

CRE Venture 2011-1 Structured Transaction

REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT

BY AND AMONG

CRE VENTURE 2011-1, LLC,

EACH OTHER GRANTOR FROM TIME TO TIME PARTY HERETO,

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CAPACITY AS RECEIVER,
AS PMN AGENT,

AND

FEDERAL DEPOSIT INSURANCE CORPORATION,
IN ITS CAPACITY AS RECEIVER,
AS INITIAL MEMBER

Dated as of August 10, 2011

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Exhibit A Joinder Agreement

REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT

THIS REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT, effective as of August 10, 2011 (this “**Agreement**”), is entered into by and among: (i) **CRE Venture 2011-1, LLC**, a Delaware limited liability company (the “**Debtor**” or the “**Company**”); (ii) each other entity listed on the signature pages hereof or 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**”); (iii) the Federal Deposit Insurance Corporation in its capacity as Receiver, as the PMN Agent (in such capacity, the “**PMN Agent**”), (iv) the Federal Deposit Insurance Corporation, in its capacity as Receiver, as the Initial Member under the LLC Operating Agreement referred to below (in such capacity, the “**Initial Member**”), solely for purposes of Sections 5.1(a)(vi), 5.1(a)(viii), 5.1(a)(ix), 5.1(a)(x), 8.3, and 13.6 – 13.19.

WHEREAS, pursuant to the Contribution Agreement, (i) the Transferor has transferred all of its right, title and interest in and to the Assets, including equity interests in Ownership Entities and certain Acquired REO Property, to the 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, the Debtor has issued to the Transferor the Purchase Money Notes, dated as of the Closing Date, in the aggregate principal face amount of \$170,224,042.00, inclusive of the Purchase Money Notes Issuance Fee, and (ii) the Debtor has agreed to execute and deliver this Agreement;

WHEREAS, although only a single Class of Purchase Money Notes will be issued on the Closing Date, the Transferor has the right pursuant to Section 8.4 of the Contribution Agreement (subject to certain limitations set forth therein) to replace such single Class of Purchase Money Notes with one, or multiple, Classes of Purchase Money Notes having varying maturity dates and aggregate principal amounts;

WHEREAS, (i) pursuant to Section 8.4 of the Contribution Agreement, the Transferor from time to time may elect in its sole discretion to procure the execution and delivery of a Purchase Money Notes Guaranty pursuant to which, *inter alia*, the Purchase Money Notes Guarantor thereunder guarantees the payment when due of the principal of any Class of the Purchase Money Notes, (ii) further Purchase Money Notes Guarantees may be issued pursuant to Section 2.8 of the Custodial and Paying Agency Agreement and (iii) the Company is to be obligated to reimburse each Purchase Money Notes Guarantor for any payments made by it pursuant to any Purchase Money Notes Guaranty; and

WHEREAS, in connection with the foregoing, each Grantor has agreed to (i) provide the PMN Agent, for the benefit of the Secured Parties, with the collateral identified in this Agreement and (ii) guaranty payment of the Secured Obligations in order to induce the Transferor to provide financing to Debtor pursuant to the terms of the Purchase Money Notes;

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 PMN Agent and the Initial Member agree as follows:

ARTICLE I **Definitions**

Section 1.1 Definitions.

(a) For purposes of this Agreement, terms used herein (including in the preamble and recitals hereto), to the extent the same are defined in, or by reference in, that certain Agreement of Definitions - CRE Venture 2011-1 Structured Transaction dated as of the date hereof among the parties hereto and certain others (as the same may be amended from time to time in accordance with the terms set forth herein for the amendment of this Agreement) (the "**Agreement of Definitions**"), and are not otherwise defined herein, shall have the meanings and definitions given, or referred to, in the Agreement of Definitions.

(b) UCC Terms. The following terms have the meanings given to them in the NY UCC and terms used herein without definition that are defined in the NY UCC have the meanings given to them in the NY 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. The Rules of Construction apply to this Agreement and each other Secured Parties Collateral Document, unless otherwise specified herein or in such other Secured Parties Collateral Document.

ARTICLE II **Reimbursement**

Section 2.1 Reimbursement. The Debtor agrees to pay (i) each Purchase Money Notes Guarantor, on the Distribution Date following any payment by such Purchase Money Notes Guarantor with respect to the Guaranteed Obligations under any Purchase Money Notes Guaranty (including pursuant to Section 16(b) of any Purchase Money Notes Guaranty), the amount of such payment (provided, however, that any such payment by such 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) pursuant to this Section 2.1, and (ii) to the PMN Agent for distribution solely among the Purchase Money Notes Guarantors for any day on which a Purchase Money Notes Trigger Event is continuing, interest on an amount equal to the lesser of (x) the amount, if any, necessary to be added to the Defeasance Account to cause the Purchase Money Notes Trigger Event to cease to exist and (y) the aggregate amount remaining unpaid by the Debtor to all Purchase Money Notes Guarantors pursuant to 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 ceases to exist and (II) the day all amounts owing to all Purchase Money Notes Guarantors pursuant to clause (i) of this Section 2.1 are reimbursed in full (both before and after judgment), payable on each Distribution Date, at a rate per annum equal to the LIBOR Rate

plus 3.00% (calculated on an actual/360 day basis). All payments by the Debtor pursuant to this Section 2.1 shall be made free and clear of set-off or counterclaim in lawful currency of the United States and in immediately available funds. For the avoidance of doubt, for all purposes of this Agreement, including this Section 2.1 and Section 5.2, (A) no payment by any Purchase Money Notes Guarantor with respect to the Guaranteed Obligations under any Purchase Money Notes Guaranty (including pursuant to Section 16(b) of any Purchase Money Notes Guaranty) shall be deemed to constitute a payment by the Debtor in respect of the Purchase Money Notes (such that, for example, any determination for purposes of any Purchase Money Note or this Agreement of the aggregate outstanding principal amount of the Purchase Money Notes (or any Class of Purchase Money Notes) shall disregard any such payment by any Purchase Money Notes Guarantor), (B) any payment to any Purchase Money Notes Guarantor (from the Debtor, from the proceeds of any Secured Parties Collateral or otherwise from any Asset Proceeds, but excluding, for the avoidance of doubt, any deemed payment pursuant to clause (C)) on account of amounts owed to such Purchase Money Notes Guarantor pursuant to this Section 2.1 above shall be applied (I) first to any amount owed to such Purchase Money Notes Guarantor pursuant to clause (ii) above, (II) second, to any amount owed to such Purchase Money Notes Guarantor pursuant to clause (i) above in respect of any amount paid by such Purchase Money Notes Guarantor pursuant to Section 16(b) of any Purchase Money Notes Guaranty, and (III) third to any amount owed to such Purchase Money Notes Guarantor pursuant to clause (i) above (other than any amount paid by such Purchase Money Notes Guarantor pursuant to Section 16(b) of any Purchase Money Notes Guaranty), and to the extent (and solely to the extent) so applied as described in clause (B)(III) shall be deemed to constitute a payment by the Debtor in respect of the Class of Purchase Money Notes in respect of which the Purchase Money Notes Guarantor payment was made, and (C) any payment to any Purchase Money Notes Guarantor as the subrogee (as the result of any payment made by such Purchase Money Notes Guarantor with respect to the Guaranteed Obligations under any Purchase Money Notes Guaranty) to the rights of any Holders of Guaranteed Purchase Money Notes (excluding, for the avoidance of doubt, any deemed payment pursuant to clause (B)) shall, as between the Grantors and such Purchase Money Notes Guarantor, for the purpose of determining the amount owed by the Debtor pursuant to this Section 2.1, be deemed to be applied in the order set forth in clauses (B)(I), (II) and (III). For the avoidance of doubt, this Section 2.1 applies only if any Purchase Money Notes Guaranty is executed and delivered.

Section 2.2 Obligations Absolute. The obligations of the 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, any Purchase Money Notes Guaranty 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 Note or any Purchase Money Notes Guaranty;

(c) the existence of any claim, setoff, defense or other right that the Debtor may have at any time against any Purchase Money Notes Guarantor, the Transferor 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 Purchase Money Notes Guaranty against demand of the Holders or the Paying Agent that does not comply with the terms of such Purchase Money Notes Guaranty; and

(e) any other act or omission to act or delay of any kind by any 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 the Debtor's obligations hereunder pursuant to this Agreement.

ARTICLE III
Security Interest

Section 3.1 Granting of Security Interest. To secure the Debtor's payment and performance of the Secured Obligations when due (whether at stated maturity, by acceleration or otherwise) and each Subsidiary Grantor's payment and performance of its guaranty of payment and performance of the Secured Obligations, each Grantor hereby transfers, assigns, sets over, pledges, conveys, mortgages and grants to the PMN Agent for its benefit and for the benefit of the Secured Parties, and hereby grants to the PMN Agent for its benefit and the benefit of the Secured Parties a continuing security interest in, lien on and right of setoff against, all of such Grantor's right, title and interest in and to the Secured Parties Collateral. The "**Secured Parties Collateral**" means all of the following, in each case whether now owned or hereafter acquired, whether now existing or hereafter arising, wherever located and 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: all accounts, chattel paper, deposit accounts, documents (as defined in the UCC), equipment, fixtures, general intangibles, Intellectual Property, instruments, insurance (as defined in the UCC), inventory, investment property, letter-of-credit rights, money (as defined in the UCC) and other property of each Grantor (and any supporting obligations related thereto), including:

(a) the Assets, including all future advances made with respect thereto;

(b) the Asset Documents;

(c) all amounts payable to any Grantor pursuant to the Asset Documents and all obligations owed to any Grantor in connection with the Assets and the Asset Documents;

- (d) all of each Grantor's right, title and interest in, to or under the Collateral;
- (e) all Acquired Property;
- (f) all claims, suits, causes of action and any other right of any 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;
- (g) all cash, securities and other property received or applied by or for the account of any 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;
- (h) the Company Accounts and any other accounts established by the Debtor pursuant to the Custodial and Paying Agency Agreement, and all amounts on deposit therein;
- (i) all Ownership Interests in all Ownership Entities (collectively, the "Pledged Interests");
- (j) all of each Grantor's right, title and interest in and to all insurance policies;
- (k) 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; and
- (l) all of each Grantor's right, title and interest in, to or under any and all books, correspondence, credit files, records, invoices, documents and other papers, including all tapes, cards, computer runs and other papers and documents, in the possession or under the control of such Grantor or any computer bureau or service company from time to time acting for such Grantor (including all files, books and records maintained from time to time pursuant to the Reporting and Access Schedule).

