interests of the [Lender] and [Ownership Entity's] in the [Property] shall not merge, but shall be and remain at all times separate and distinct, notwithstanding any union of said interests in [Lender] at any time by purchase, termination or otherwise, and that the lien of the [Mortgage/Deed of Trust] in the [Property] shall be and remain at all times a valid and continuous lien on the [Property] until and unless released of record by the [Lender] or its successors and assigns. All provisions of this Section [ ] shall survive delivery of the [Deed] and of the other [Deed Documents].

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<sup>1</sup> All defined terms must be tailored to the specific Deed-in-Lieu transaction.

<sup>2</sup> Deed Documents may include, but not be limited to, the deed, bill of sale, any applicable affidavits and a FIRPTA Certificate.

**Tab 5 to  
Checklist for Acquired Properties**

**Form of Subordination Agreement**

[to be provided by Collateral Agent upon acquisition of an Acquired REO Property]