For the avoidance of doubt, the "Secured Parties Collateral" includes all Acquired REO Property notwithstanding that neither REO Mortgages nor UCC fixture filings are required to be recorded or filed with respect thereto. All of the Notes and other Custodial Documents shall be held by the Custodian as set forth in Section 8.4 (except and to the extent the same are permitted to be removed from the Custodian's possession as provided in the Custodial and Paying Agency Agreement). Pursuant to Section 3.1 of the Contribution Agreement, the Receiver (as the PMN Agent) shall retain possession of the Notes and other Custodial Documents until such time as the Debtor retains the Custodian/Paying Agent pursuant to the provisions of Section 8.4 and, at such

time, the Transferor shall cause the Custodian to take possession of the Notes and other Custodial Documents (to the extent they are in the possession of the Transferor or any of its employees or contractors (and have actually been located and collected for delivery pursuant to the Contribution Agreement) as of the Closing Date) on behalf of the PMN Agent. The Debtor shall deliver to the PMN Agent (unless the Custodian/Paying has been appointed, in which case the Debtor shall deliver to the Custodian) within sixty days after the Closing Date, (x) for each Loan, an Allonge, and (y) for each Mortgage included in the Collateral Documents (except, subject to the last sentence of this Section 3.1, in the case of any MERS Designated Loan), a Mortgage Assignment, in blank, and executed by the Debtor. Such Allonges and Mortgage Assignments shall be held by the Custodian 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 PMN Agent may use the Allonge to effect the endorsement of a Note or the Mortgage Assignment to effect the assignment of a Mortgage 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 shall execute and deliver to the PMN Agent or the Custodian, as the case may be, the Mortgage Assignment described above in this Section 3.1 (for the avoidance of doubt, that the Debtor initially was excused from delivering pursuant to the parenthetical above in this Section 3.1 referring to MERS Designated Loans) promptly after the removal of such MERS Registered Mortgage from the MERS System (including the assignment of record of such MERS Registered Mortgage to the Company) 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 interest granted pursuant to this Agreement.

Section 3.2 Asset Defaults; Acquisition of Collateral.

(a) Discretion of Debtor in Responding to Defaults of a Borrower. Upon the occurrence of an event of default pursuant to any of the Asset Documents, but subject to the other terms and conditions of this Agreement applicable thereto, 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 PMN 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, or to appoint a receiver, (iv) the institution of proceedings against any Obligor, (v) the acceptance of a deed in lieu of foreclosure, (vi) the purchase of the real property Collateral at a foreclosure sale or trustee's sale or the purchase of the personal property Collateral at a Uniform Commercial Code sale, (vii) the institution or continuation of proceedings to obtain a deficiency judgment against such Borrower or any Obligor and (viii) the institution of any other remedy provided for in the respective Asset Documents or at Law.

(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 acquire or 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 procure that no Servicer or Subservicer, and no Subsidiary or other entity in which the Debtor owns any interest, shall 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 (by the Servicer, any Subservicer, the Debtor, any Subsidiary of the Debtor or any other entity in which the Debtor owns any interest) 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 a Site Assessment to be commissioned with respect to such Collateral; provided, that the Debtor may rely on a third-party Site Assessment conducted within one year prior to acquiring title so long as the Debtor has obtained all relevant updates within one hundred and eighty days prior to acquiring title, and taken applicable further action, so as to be deemed to have satisfied the Environmental Protection Agency's "All Appropriate Inquiries" standards, set forth in 40 C.F.R. § 312, for meeting the "Bona Fide Prospective Purchaser" and "Innocent Purchaser" defenses under the Superfund statute, 42 U.S.C. §§ 9601, 9607. 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 PMN Agent and to sell the Acquired Property as promptly as practicable in a way designed to minimize financial loss to the Debtor and the PMN 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 the Debtor by foreclosure, by deed in lieu of foreclosure, by power of sale, 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, and such Ownership Entity shall become a Subsidiary Grantor as set forth in Section 8.12. 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 PMN 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 PMN 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 all Purchase Money Notes Guaranties and the indefeasible payment, satisfaction and discharge of all Secured Obligations in full. It is the intent of each Grantor and the PMN Agent to (subject to the proviso to Section 8.10) 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 PMN 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 Collateral. Each Grantor is authorized to cause the release or assignment of any Lien granted to or held by such Grantor on any Collateral, solely to the extent necessary, (i) upon a final, nonappealable order of a court of competent jurisdiction permitting or directing disposition thereof, (ii) 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, (iii) 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, (iv) in connection with such Grantor's sale of an Asset in accordance with Section 10.1 of this Agreement or (v) 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 Asset Proceeds with respect to such sale or disposition are deposited into the Collection Account. For the avoidance of doubt, except as provided in the preceding sentence (and except as provided in Section 10.1), no Grantor shall release or assign any Lien granted to or held by such Grantor on any Collateral.

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 PMN 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 PMN Agent may determine is necessary, advisable or prudent to ensure the perfection of the security interest in the Secured Parties Collateral granted to the PMN Agent herein pursuant to the terms hereof.

Section 3.7 Power of Attorney. Each Grantor hereby irrevocably appoints the PMN 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 PMN 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 PMN Agent's discretion, following a failure by the Debtor to satisfy promptly its obligations pursuant to Section 3.1, Section 3.2, Section 4.10, Section 4.11 or Section 4.12 of the Contribution Agreement as it relates to the preparing, furnishing, executing and/or recording of all relevant Transfer Documents and other documents as may be reasonably necessary to satisfy the transfer and recording obligations of the Debtor pursuant to Section 3.1, Section 3.2, Section 4.10, Section 4.11 or Section 4.12, to execute, furnish and record all relevant Transfer Documents and other documents as may be reasonably necessary to satisfy such transfer and recording obligations of the Debtor. The Debtor shall reimburse the PMN Agent on demand for all costs and expenses incurred by the PMN Agent in connection with any exercise of the power of attorney set forth in this Section 3.7.

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, the Private Owner or the Manager, as applicable, from the Initial Member of notice of the occurrence of an "Event of Default" (pursuant to and as such term is defined 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, (B) the Private Owner or (C) the Specified Parent of the Private Owner (or, if such Specified Parent is comprised of more than one Person, any Person comprising such Specified Parent) or any Person that Controls, or is Controlled by, such Specified Parent (or, if such Specified Parent is comprised of more than one Person, any Person comprising such Specified Parent); or (ii) with respect to any Servicer (or any Subservicer); provided (for the avoidance of doubt, solely with respect to this clause (ii)) that, if such Servicer (or Subservicer) is not an Affiliate of the Private Owner, then such Insolvency Event pursuant to this clause (ii) shall not be an Event of Default pursuant to this Agreement (but in all events shall be a default under the applicable Servicing Agreement (or Subservicing Agreement)) so long as the Manager shall have fully replaced (or caused the replacement of) such affected Servicer (or Subservicer) within thirty days after the occurrence of such Insolvency Event; or

(c) the occurrence of any Dissolution Event (without any cure period other than as may be provided for in the definition of Dissolution Event) (i) with respect to (A) the Debtor or (B) the Private Owner or (ii) with respect to the Servicer (or any Subservicer); provided (for the avoidance of doubt, solely with respect to this clause (ii)), that if such Servicer (or Subservicer) is not an Affiliate of the Private Owner, then such Dissolution Event pursuant to this clause (ii) 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 replaced (or caused the replacement of) such affected Servicer (or Subservicer) within thirty days after the occurrence of such Dissolution Event; or

(d) any failure of the Debtor, the Private Owner or the Manager (in any capacity) to pay or to cause to be paid any Working Capital Expense when due, which failure continues unremedied for a period of thirty days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given by the PMN Agent to the Debtor or otherwise shall have been given to the Debtor, the Private Owner or the Manager, as applicable; provided, however, that such failure to pay or cause to be paid any Servicing Expense relating to an Asset pursuant to this paragraph (d) shall not be an Event of Default pursuant to this Agreement, to the extent that the Debtor, the Private Owner or the Manager, as applicable, reasonably has determined in accordance with applicable Servicing Standards that such Servicing Expense, if so paid, when combined with all reimbursed previous Servicing Expenses, Required Funding Draws, and Pre-Approved Charges with respect to such Asset (and any remaining amounts owing to the Initial Member with respect to its servicing of such Asset as described in the Contribution Agreement), would not be recoverable from the Asset Proceeds from such Asset; or

(e) any failure in any material respect of the Debtor, the Private Owner or the Manager (in any capacity) to perform any of its obligations under, or otherwise to comply with and observe any provision of, the LLC Operating Agreement, which failure continues unremedied for a period of thirty 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 by the PMN Agent or otherwise shall have been given to the Debtor, the Private Owner or the Manager (in any capacity), as applicable; or

(f) the occurrence of either (i) any failure in any material respect by the Servicer or any Rated Subservicer to perform any of its obligations under, or otherwise to comply with and observe any provision of, the Servicing Agreement or applicable Subservicing Agreement, which continues unremedied for a period of thirty days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Initial Member or the Manager to the Servicer or by the PMN Agent to the Debtor, or (ii) a failure by the Manager (in its individual capacity) to replace the Servicer (or cause the replacement of an applicable Rated Subservicer) upon the occurrence of either (x) an Event of Default pursuant to this Agreement as a result of the Servicer's (or such Rated Subservicer's) acts or omissions or (y) a material breach by the Servicer (or such Rated Subservicer) of, or the occurrence of any "Default" under (and as defined in), the Servicing Agreement (including any such "Default" resulting from acts or omissions of such Rated Subservicer under its Subservicing Agreement) or applicable Subservicing Agreement, in the case of (x) or (y) that continues unremedied for a period of thirty 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 by the PMN Agent to the Debtor; or

(g) any failure in any material respect of (i) the Manager (in any capacity) to perform any of its obligations under, or otherwise to comply with and observe any provision of, the Servicing Agreement or (ii) the Debtor to perform any of its obligations under, or otherwise to comply with and observe any provision of, the Custodial and Paying Agency Agreement (including any failure to pay fees or expenses due thereunder) that, in the case of (i) or (ii), remains unremedied for a period of thirty 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 by the PMN Agent or otherwise shall have been given to the Manager (in any capacity) or the Debtor, as applicable;

(h) there shall be a change in the identity of the Manager or the Private Owner (including by action of, or at the direction of, the Initial Member) without the consent of the PMN Agent, or there shall occur (i) any breach (or, for the avoidance of doubt, any attempted or purported Disposition that, but for Section 8.5 of the LLC Operating Agreement, would have constituted a breach) of Section 8.1 or 8.2 of the LLC Operating Agreement or (ii) any Restricted Servicer Change of Control; provided (for the avoidance of doubt, solely with respect to this clause (ii)), that, if the Servicer (or Subservicer) is not an Affiliate of the Private Owner, then any such Restricted Servicer Change of Control shall not be an Event of Default under this clause (ii) (but shall in all events be a default under the applicable Servicing Agreement (or Subservicing Agreement)) so long as the Manager shall have fully replaced (or caused the replacement of) such affected Servicer (or Subservicer) within thirty days after the occurrence of such Restricted Servicer Change of Control; or

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

(j) (x) any failure, of the Private Owner, at any time, for any reason or to any extent, to maintain in full the Additional Security, (y) the occurrence of any LC Reissuance/Extension Failure or (z) any failure, at any time, for any reason or to any extent, by an Issuing Bank to comply with any terms, agreements or conditions of any Qualifying Letter of Credit; or

(k) any representation, warranty, certification or other written statement of fact made by or on behalf of any Grantor in this Agreement, the Custodial and Paying Agency Agreement or any other Secured Parties Collateral Document, or in any written statement or certificate at any time delivered pursuant to or in connection with this Agreement, the Custodial and Paying Agency Agreement or any other Secured Parties Collateral Document (including any Cash Flow and Distribution Report or Monthly Report), shall be (i) false or incorrect when made, to the extent such representation, warranty, certification or written statement of fact is qualified by materiality, or (ii) false or incorrect in any material respect when made, to the extent such representation, certification or written statement of fact is not qualified by materiality, and (in each case) such state of facts remains unremedied for a period of thirty days or more after the date on which written notice of such state of facts requiring the same to be remedied shall have been given by the PMN Agent to the Debtor or otherwise shall have been given to the Debtor; or

(l) any 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 the PMN Agent 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 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) [Intentionally Omitted]

(o) the occurrence of a Purchase Money Notes Trigger Event, unless, within ten Business Days thereafter, the Private Owner makes an Excess Working Capital Advance pursuant to clause (y) of the first sentence of Section 5.5 of the LLC Operating Agreement in an amount equal to the sum of (i) the amount necessary to eliminate the shortfall described in the definition of the term "Purchase Money Notes Trigger Event" plus (ii) all interest that will have accrued pursuant to Section 2.1 hereof as of the Distribution Date on which the proceeds of such Excess Working Capital Advance will be distributed pursuant to Section 5.1(c) of the Custodial and Paying Agency Agreement (it being understood and agreed for the avoidance of doubt that if a Purchase Money Notes Trigger Event shall occur, an Event of Default under this clause (o) thereafter can only be avoided or (after the ten-Business Day period specified above) cured by the making of the Excess Working Capital Advance described (including in the amount described) above in this clause (o));

(p) any material provision of any Purchase Money Note, this Agreement, the Custodial and Paying Agency Agreement, the LLC Operating Agreement or any other Secured Parties Collateral Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Secured Obligations, ceases to be in full force and effect; or any Grantor or the Private Owner (including in its capacity as Manager) contests in any manner the validity or enforceability of any provision of any Purchase Money Note, this Agreement, the Custodial and Paying Agency Agreement, the LLC Operating Agreement or any other Secured Parties Collateral Document; or any Grantor or the Private Owner (including in its capacity as Manager) denies that it has any or further liability or obligation under any Purchase Money Note, this Agreement, the Custodial and Paying Agency Agreement, the LLC Operating Agreement or any other Secured Parties Collateral Document other than as expressly provided herein or therein, or purports to revoke, terminate or rescind any provision of any Purchase Money Note, this Agreement, the Custodial and Paying Agency Agreement, the LLC Operating Agreement or any other Secured Parties Collateral Document; or

(q) (i) this Agreement shall for any reason (other than the absence of REO Mortgages or UCC fixture filings with respect to Acquired REO Property or otherwise pursuant to the express terms hereof) fail or cease to any extent to create a valid and perfected first priority Lien on all or any portion of the Secured Parties Collateral, or (ii) any Grantor or the Private

Owner (including in its capacity as Manager) shall so assert, and (with respect only to clause (i) and then only if such failure is not material) such failure continues unremedied for thirty days after the earlier to occur of (x) such Grantor obtaining actual knowledge of such failure or cessation or (y) receipt by such Grantor of written notice thereof from the PMN Agent or the Custodian and Paying Agent;

(r) any breach of Section 10.1(s) of the LLC Operating Agreement, which breach continues unremedied for a period of thirty days or more after the date on which written notice of such breach requiring the same to be remedied shall have been given by the PMN Agent to the Debtor or the Private Owner or otherwise shall have been given to the Debtor or the Private Owner; or

(s) any failure, in any respect, on the part of the Debtor to perform any of its obligations under, or otherwise to comply with and observe any provision of, Section 8.1, 8.2 (first two sentences), 8.3, 8.7, 8.8, 8.12 or 8.20 of this Agreement;

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

(u) any failure (other than those specified in any of subsections (a) through (t) above) in any material respect on the part of the Debtor to perform any of its obligations under, or otherwise to comply with and observe any provision of, this Agreement (including any obligation imposed upon any Servicer or Subservicer), any other Secured Parties Collateral Document or the Custodial and Paying Agency Agreement (or any document related hereto or thereto) that continues unremedied for a period of thirty days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given by the PMN Agent to the Debtor or otherwise shall have been given to the Debtor; provided, however, that in the case of a failure that cannot be cured within thirty days but which by its nature is curable, the cure period shall be extended for an additional thirty days if the Debtor can demonstrate to the reasonable satisfaction of the PMN Agent 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 PMN Agent may declare the 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 each Purchase Money Note, together with all other accrued and unpaid amounts in respect thereof through the date of acceleration and any other amounts owed by the Debtor thereunder, shall become immediately due and payable without the necessity of any presentment, demand, protest or any other notice of

any kind, all of which are hereby expressly waived by the Debtor; provided, however, that with respect to an Event of Default pursuant to Section 4.1(b)(i)(A), the unpaid principal amount of, and other amounts, in respect of, each Purchase Money Note shall automatically become immediately due and payable without further act of the PMN Agent or any Holder;

(ii) The PMN Agent may institute Proceedings for the collection of all amounts then payable by Debtor pursuant to this Agreement, whether by declaration or otherwise, for the enforcement of any judgment obtained and/or for the collection from the Debtor of any moneys adjudged due;

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

(iv) The PMN 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 PMN Agent;

(v) The PMN 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, (x) the PMN Agent may direct the Initial Member to exercise its right, and thereupon the Initial Member shall exercise its 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 selected by the Initial Member (in its sole and absolute discretion) or (y) the PMN Agent may exercise its direct rights, pursuant to the LLC Operating Agreement, the Servicing Agreement and any Subservicing Agreement to terminate the Servicer (and any Subservicers) and cause the Manager to enter into a new Servicing Agreement with a servicer selected by the PMN Agent (in its sole and absolute discretion);

(vii) In addition to, and without limitation of, clause (iv), the PMN Agent may enter into separate arrangements for the Servicing (or for any portion of the Servicing) of the Assets (any successor servicer selected pursuant to clause (vi) or this clause (vii), a “**Successor Servicer**”);

(viii) If an “Event of Default” pursuant to and as defined in the LLC Operating Agreement has occurred, (x) the PMN Agent may direct the Initial Member to exercise its right, and thereupon the 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), or (y) the PMN Agent may exercise its direct rights, pursuant to the LLC Operating Agreement, to terminate the existing Manager and appoint a new Manager selected by the PMN Agent (in its sole and absolute discretion);

(ix) If an “Event of Default” pursuant to and as defined in the LLC Operating Agreement has occurred, the PMN Agent may direct the Initial Member to exercise its right, and the Initial Member thereupon shall exercise its right, pursuant to the LLC Operating Agreement, to require the Private Owner to sell its equity interest in 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) If an “Event of Default” pursuant to and as defined in the LLC Operating Agreement has occurred, the PMN Agent may direct the Initial Member to exercise some or all of its rights, and thereupon the Initial Member shall exercise such rights, described in clauses (i) through (v) of Section 3.13(a) of the LLC Operating Agreement (in addition to the rights described in Sections 5.1(a)(vi), 5.1(a)(viii), and 5.1(a)(ix) above);

(xi) The PMN Agent may institute Proceedings for the collection of all amounts then payable to the Holders, whether by declaration or otherwise, for the enforcement of any judgment obtained and/or for the collection of any monies adjudged due pursuant to the Purchase Money Notes;

(xii) The PMN Agent may institute Proceedings for the collection of all amounts then payable by any Subsidiary Grantor pursuant to Article VI of this Agreement, whether by declaration or otherwise, for the enforcement of any judgment obtained and/or for the collection from such Subsidiary Grantor of any monies adjudged due;

(xiii) If an “Event of Default” pursuant to and as defined in the LLC Operating Agreement has occurred, the PMN Agent may exercise any and all rights and remedies of the PMN Agent under the LLC Operating Agreement, the Servicing Agreement and/or any Subservicing Agreement arising upon such occurrence (in addition to the right described in Sections 5.1(a)(vi)(y) above);

(xiv) The PMN Agent otherwise may exercise on behalf of the Holders their rights and remedies pursuant to the Purchase Money Notes;

(xv) The PMN Agent may declare all amounts owed to the Purchase Money Notes Guarantors pursuant to Section 2.1 to be immediately due and payable, by a notice in writing to the Debtor and the Custodian/Paying Agent, and upon any such declaration all such amounts, including any accrued and unpaid interest pursuant to Section 2.1, shall become immediately due and payable without the necessity of any presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Debtor; provided, however, that with respect to an Event of Default pursuant to Section 4.1(b)(i)(A), all amounts owed to the Purchase Money Notes Guarantors pursuant to Section 2.1, including any accrued and unpaid interest pursuant to Section 2.1, shall automatically become immediately due and payable without further act of the PMN Agent or any Purchase Money Notes Guarantor; and/or

(xvi) The PMN Agent may exercise any and all rights and remedies of any Grantor under or in connection with the Collateral and/or the Secured Parties Collateral,

including any and all rights of any Grantor to take or refrain from taking any action thereunder, or to receive, demand or otherwise require payment of any amount thereunder, or to require the performance of any provision thereof. In furtherance and not in limitation of the foregoing, the PMN Agent, on behalf of the Secured Parties, may: (A) notify any and all obligors under the aforementioned contracts that the same have been assigned to the PMN Agent, for the benefit of the Secured Parties, that the PMN Agent, on behalf of the Secured Parties, is entitled to exercise all rights pertaining thereto, and that all payments thereon and other performance thereunder are to be made and rendered directly and exclusively to the PMN Agent, for the benefit of the Secured Parties; (B) renew, extend, modify, amend, accelerate, accept partial payments or performance on, make allowances and adjustments and issue credits with respect to, release, settle, compromise, compound, collect or otherwise liquidate or deal with, on terms acceptable to the PMN Agent, on behalf of the Secured Parties, in whole or in part, the rights to the Secured Parties Collateral and any amounts owing thereon or any performance due thereunder or any of the Grantors' rights or interests therein; (C) enter into any other agreement relating to or affecting the rights to the Secured Parties Collateral; and (D) give all consents, waivers and ratifications in respect of the rights of each Grantor and exercise all other rights, powers and remedies and otherwise act with respect thereto as if it were the owner thereof. Each Grantor hereby releases the PMN Agent and the Secured Parties from, and agrees to hold each of them harmless from and against, any claims arising out of any action taken or omitted to be taken with respect to any such contracts.

The rights of the PMN Agent under this Section 5.1(a) are separate from, and in addition to, the rights of the PMN Agent under Section 12.4(e) of the LLC Operating Agreement.

(b) Cooperation to Facilitate Disposition. In any event, if any Successor Servicer is appointed pursuant to the provisions of this Article V, the Company shall, and shall cause any Servicer (and any Subservicer) to, provide the PMN Agent and any Successor Servicer in a timely manner with all documents, records and data (including electronic documents, records and data) requested by the PMN Agent or any Successor Servicer to enable it and any Successor Servicer to assume the responsibilities as servicer, and to cooperate with the PMN Agent in effecting the termination of any Servicer (or Subservicer), including (i) the transfer within one 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 PMN Agent might specify and (iii) the assignment to PMN Agent (or any Person designated by the PMN Agent) of the right to access all such lockbox accounts, the Company 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 PMN Agent or any Successor Servicer pursuant to this Section 5.1(b) shall be limited to those documents in the Servicer's (or its Subservicers') possession at the time of such transfer or which the Servicer (or any Subservicer) acquires thereafter and shall not include or be deemed to include any documents, records or data in the possession of the Custodian. The Company shall be liable for all costs and expenses incurred by the PMN Agent (I) associated with the complete transfer of the servicing data, (II)

associated with the completion, correction or manipulation of servicing data as might be required to correct errors or insufficiencies in the servicing data to enable the PMN Agent and any Successor Servicer (and any 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 Company for the same, the PMN Agent shall provide reasonable documentation evidencing such costs and expenses.

(c) Pledged Interests.

(i) In addition to, and without limitation of, the rights and remedies otherwise afforded to the PMN Agent in, or as described in, Sections 5.1(a), 5.1(b) and 5.3, upon the occurrence and during the continuance of any Event of Default and notice from the PMN Agent to the Debtor of the PMN Agent's intention to exercise its rights under this Section 5.1(c)(i):

(A) All rights of the Debtor (x) to receive any dividends or distributions (or other proceeds) in respect of the Pledged Interests which it would otherwise be authorized to receive and (y) to exercise or refrain from exercising the voting and other consensual rights that it would otherwise be entitled to exercise in respect of the Pledged Interests shall cease, and all such rights shall thereupon become vested in the PMN Agent who shall thereupon have the sole right to receive and hold on behalf of the Secured Parties as Secured Parties Collateral such dividends or distributions (or other proceeds) and to exercise or refrain from exercising such voting and other consensual rights;

(B) all dividends or distributions (or other proceeds) in respect of the Pledged Interests that are received by the Debtor contrary to the provisions of clause (A) above shall be received in trust for the benefit of the PMN Agent on behalf of the Secured Parties, shall be segregated from other funds of the Debtor, and shall be forthwith paid over to the PMN Agent as Secured Parties Collateral in the same form as so received (with any necessary indorsement or assignment); and

(C) the Debtor shall promptly execute and deliver, and cause the issuers of the Pledged Interests to execute and deliver (and each Subsidiary Grantor hereby covenants to execute and deliver), to the PMN Agent such proxies and other instruments as may be necessary, or as the PMN Agent from time to time request, (x) to vest in the PMN Agent the powers intended to be vested in the PMN Agent pursuant to this Section 5.1(c)(i) and/or (y) to, during the continuance of an Event of Default and as specified by the PMN Agent in its discretion from time to time, transfer to the PMN Agent or its nominee such Ownership Interests as the PMN Agent may specify and/or (in the case of any Subsidiary Grantor that is a limited liability company) substitute the PMN Agent or its nominee as the substituted member in such limited liability company with all rights, powers and duties of a member.

(ii) (A) In addition to and without limitation of Section 5.1(c)(i), the Debtor, being the sole holder and owner of the Pledged Interests (for the avoidance of doubt, now or hereafter issued), hereby irrevocably and unconditionally authorizes the PMN Agent, for

itself and for the benefit of the other Secured Parties, upon the occurrence and during the continuance of any Event of Default, to vote for the Debtor, as the Debtor's proxy, at any and all meetings of the members or shareholders of any issuer of any Pledged Interest (including, without limitation, at any meeting to consider any petition for relief under any Debtor Relief Law), and, as the Debtor's proxy, to consent or dissent to any action taken without a meeting, and further makes, constitutes and irrevocably and unconditionally appoints the PMN Agent, for itself and for the benefit of the other Secured Parties, upon the occurrence and during the continuance of any Event of Default, to act as the true and lawful proxy and attorney-in-fact in the name and on behalf of the Debtor, with full power to appoint a substitute or substitutes, to vote and execute and deliver written voting consents with respect to the Pledged Interests, to the same extent and with the same effect as the Debtor could do under any applicable Laws or regulations governing the rights and powers of members or shareholders of the applicable issuer of the Pledged Interests (the irrevocable proxy and power of attorney granted under this Section 5.1(c)(ii)(A), the "**Irrevocable Proxy**").

(B) SUBJECT TO TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH SECTION 13.4 HEREOF, THE IRREVOCABLE PROXY IS IRREVOCABLE AND COUPLED WITH AN INTEREST. The Irrevocable Proxy is being given to the PMN Agent in connection with the pledge of, and grant of a security interest in, the Pledged Interests to the PMN Agent, for itself and for the benefit of the other Secured Parties pursuant to this Agreement. To the full extent permitted by applicable Law, all power and authority conferred under the Irrevocable Proxy shall not be terminated by any act of the Debtor or any issuer of any Pledged Interest or by operation of Law, by lack of appropriate power or authority, or by the occurrence of any other event or events, except as expressly provided in this Agreement. If, after the execution of the Irrevocable Proxy, any such event or events shall occur, the PMN Agent is nevertheless authorized and directed to vote the Pledged Interests in accordance with the terms of the Irrevocable Proxy as if such lack of appropriate power or authority or other event or events had not occurred and regardless of notice thereof. The Irrevocable Proxy shall be binding upon, and enforceable against, all beneficiaries, successors, assigns, transferees and legal representatives of the Debtor.

(C) The parties hereto expressly acknowledge and agree that (x) the Irrevocable Proxy gives the PMN Agent, for itself and for the benefit of the other Secured Parties, upon the occurrence and during the continuance of an Event of Default, the right to vote (or consent) with respect to the Pledged Interests, and (y) from and after notice to such effect from the PMN Agent (during the continuance of an Event of Default) until the earlier of (I) such time as no Event of Default shall be continuing and (II) revocation by the PMN Agent of such first notice by a further notice to such effect from the PMN Agent, the rights of the PMN Agent described in clause (x) shall be exclusive, such that (without limitation) the Debtor shall not have any such rights described in clause (x).

(iii) Each of the Debtor and each Subsidiary Grantor hereby irrevocably and unconditionally consents and agrees, including for all purposes of the Organizational Documents of such Subsidiary Grantor (and anything in such Organizational Documents to the contrary notwithstanding), to (x) the pledge, and grant of a security interest, by

the Debtor of the Ownership Interests in such Subsidiary Grantor pursuant to Section 3.1 hereof, and (y) the terms of this Section 5.1(c) above (including the exercise, during the continuance of an Event of Default and at the discretion of the PMN Agent, by the PMN Agent of all rights (including voting rights) of the Debtor with respect to such Ownership Interests as set forth in this Section 5.1(c) above).

Section 5.2 Application of Proceeds. If the PMN Agent collects any amount pursuant to Section 5.1 of this Agreement, it shall pay out such amount in the following order notwithstanding anything in any Purchase Money Notes, the Custodial and Paying Agency Agreement or the Contribution Agreement to the contrary: (i) first, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts payable to the PMN Agent, in its capacity as such (i.e., for the PMN Agent's own account and not for the account of other Persons); (ii) second, to payment of that portion of the Secured Obligations constituting fees, expenses and indemnity payments payable to the Custodian/Paying Agent, in its capacity as such (i.e., for the Custodian/Paying Agent's own account and not for the account of other Persons) pursuant to the Custodial and Paying Agency Agreement; (iii) third, to the payment of any amount payable to any Purchase Money Notes Guarantor pursuant to Section 2.1 (including interest accruing after the commencement by or against the Debtor of any proceeding under any Debtor Relief Laws naming the Debtor as a debtor in such proceeding, regardless of whether such principal, interest or costs, fees and expenses are allowed or admitted claims in such proceeding), in the order of priority set forth in clauses (B)(I), (II) and (III) of Section 2.1, ratably (separately in the case of each of clauses (B)(I), (II) and (III) of Section 2.1) to each Purchase Money Notes Guarantor in proportion to the respective amounts described in this clause (iii) payable to them (to the extent remaining unpaid after the application of any available funds in the Defeasance Account); (iv) fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Purchase Money Notes, ratably to each Holder in proportion to the respective amounts described in this clause (iv) payable to them (to the extent remaining unpaid after the application of any available funds in the Defeasance Account), provided that, from and after the Guaranty Issuance Date, references in this clause to the "Purchase Money Notes" shall instead refer to the "Guaranteed Purchase Money Notes"; (v) fifth, from and after the Guaranty Issuance Date, to payment of that portion of the Secured Obligations constituting unpaid principal of the Non-Guaranteed Purchase Money Notes, ratably to each Holder in proportion to the respective amounts described in this clause (v) payable to them (to the extent remaining unpaid after the application of any available funds in the Defeasance Account); (vi) sixth, to payment of that portion of any other Secured Obligation owed to any Person, ratably among such Persons in proportion to the respective amounts described in this clause (vi) payable to them; and (vii) the balance, if any, to be (x) transferred to the Paying Agent for deposit into the Collection Account, or (y) applied as otherwise provided by Law; provided, however, that if the PMN Agent collects any money or property pursuant to Section 5.1 of this Agreement in respect of the Defeasance Account, it shall pay out such amount in the manner set forth in clauses (iii), (iv) (for the avoidance of doubt, giving effect to the proviso thereto), (v), (i), (ii), (vi) and (vii), in such order of priority (and, for the avoidance of doubt, applying references in said clauses to the application of any available funds in the

Defeasance Account as if they excluded any such money or property being distributed pursuant to this proviso).

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 PMN Agent from time to time may postpone any public Sale by public announcement made at the time and place of such Sale. The PMN 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 PMN 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) To the maximum extent permitted by applicable Law, any Secured Party may be the purchaser of any or all of the Secured Parties Collateral at any such Sale and (with the consent of the PMN Agent, which may be withheld in its discretion) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Secured Parties Collateral sold at any such public Sale, to use and apply all of any part of the Secured Obligations as a credit on account of the purchase price of any Secured Parties Collateral payable at such Sale;

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

(iv) The PMN 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;

(v) The PMN Agent is hereby authorized to comply with any limitation or restriction in connection with such Sale as it may be advised by counsel is necessary in order to avoid any violation of applicable Law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that such prospective bidders and purchasers have certain qualifications, and restrict such prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Collateral), or in order to obtain any required approval of such Sale or of the purchaser by any Governmental Authority, and each Grantor further agrees that such compliance shall not result in such Sale

being considered or deemed not to have been made in a commercially reasonable manner, nor shall the PMN Agent be liable nor accountable to any Grantor for any discount allowed by reason of the fact that any Secured Parties Collateral is sold in compliance with any such limitation or restriction; and

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

If the PMN Agent effects a Sale of any of the Secured Parties Collateral upon credit, the Grantors will be credited only with payment actually made by the purchaser, received by the PMN Agent and applied in accordance with Section 5.2 hereof. In the event the purchaser fails to pay for the Secured Parties Collateral, the PMN Agent may resell the same, subject to the same rights and duties set forth herein.

Section 5.4 No Impairment of Action. The PMN 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 PMN Agent shall be impaired by the recovery of any judgment by the PMN 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 PMN Agent shall be applied in accordance with Section 5.2.

Section 5.5 Remedies Cumulative; Waiver. The rights of the PMN Agent 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. The PMN Agent may enforce any of its remedies pursuant to this Agreement successively or concurrently in its sole discretion (subject to any express limitation set forth in this Agreement). No delay or failure on the part of the PMN Agent to exercise any right or remedy to which it might become entitled pursuant to this Agreement upon an Event of Default shall constitute abandonment or waiver of any such right and the PMN Agent shall be entitled to exercise such right or remedy at any time during the continuance of an Event of Default.

Section 5.6 Waiver of Certain Rights and Remedies. To the extent permitted pursuant to 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 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 in this Agreement, all other rights and remedies of such Grantor with respect thereto.

ARTICLE VI
Guaranty

Section 6.1 Guaranty.

(a) Each Subsidiary Grantor hereby, jointly and severally, unconditionally and irrevocably, guaranties to the PMN 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 Subsidiary Grantor pursuant to this Agreement and the Transaction Documents shall in no event exceed the amount that validly can be guaranteed by such Subsidiary Grantor, if any, pursuant to 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 Subsidiary Grantor agrees that the Secured Obligations at any time and from time to time may exceed the amount of the liability of such Subsidiary Grantor pursuant to this Agreement 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 Secured Obligations have been indefeasibly paid, satisfied and discharged in full and this Agreement has been terminated, notwithstanding that from time to time prior thereto the Debtor may be free from any Secured Obligations.

(e) No payment made by the Debtor, any Subsidiary Grantor, any other guarantor or any other Person or received or collected by the Secured Parties from the Debtor, any Subsidiary 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 Subsidiary 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 Subsidiary Grantor pursuant to this Agreement until the Secured Obligations have been indefeasibly paid, satisfied and discharged in full and this Agreement has been terminated.

Section 6.2 Right of Contribution. Each Subsidiary Grantor hereby agrees that to the extent that another Subsidiary Grantor shall have paid more than its proportionate share of any payment made pursuant to this Agreement, such Subsidiary Grantor shall be entitled to seek and receive contribution from and against any other Subsidiary Grantor pursuant to this Agreement

that has not paid its proportionate share of such payment. Each Subsidiary Grantor's right of contribution shall be subject to the terms and conditions of Section 6.3. The provisions of this Section 6.2 in no respect shall limit the obligations and liabilities of any Subsidiary Grantor to the Secured Parties, and each Subsidiary Grantor shall remain liable to the Secured Parties for the full amount guaranteed by such Subsidiary Grantor pursuant to this Agreement.

Section 6.3 No Subrogation. Notwithstanding any payment made by any Subsidiary Grantor pursuant to this Agreement or any set-off or application of funds of any Subsidiary Grantor by the Secured Parties, no Subsidiary Grantor shall be entitled to be subrogated to any of the rights of the Secured Parties against the Debtor or any other Subsidiary 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 Subsidiary Grantor seek or be entitled to seek any contribution or reimbursement from the Debtor or any other Subsidiary Grantor in respect of payments made by such Subsidiary 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 Subsidiary 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 Subsidiary Grantor in trust for the Secured Parties, segregated from other funds of such Subsidiary Grantor, and, immediately upon receipt by such Subsidiary Grantor, shall be deposited into the Collection Account.

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 any Holder, any Purchase Money Notes Guarantor, the PMN Agent or any other Secured Party may be rescinded by such Person or any of the Secured Obligations continued, or 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, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by any Holder, any Purchase Money Notes Guarantor, the PMN Agent or any the other Secured Party, or any Purchase Money Note, any Purchase Money Notes Guaranty and/or any other Transaction Document, or any other documents executed and delivered in connection therewith, may be amended, modified, supplemented or terminated, in whole or in part, or any collateral security, guaranty or right of offset at any time held by the PMN 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 PMN 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, amendment, Modification, waiver or accrual of any of the Secured Obligations and notice of or proof of reliance by the PMN 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 PMN 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, demand for payment and notice of default or nonpayment to or upon the Debtor or any of the Grantors with respect to the Secured Obligations. Each Subsidiary Grantor understands and agrees that the guaranty contained in this Article VI, and the grant by such Subsidiary Grantor 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 (i) the validity or enforceability of 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 PMN Agent, for the benefit of the Secured Parties, (ii) 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 the Debtor or any other Person against the PMN Agent, or (iii) any other circumstance whatsoever (with or without notice to or knowledge of the Debtor or such Subsidiary Grantor) which constitutes, or may be construed to constitute, an equitable or legal discharge of the Debtor for the Secured Obligations, or of such Subsidiary Grantor pursuant to 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 pursuant to this Agreement or otherwise pursuing its rights and remedies hereunder against any Grantor, the PMN 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 the 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 PMN Agent to make any such demand, to pursue such other rights or remedies or to collect any payments from the 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 the 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 pursuant to this Agreement, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of Law, of the PMN 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 PMN Agent upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Debtor or any Subsidiary Grantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Debtor or any Subsidiary Grantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

Section 6.7 Payments. Each Subsidiary 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 (subject to the terms of the Custodial and Paying Agency Agreement, including Section 5.3 thereof) 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 PMN 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, warrants and covenants to the PMN Agent as of the Closing Date and at all times while any of the Secured Obligations shall remain unsatisfied or undischarged to any extent, 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 the 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 PMN Agent or any Purchase Money Notes Guarantor of any of its rights or remedies pursuant to this Agreement;

(c) The Grantors are and will be at all times the sole and exclusive owners of the Secured Parties Collateral free and clear of any Lien other than Liens in favor of the PMN Agent and other Liens expressly permitted pursuant to the Transaction Documents, and 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 PMN Agent) is on file in any recording or filing office (disregarding any financing statement with respect to any Lien on the Collateral in favor of any Person claiming by, through or under any Failed Bank);

(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 Organization Document 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 pursuant to this Agreement;

(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 Closing Date for (i) the due execution, delivery and performance by such Grantor of this Agreement, (ii) the grant by such Grantor of the security interest or other Lien purported to be created hereby in the Secured Parties Collateral or (iii) the exercise by the PMN Agent of any of its rights and remedies pursuant to this Agreement. 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 Lien purported to be created pursuant to this Agreement 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 the PMN Agent in the applicable jurisdiction required pursuant to the Uniform Commercial Code, (B) the execution and delivery of the Account Control Agreements pursuant to the Uniform Commercial Code, (C) the execution and delivery by the Custodian of the Custodial and Paying Agency Agreement containing an acknowledgment by the Custodian that it holds possession of the Custodial Documents for the PMN Agent's benefit, (D) with respect to any Acquired REO Property, the execution and delivery of an REO Mortgage with respect to such REO Property and the due recording of such REO Mortgage in the appropriate recording office(s) (it being understood that none of such execution, delivery and recording of REO Mortgages (or of UCC fixture filings) is required pursuant to this Agreement), and (E) the taking of any action required to maintain continuing perfection with respect to proceeds which cannot be perfected by the filing of financing statements pursuant to the Uniform Commercial Code (subclauses (A), (B), (C), (D) and (E), each a "**Perfection Requirement**" and collectively, the "**Perfection Requirements**"); and

(f) Except to the extent that such is not the case as a result of the absence of REO Mortgages, or UCC fixture filings, with respect to Acquired REO Property, (i) this Agreement creates a legal, valid and enforceable security interest and Lien in favor of the PMN Agent, for the benefit of the Secured Parties, in the Secured Parties Collateral, as security for the Secured Obligations, (ii) compliance with the Perfection Requirements will result in the perfection of such security interests and Liens, (iii) after compliance with the Perfection Requirements, such security interests and Liens, including in the case of Secured Parties Collateral in which such Grantor obtains rights after the Closing Date, will be perfected, first priority security interests and Liens, and (iv) the Perfection Requirements and all other action necessary or desirable to perfect and protect such security interest and Liens have been duly made or taken.

ARTICLE VIII

Covenants

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

Section 8.2 Grantor Status; Licensing. The Debtor at all times shall constitute a limited liability company organized pursuant to the Laws of the State of Delaware and a Special Purpose Entity. Each Subsidiary Grantor at all times shall be a Special Purpose Entity. As soon as reasonably practical after the Closing Date, each of the Debtor and each Subsidiary Grantor shall apply for and thereafter use its 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 its state of formation and licenses to purchase, own or service the Assets and, if applicable, operate, manage, lease and dispose of Acquired Property, if the failure to so obtain such licenses reasonably would be expected to result in the imposition of fines, penalties or other liabilities on any Grantor, claims and defenses being asserted against any Grantor (including counterclaims and defense asserted by Borrowers) or materially adversely affect any Grantor or any Grantor's ability to foreclose on the Collateral securing or otherwise realize the full value of any Asset.

Section 8.3 LLC Operating Agreement. Each of the Debtor and the Initial Member (i) at all times shall have in effect and be subject to the LLC Operating Agreement, (ii) shall not amend or modify the LLC Operating Agreement without the prior written approval of the PMN Agent and (iii) shall not enter into or allow itself to become subject to any other constituent documents inconsistent with any terms of the LLC Operating Agreement. The Initial Member shall immediately advise, in writing, the PMN Agent of any drawing under a Qualifying Letter of Credit or withdrawal of funds from the Private Owner Pledged Account.

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 and Account Control Agreement with the Custodian/Paying Agent. The Custodian 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 the 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 PMN Agent upon no more than thirty 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 (which shall be done only in accordance with the Custodial and Paying Agency Agreement), (i) any loss or destruction of or damage to such Notes or other 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 (ii) such Notes or other Custodial Documents shall be returned to the Custodian within the time provided pursuant to the UCC to maintain the PMN 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 as soon as is possible following the completion of the restructuring or Modification (and, in any event, in accordance with clause (ii) of the immediately preceding sentence). The Debtor shall ensure that the PMN Agent and each 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. If the Person then serving as the Custodian and Paying Agent shall, at any time and for any reason, cease to be a Qualified Custodian and Paying Agent, the Company forthwith shall replace such Person with a new Custodian and Paying Agent that is a Qualified Custodian.

Section 8.5 Compliance with Law. Each Grantor at all times shall comply with applicable Law in connection with the performance of its obligations pursuant to this Agreement and the other Secured Parties Collateral Documents.

Section 8.6 Servicer. The Debtor at all times shall 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. The Debtor shall not:

(a) at any time, without limiting its obligation to constitute a Special Purpose Entity, incur any Debt (other than Debt evidenced by the Purchase Money Notes and pursuant to this Agreement, Debt in respect of Excess Working Capital Advances);

(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 to or acquiesce in the appointment of a trustee, receiver or liquidator with respect to all or any 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, (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 the value of all of its property, at a fair valuation or (vii) institute any proceedings to set aside or void any transfer of an interest in property (or to recover the value thereof) or other transaction on the grounds that such transfer or other transaction constituted a fraudulent conveyance or a preferential transfer (or on similar grounds); or

(d) place or permit (voluntarily or involuntarily) to be placed, or permit or suffer to exist (voluntarily or involuntarily), any Lien (other than the security interest granted to PMN Agent hereunder or any other Permitted Lien) on any of the Secured Parties Collateral

(including any Secured Parties Collateral (including any Acquired REO Property)) owned by any Subsidiary Grantor), and shall not take any action to interfere with the PMN 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 PMN Agent with not less than thirty days' prior written notice of any change (i) in the jurisdiction in which it is organized, (ii) in its company name, (iii) in the location of its principal place of business or chief executive office or (iv) 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 pursuant to the UCC or otherwise that are required in order for the PMN Agent, following such change, to continue 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 Notes; Reimbursement of PMN Agent. Debtor will duly and punctually pay, or cause the Paying Agent to pay (including prepay), the principal of the Purchase Money Notes in accordance with the terms of the Purchase Money Notes, this Agreement and the Custodial and Paying Agency Agreement, including from moneys on deposit in the Defeasance Account, provided that a failure to pay the principal of any Purchase Money Note when due in and of itself shall not be an Event of Default unless and until an Event of Default with respect to the occurrence of a Purchase Money Notes Trigger Event shall have occurred. Without limitation of the foregoing, on each Distribution Date, the Debtor will, as and to the extent of available funds required to be deposited in the Distribution Account, direct the Paying Agent to distribute amounts on deposit in the Distribution Account as set forth in Section 5.1 of the Custodial and Paying Agency Agreement (subject to the other terms thereof). Nothing in this Section 8.9 limits the rights and remedies of the PMN Agent upon the occurrence of an Event of Default.

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 (including financing statements (other than UCC fixture filings) and continuation statements under the UCC), and take all further action, that may be necessary, or that the PMN Agent reasonably may request, in order to (i) perfect, to ensure the continued perfection of, and to protect, the assignment and security interest, or other Lien, granted or intended to be granted hereby (including to comply with the Perfection Requirements) or (ii) enable the PMN Agent to exercise and enforce its rights and remedies pursuant to this Agreement with respect to any Secured Parties Collateral, provided that the Grantors shall not be required to execute and deliver, or cause to be recorded, any REO Mortgage or any UCC fixture filing.

Section 8.11 REO Collateral Documents. Within (i) fifteen Business Days after the foreclosure, conveyance in lieu of foreclosure or other event that results in any property first becoming Acquired REO Property after the Closing Date or (ii) for any property constituting Acquired REO Property as of the Closing Date, thirty days after the Closing Date, the Debtor shall cause the REO Collateral Documents to be delivered to the PMN Agent or, to the extent

constituting Collateral Documents, to the Custodian. For this purpose (and without limitation), the following is hereby designated as an “REO Collateral Document” with respect to each Acquired REO Property: an owner’s title insurance policy, on the 2006 ALTA form, (A) insuring the deed, (B) naming the Ownership Entity, as insured, (C) in an amount equal to the Net Fair Value of the Acquired Property, (D) dated as of the date that such Acquired REO Property became an Acquired REO Property or, for any property described in clause (ii), as of a date within thirty days after the Closing Date, and (E) with such endorsements as are reasonably customary attached thereto.

Section 8.12 Additional Grantors. If the Debtor shall form or otherwise acquire or have any Subsidiary, the Debtor immediately shall cause such Subsidiary to become a Subsidiary Grantor pursuant to this Agreement. The Debtor shall cause such Subsidiary immediately to (i) execute and deliver to the PMN 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 PMN Agent or the Initial Member, and such Subsidiary shall thereafter for all purposes (including for purposes of Section 3.1 hereof) be a party hereto and have the same rights, benefits and obligations as a Subsidiary Grantor party hereto on the Closing Date, and (ii) without limiting the generality of clause (i), execute and deliver such instruments (including UCC financing statements), and take such other actions, as are required to comply with Section 8.10 hereof with respect to such Subsidiary Grantor and its assets. 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 PMN 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 PMN Agent.

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

(a) Reporting and Access Schedule. The Reporting and Access Schedule is hereby incorporated into this Agreement as if set forth in full herein. The obligations of the Grantors and the rights of the PMN Agent and the Purchase Money Notes Guarantors under Sections 1(b) and 2(e) of the Reporting and Access Schedule shall survive any termination of this Agreement.

(b) Reporting With Respect to Event of Default. Promptly after the Debtor shall obtain knowledge thereof, the Debtor shall notify the PMN Agent and each Purchase Money Notes Guarantor of the occurrence of any Default or Event of Default. Each notice pursuant to this Section 8.14(b) shall be accompanied by a written statement of a Responsible Officer of the Manager (i) that such notice is being delivered pursuant to this Section 8.14(b) and (ii) setting forth further details of the occurrence referred to therein and stating what action the Debtor has taken and proposes to take with respect thereto.

Section 8.15 Insurance.

(a) The Debtor shall cause insurance coverage to be maintained for the Collateral and the Acquired Property from an insurer (unless provided for in the then-applicable Business Plan) reasonably acceptable to the PMN Agent 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 PMN Agent (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 days after receipt by the PMN Agent of written notice thereof, and that no act or thing done by the applicable Ownership Entity shall invalidate any policy as against the PMN Agent, and (ii) with respect to any policy insuring a Grantor or Collateral, name the PMN Agent, ISAOA, 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 PMN Agent or any Holder.

Section 8.17 [Intentionally Omitted]

Section 8.18 Administration of REO Properties. In addition to, and not in limitation of, its other covenants hereunder, 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 Acquired REO Properties and in general conformance with the Business Plan. The Debtor shall furnish to the PMN Agent such reports regarding the operation, management, leasing or disposition of any Acquired REO Property as the PMN Agent reasonably shall request.

Section 8.19 Guaranteed Purchase Money Notes Reissuance Fee. In the event that a Purchase Money Notes Guarantor elects to exercise its rights under Section 2.8 of the Custodial and Paying Agency Agreement with respect to any Maturing Purchase Money Notes, such 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 (determined for this purpose without taking into account the increase in the amount of the Reissued Purchase Money Notes due to such reissuance fee) (the "**Guaranteed Purchase Money Notes Reissuance Fee**"). To effect payment of the Guaranteed Purchase Money Notes Reissuance Fee to the Purchase Money Notes Guarantor, the

Guaranteed Purchase Money Notes Reissuance Fee will be added to the principal balance of the Reissued Purchase Money Notes.

Section 8.20 Transfers and Holding of Collateral.

(a) Except as permitted pursuant to Section 8.20(b) and (c) below (and except for the Liens and other rights granted to the PMN Agent under any Secured Parties Collateral Document), no Grantor may Dispose of any Secured Parties Collateral (and, without limitation of the foregoing, each Grantor covenants that, except as permitted pursuant to this Section 8.20(b) and (c) below (and except for the Liens and other rights granted to the PMN Agent under any Secured Parties Collateral Document), it shall not Dispose of any Secured Parties Collateral (including any Acquired REO Property).

(b) Subsidiary Grantors may acquire and hold Acquired REO Property, in compliance with this Agreement.

(c) So long as no Event of Default shall have occurred and be continuing, the Grantors may Dispose of Secured Parties Collateral as set forth in Section 10.1 hereof.

(d) The Debtor shall procure that, at all times, (i) the Debtor shall be the sole member or shareholder of each Subsidiary Grantor and (ii) each Subsidiary Grantor shall constitute a wholly-owned subsidiary of the Company (in each case unless and until all Ownership Interests in such Subsidiary Grantor shall be sold in accordance with Section 8.20(c), upon which sale (and the deposit of the sale proceeds into the Collection Account) such Subsidiary Grantor automatically shall be released from its obligations hereunder and shall cease to constitute a "Subsidiary Grantor" for any purpose of this Agreement).

(e) No Grantor will merge or consolidate with or into any other Person. The Debtor covenants that the terms of the Organizational Documents of each issuer of the Pledged Interests at all times shall be consistent with, and shall not impair, the interests, rights or remedies (including during an Event of Default) of the PMN Agent hereunder (including under Sections 3.1 and 5.1(c) hereof) with respect to the Pledged Interests. The Debtor shall not exercise its rights as the holder or owner of any Pledged Interests in a manner that would impair the interests, rights or remedies (including during an Event of Default) of the PMN Agent hereunder (including under Sections 3.1 and 5.1(c) hereof) with respect to the Pledged Interests.

ARTICLE IX

Required Consent; Limits on Liability

Section 9.1 Required Consents. Notwithstanding anything to the contrary contained in this Agreement, the Debtor shall not permit to be taken any action enumerated in Section 6.1 of the Servicing Agreement (other than Section 6.1(g) (other than Section 6.1(g)(ix)) 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, 5.5, 8.1, 8.2, 12.14, 12.18 and 12.20 of the LLC Operating Agreement), or any

action enumerated below, without the prior written consent of the PMN Agent, which consent may be withheld or conditioned in the PMN Agent's sole and absolute discretion:

- (a) [Intentionally Omitted];
- (b) any financing of any Sale or other Disposition with respect to any of the Assets;
- (c) any Sale or other Disposition of any Asset that provides for any recourse against the PMN Agent, any Holder, any Purchase Money Note 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 advances of additional funds that would increase the Unpaid Principal Balance of any of the Assets, other than through capitalizing accrued and unpaid interest and Servicing Expenses permitted under the Transaction Documents and through Required Funding Draws;
- (g) reimbursement for any expense or cost incurred (or paid) to any Affiliate of any of the Private Owner, the Debtor, the Servicer or any Subservicer, except as permitted pursuant to the Transaction Documents;
- (h) [Intentionally Omitted]
- (i) the replacement of the Servicer or any Rated Subservicer (or the termination of the Servicing Agreement or applicable Subservicing Agreement with a Rated Subservicer);
- (j) the payment of any fees to, or entering into any transaction with, any Affiliate of the Debtor or the Private Owner or the Servicer or any Subservicer, except as expressly contemplated by the Transaction Documents;
- (k) any Modification of, or waiver in respect of, any provision of the Organizational Documents of the Debtor (including the LLC Operating Agreement);
- (l) any Change of Control;
- (m) [Intentionally Omitted]; or
- (n) any incurrence, creation or assumption by the Debtor or any Ownership Entity of any Debt other than in respect of the Purchase Money Notes, this Agreement, and Excess Working Capital Advances.

Section 9.2 Limitation of Liability.

(a) Liability Generally. Neither the PMN Agent nor any Purchase Money Notes Guarantor nor any other Secured Party nor any Related Person of any of the foregoing, shall be liable to any Grantor for any action taken or omitted to be taken by them or any one of them under or pursuant to this Agreement or in connection with any Secured Parties Collateral or any portion thereof, except that this sentence shall not apply to any act or omission constituting gross negligence, bad faith or willful misconduct (it being understood and agreed that in any event nothing in this sentence shall create any such liability). Neither the PMN Agent nor any Purchase Money Notes Guarantor nor any other Secured Party nor any Related Person of any of the foregoing shall be liable to any Grantor for any action taken or omitted to be taken by them or any one of them constituting, or in connection with, any exercise by the PMN Agent of any right or remedy pursuant to Article V of this Agreement, except that this sentence shall not apply to any act or omission constituting willful misconduct (it being understood and agreed that in any event nothing in this sentence shall create any such liability).

(b) Reliance on Notices, etc. Without limiting the generality of Section 9.2(a), the PMN Agent shall not incur any liability to any Grantor 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 the PMN Agent to be genuine and to have been signed or sent by the proper party and that on its face is properly executed.

(c) No Consequential Damages. In addition to and without limitation of the exculpatory effects of Sections 9.2(a) and (b), regardless of the legal theory upon which any claim by any Grantor against the PMN Agent, any Purchase Money Notes Guarantor or any other Secured Party, or any Related Person of any of the foregoing, is based (including contract, tort, strict liability or fraud), neither the PMN Agent nor any Purchase Money Notes Guarantor nor any other Secured Party nor any Related Person of any of the foregoing shall be liable for, and no Grantor may recover from any of the foregoing Persons, any amounts other than actual losses, costs and expenses incurred by the party asserting the claim. Without limiting the foregoing, none of the foregoing Persons shall be liable for, and no Grantor shall be entitled to recover from any of the foregoing Persons, 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 parties hereto, regardless of whether the Person 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, any claims asserted against any Grantor, by (i) any Related Person of any Grantor, (ii) any Servicer or any Subservicer, or (iii) any Related Person of any Servicer or any Subservicer shall not constitute claims asserted against such Grantor by a third party.

ARTICLE X
Release of Secured Parties Collateral

Section 10.1 Release of Secured Parties Collateral. The PMN Agent shall release its Lien on any Secured Parties Collateral, solely to the extent necessary and so long as no Event of Default shall have occurred and be continuing, in connection with the Debtor's sale of an Asset or any Collateral, or the Ownership Interests in an Ownership Entity, to the extent such sale does not violate, or result in a violation, of the LLC Operating Agreement (or any other Transaction Document), provided, that any such transaction is consistent with the Business Plan and the Asset Proceeds with respect to any such sale or disposition are deposited into the Collection Account. The PMN Agent reserves the right in its discretion from time to time to provide one or more limited powers of attorney to the Debtor (giving certain designated representatives of the Debtor and/or the Manager the power to act on behalf of the PMN Agent (in lieu of the PMN Agent itself executing the following instruments)), for the sole purpose of executing on behalf of the PMN Agent and/or filing routine release documents (including relevant full or partial terminations of applicable UCC financing statements granted in favor of the PMN Agent) with respect to the applicable Liens of the PMN Agent in connection with the sale or other disposition of any Loan, Acquired Property and/or Ownership Entity (or in each case relevant portions thereof) permitted under this Agreement. Any such limited power of attorney may, at the discretion of the PMN Agent, grant the Manager authority to execute applicable documents on behalf of the PMN Agent with respect to payments (to the PMN Agent as loss payee) under property insurance covering Acquired Property. At the request of the PMN Agent, the Debtor shall (and/or shall cause the Manager, as the case may be), to enter into an agreement with the PMN Agent setting forth any conditions, restrictions, notice and reporting obligations, PMN Agent revocation rights and/or other similar terms that the PMN Agent in its discretion may specify in relation to the use of any such power of attorney (such as, for example but without limitation, a condition to the effect that such power of attorney be used only to effect releases to which the Debtor is entitled under the first sentence of this Section 10.1 and a prohibition on the use of any such power of attorney after an Event of Default shall have occurred), and the Debtor shall comply (and shall cause the Manager to comply, as the case may be) with the terms of any such agreement.

ARTICLE XI
Liquidation of Assets

Section 11.1 Rights to Liquidate Assets and Secured Parties Collateral. The PMN Agent 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 the Debtor or any Ownership Entity at any time after the earlier to occur of (i) the seventh anniversary of the Closing Date or (ii) the date on which the then Unpaid Principal Balance is 10.0 % or less of the Unpaid Principal Balance as of the Cut-Off Date as set forth on the Asset Schedule (and prior to the PMN Satisfaction/Defeasance Date).

Section 11.2 Exercise of Rights to Liquidate Assets and Secured Parties Collateral.

(a) In order to exercise its rights under Section 11.1, the PMN Agent shall give notice in writing to the Custodian/Paying Agent and the Debtor (with copies thereof to the Initial Member), setting forth (i) its election pursuant to the first sentence of Section 11.2(b), and (ii) if the PMN Agent has elected to permit the Debtor itself to conduct such liquidation in the first instance, the date by which the remaining Assets or other Secured Parties Collateral are to be liquidated by the Debtor, which date shall be no less than one hundred and fifty calendar days after the date of such notice.

(b) The PMN Agent in its discretion may elect itself to liquidate, or direct the liquidation, of the remaining Assets or Secured Parties Collateral in the first instance, or to have the Debtor conduct such liquidation in the first instance. In the event that the PMN Agent elects to have the Debtor conduct such liquidation in the first instance, then (i) the Company shall (subject to clause (ii)) proceed expeditiously to cause the remaining Assets or other Secured Parties Collateral to be liquidated in the manner set forth in the first two sentences of Section 12.20(c) of the LLC Operating Agreement, and (ii) if (x) the Debtor, the Manager, the Initial Member (if the Initial Member is other than the FDIC) or any Affiliate of any of the foregoing desires to bid to acquire the remaining Assets or other Secured Parties Collateral or (y) the remaining Assets or other Secured Parties Collateral are not liquidated by the date specified in the notice provided by the Paying Agent pursuant to Section 11.2(a), the PMN Agent shall have the right, in its discretion, by further notice to such effect to the Custodian/Paying Agent and the Debtor (with copies thereof to the Initial Member), to take over such liquidation and thereafter liquidate, or direct the liquidation, of the remaining Assets or Secured Parties Collateral in its discretion.

(c) In the event that the PMN Agent, either in the first instance or thereafter as described in Section 11.2(b), elects to conduct or direct the liquidation of the remaining Assets or Secured Parties Collateral, (i) the Debtor shall, and shall cause the Custodian/Paying Agent to, cooperate with and assist the PMN Agent with respect to any or all aspects of such liquidation to the extent reasonably requested by the PMN Agent from time to time and (ii) all costs and expenses incurred by the PMN Agent shall be deducted from the Asset Proceeds and retained by the PMN Agent, and (subject to the rights and remedies of the PMN Agent if an Event of Default shall have occurred) the remaining Asset Proceeds 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)(viii) of the Custodial and Paying Agency Agreement until the Secured Obligations have been repaid in full.

ARTICLE XII
PMN Agent

Section 12.1 Appointment and Authorization of PMN Agent. The Receiver is irrevocably appointed, designated and authorized to act as the PMN Agent under this Agreement

and the other Transaction Documents to which the PMN Agent is a party. The PMN Agent shall act as the agent of (and hold any security interest or other Lien created by the Secured Parties Collateral Documents for and on behalf of or in trust for) the Holders, each Purchase Money Notes Guarantor and each other Secured Party for purposes of (i) 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, and (ii) making such determinations, and exercising or fulfilling such powers, rights, remedies, obligations, discretion and/or authority, as are expressly set forth in, and otherwise acting as the “PMN Agent” as expressly set forth in, any Transaction Document. In this capacity, the PMN Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the PMN Agent for any of the purposes set forth in the preceding sentence) shall be entitled to the benefits of all provisions of this Article XII (in the case of any such co-agent, sub-agent or attorney-in-fact, as though such co-agent, sub-agent or attorney-in-fact were the PMN Agent). Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Transaction Document, the PMN Agent shall have no duties or responsibilities, except those expressly set forth in this Agreement or in the other Transaction Documents to which it is a party, nor shall the PMN 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 PMN Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” in this Agreement and in the other Transaction Documents with reference to the PMN 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. Nothing in any Transaction Document shall be construed to limit the right of the Required PMN Consenting Parties and the PMN Agent to enter into such further agreements as they, in their sole discretion, deem necessary or appropriate with respect to the purposes of the PMN Agent’s appointment as described in the first sentence of this Section 12.1(a), including the manner in which the Required PMN Consenting Parties may instruct the PMN Agent to act under any Transaction Document, and indemnification of the PMN Agent. Anything in Section 13.12 hereof to the contrary notwithstanding, the Required PMN Consenting Parties and the PMN Agent may amend this Article XII in any manner (with respect to the subject matter of this Article XII) without the approval of (but with notice to) any Grantor so long as such amendment does not impose any material additional obligations upon the Debtor.

Section 12.2 Delegation of Duties. The PMN Agent may execute any of its duties pursuant to this Agreement or any other Transaction Document (including for purposes of holding or enforcing any Lien on the collateral (or any portion thereof) granted pursuant to 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 PMN Agent and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties and to rely on any such advice. The PMN 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 bad faith or willful misconduct (as determined in the final judgment of a court of competent jurisdiction).

Section 12.3 Liability of PMN Agent. Neither the PMN Agent, nor any of its Affiliates or officers, directors, employees, agents, sub-agents or attorneys-in-fact of any of them shall (i) be liable for any action taken or omitted to be taken by any of them pursuant to or in connection with this Agreement or any other Transaction Document or the transactions contemplated hereby (except that this clause (i) shall not apply to the PMN Agent's own bad faith or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth in this Agreement or any other Transaction Document to which it is a party), or (ii) 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 PMN 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 pursuant to 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. Neither the PMN Agent, nor any of its Related Persons, shall be under any obligation to any Secured Party or participant to (i) ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement, or any other Transaction Document, or (ii) inspect the properties, books or records of any Grantor, Borrower or Obligor or any of their respective Affiliates.

Section 12.4 Reliance by PMN Agent.

(a) The PMN 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 PMN Agent. The PMN Agent shall be fully justified in failing or refusing to take any action pursuant to any Transaction Document unless it shall first receive such advice or concurrence of the Required PMN Consenting Parties (and any other Secured Party) as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Holders (and/or Note Owners), the Purchase Money Notes Guarantors and/or other Secured Parties against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Anything in this Article XII to the contrary notwithstanding, the PMN Agent in all cases shall be fully protected in acting, or in refraining from acting, pursuant to this Agreement or any other Transaction Document, in accordance with a direction of the Required PMN Consenting Parties and any action taken or failure to act pursuant to any such direction shall be binding upon all the Secured Parties. Anything in this

Section 12.4(a) above (or the rest of this Agreement) to the contrary notwithstanding, the PMN Agent may not agree to any amendment of, or grant any waiver in respect of any of the provisions of, any Transaction Document except at, and may, and shall, execute any amendment of, or waiver in respect of any of the provisions of, any Transaction Document at, the direction of the Required PMN Consenting Parties (provided that the PMN Agent shall not be required to execute any such amendment or waiver that affects the rights or duties of, or any fees or other amounts payable to, the PMN Agent under this Agreement or any other Transaction Document).

(b) Each Holder, by its acceptance of its Purchase Money Note, 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 PMN Agent unless the PMN Agent shall have received notice from the Required PMN Consenting Parties prior to the proposed Closing Date specifying its objection thereto.

Section 12.5 Liability of PMN Agent. The PMN Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the PMN 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 PMN Agent will notify each Purchase Money Notes Guarantor (in accordance with the notice provision set forth in the relevant Purchase Money Notes Guaranty) of its receipt of any such notice. The PMN Agent shall take such action in accordance with Article V with respect to any Event of Default as may be directed by the Required PMN Consenting Parties; provided, however, that unless and until the PMN Agent has received any such direction, the PMN 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 PMN Agent. The PMN Agent may resign as the PMN Agent upon thirty days’ notice to (i) each Purchase Money Notes Guarantor (at the address set forth for such notices in the relevant Purchase Money Notes Guaranty) or, if there is no Purchase Money Notes Guarantor, to each Holder, and (ii) the Debtor. If the PMN Agent resigns pursuant to this Agreement, the Required PMN Consenting Parties, with the written consent of the Debtor (such consent not to unreasonably be withheld or delayed and, provided, further, that no such consent of the Debtor is required if the successor “PMN Agent” is the FDIC or an Affiliate of the FDIC or if an Event of Default has occurred and is continuing), may appoint a successor “PMN Agent.” If no successor “PMN Agent” is appointed prior to the effective date of the resignation of the PMN Agent, the retiring PMN Agent may appoint, after consulting with each Purchase Money Notes Guarantor and the Debtor, a successor “PMN Agent.” Upon the acceptance of its appointment as successor “PMN Agent” pursuant to this Agreement, and upon (to the extent specified by the Required PMN Consenting Parties) the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required PMN Consenting Parties may request, in order to continue the perfection of the Liens granted or purported to be granted to the PMN Agent by the Secured Parties Transaction Documents, the Person acting as such successor agent shall succeed

to all the rights, powers, designations, privileges and duties of the retiring PMN Agent and the term “PMN Agent” shall mean such successor “PMN Agent”, and the retiring PMN Agent’s appointment, powers, designations, privileges and duties as the PMN Agent shall be terminated. After the retiring PMN Agent’s resignation hereunder as the PMN Agent, the provisions of this Article XII, and Sections 13.3, 13.5 and 13.7, shall continue in effect for the benefit of such retiring PMN Agent in respect of any actions taken or omitted to be taken by it while it was acting as the PMN Agent.

Section 12.7 PMN Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Grantor, the PMN Agent (irrespective of whether the principal of the Purchase Money Notes shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the PMN Agent shall have made any demand on any Grantor) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal owing and unpaid in respect of the Purchase Money Notes and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the reasonable compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties under Section 13.3 and/or Section 13.5) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized to make such payments to the PMN Agent and, in the event that the PMN Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the PMN Agent any amount due the PMN Agent under Section 13.3 and/or Section 13.5.

Nothing contained herein shall be deemed to authorize the PMN Agent to authorize or consent to or accept or adopt on behalf of the Secured Parties any plan of reorganization, arrangement, adjustment or composition affecting the Secured Obligations or the rights of the Secured Parties or to authorize the PMN Agent to vote in respect of the claim of the Secured Parties in any such proceeding.

ARTICLE XIII

Miscellaneous

Section 13.1 Attorney-in-Fact. Each Grantor hereby constitutes and appoints the PMN 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, PMN 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 PMN 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 PMN Agent of any of the aforementioned rights, utilizing the Secured Parties Collateral to transact Grantor ordinary course business operations.

Section 13.2 [Intentionally Omitted].

Section 13.3 Reimbursement of Expenses. Except as prohibited by Law, if at any time the PMN Agent or any Purchase Money Notes Guarantor incurs any fees, expenses, costs, or charges (including attorneys' fees and expenses, costs or charges relating thereto) in connection with the creation, perfection, preservation, or release of the security interest of, or other Lien in favor of, the PMN Agent in the Secured Parties Collateral or the enforcement of any of the rights or remedies of the PMN Agent or such Purchase Money Notes Guarantor pursuant to this Agreement, all of such fees, expenses, costs or charges incurred by the PMN Agent or such Purchase Money Notes Guarantor 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 payment, satisfaction and discharge in full of all 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 PMN Agent (i) upon the written request of the Debtor promptly shall execute and deliver all such documentation, Uniform Commercial Code termination statements and instruments as are necessary to release the Liens created pursuant to this Agreement and to terminate this Agreement, and (ii) agrees, at the reasonable request of the Debtor, to furnish, execute and deliver such documents, instruments, certificates, notices or further assurances as the Debtor reasonably might 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) The Debtor shall indemnify and hold harmless the PMN Agent, each Purchase Money Notes Guarantor, the Holders, the Receiver and the FDIC, and their respective Related Persons (all of the foregoing, collectively, the "**Indemnified Parties**"), from and against any and all Losses whatsoever directly or indirectly resulting from, connected with, arising out of or related to (i) any breach of or inaccuracy in any of the representations or warranties of any Grantor contained in this Agreement or made pursuant to any Joinder Agreement executed and delivered pursuant to Section 8.12 hereof, (ii) any failure, by any Grantor or any of its Related Persons, to perform their respective obligations under, and otherwise to comply with and observe the provisions of, this Agreement, any Secured Parties Collateral Document or the Servicing Agreement, or any third-party allegation or claim based upon facts alleged that, if true, would

constitute such a breach, (iii) any exercise by the PMN Agent of any right or remedy pursuant to (or as described in) Article V, (iv) any gross negligence, bad faith or willful misconduct (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law) of or by any Grantor or any of its Related Persons, (v) any actual or asserted Environmental Hazard related to any Mortgaged Property or any Acquired Property, or (vi) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Grantor or any of their respective Related Persons or creditors, and regardless of whether any Indemnified Party is a party thereto, in the case of each of (i) through (vi) above, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of any Indemnified Party. The Debtor's obligation under this Section 13.5(a) shall, with respect to any third-party beneficiary of this Agreement (and its Related Persons), survive the termination of this Agreement or such third party beneficiary otherwise ceasing generally to constitute such a third party beneficiary. Each Indemnified Party shall deliver notice, of any claim or demand made by any Person against such Indemnified Party for which such Indemnified Party may seek indemnification under this Section 13.5(a) (a "**Third Party Claim**"), to the Debtor promptly after receipt by such Indemnified Party of written notice of the Third Party Claim, describing such Third Party Claim in reasonable detail. The failure or delay to provide such notice, however, shall not release any Grantor from any of its obligations pursuant to this Section 13.5 except to the extent that it is materially prejudiced by such failure or delay. This Section 13.5(a) shall continue to apply to any Person that was, but has ceased to be, an Indemnified Party, but only with respect to the period during which such Person was an Indemnified Party.

(b) If for any reason the indemnification provided for pursuant to this Section 13.5 is unavailable or insufficient to hold harmless the Indemnified Parties, the Debtor shall contribute to the amount paid or payable by the Indemnified Parties as a result of the Losses of the Indemnified Parties in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties, on the one hand, and the Grantors and their respective Related Persons, on the other hand, in connection with the incurrence of such Losses.

(c) If the Debtor confirms in writing to the Indemnified Party within fifteen days after receipt of a Third Party Claim the Debtor's responsibility to indemnify and hold harmless the Indemnified Party therefor, the Debtor may elect to assume control over the compromise or defense of such Third Party Claim at the Debtor's own expense and by the Debtor's own counsel, which counsel must be reasonably satisfactory to the Indemnified Party; provided, however, that (i) if such Indemnified Party so desires, the Indemnified Party may employ counsel at such Indemnified Party's own expense to assist in the handling (but not control the defense) of any Third Party Claim; (ii) the Debtor shall keep the Indemnified Party advised of all material events with respect to any Third Party Claim; (iii) the 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, without the prior written consent of each Indemnified Party, will 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 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. In addition to the foregoing, if the Debtor elects not to assume the compromise or defense of any Third Party Claim, fails to timely and properly notify the Indemnified Party of its election as herein provided, or, at any time after assuming such defense, fails to diligently defend against such Third Party Claim in good faith, the Indemnified Party may pay, settle, compromise or defend against such Third Party Claim (but the Debtor shall nevertheless be required to pay all Losses incurred by the Indemnified Party in connection with such payment, settlement, compromise or defense). In connection with any defense of a Third Party Claim (whether by the Debtor, a Subsidiary Grantor or the Indemnified Party), all of the parties to this Agreement 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 reasonably might be requested by a party to this Agreement 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, and the Initial Member, 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 PMN Agent, any Purchase Money Notes Guarantor or the FDIC arising out of, relating to, or in connection with this Agreement or any other Transaction Document, and waives any right to:

(A) remove or transfer such suit, action or proceeding to any court or dispute-resolution forum other than the court in which the PMN Agent, any Purchase Money Notes Guarantor or the FDIC, as applicable, files the suit, action or proceeding without the consent of the PMN Agent, such Purchase Money Notes Guarantor or the FDIC, 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 PMN Agent, any Purchase Money Notes Guarantor or the FDIC 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 PMN Agent, such Purchase Money Notes Guarantor or the FDIC, 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 PMN Agent, any Purchase Money Notes Guarantor or the FDIC 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 PMN Agent, such Purchase Money Notes Guarantor or the FDIC, as applicable, and agrees to consent thereafter to transfer of the suit, action or proceeding to either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia at the option of the PMN Agent, such Purchase Money Notes Guarantor or the FDIC, as applicable; and

(iv) agrees, if the United States District Court for the Southern District of New York and the United States District Court for the District of Columbia both lack jurisdiction to hear a suit, action or proceeding falling within Section 13.7(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 PMN Agent, the relevant Purchase Money Notes Guarantor or the FDIC, 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, the PMN Agent and the Initial Member hereby irrevocably and unconditionally agree 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 (including as the Initial Member), 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 ITS AFFILIATES), THE PMN AGENT AND THE INITIAL MEMBER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE 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 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 pursuant to this Agreement. A copy of any notice or other communication to the PMN Agent hereunder shall contemporaneously be delivered to each Purchase Money Notes Guarantor (until such time as the Guaranteed Purchase Money Notes Satisfaction Date with respect to such Purchase Money Notes Guarantor shall have occurred).

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

CRE Venture 2011-1, LLC
2450 Broadway, 6th Floor
Santa Monica, CA 90404
Attention: Paul A. Fuhrman
E-mail Address: [REDACTED]

with a copy to:

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

Address for notices or communications to the PMN Agent or the Initial Member:
Assistant Director - Structured Transactions
Federal Deposit Insurance Corporation
550 17th Street, NW (Room F-7015)
Washington, D.C. 20429-0002
Attention: Ralph Malami
E-mail: rmalami@fdic.gov

with a copy to:

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

If to any Purchase Money Notes Guarantor:

In accordance with the notice provision set forth in the relevant Purchase Money Notes Guaranty.

Section 13.10 Assignment.

(a) This Agreement shall inure to the benefit of and be binding on and enforceable against each Grantor, the PMN Agent and the Initial Member and their respective successors and assigns (including, for the avoidance of doubt, the Persons from time to time serving as the PMN Agent (in their capacities as such)); provided, however, that no Grantor shall assign its rights pursuant to this Agreement in whole or in part without the prior written consent of the PMN Agent, and any such assignment without such consent shall be null and void ab initio. The Initial Member is a party to this Agreement solely for the benefit of the PMN Agent, and accordingly no Grantor has any rights or remedies hereunder or in respect hereof against the Initial Member (including with respect to any breach hereof by the Initial Member).

(b) Upon the consummation of any sale, transfer or assignment of the Initial Member Interest pursuant to and in accordance with Section 8.7(b) of the LLC Operating Agreement, the transferor "Initial Member" shall cease to be a party to this Agreement (and accordingly, except as expressly otherwise provided in the proviso to this sentence), shall cease to be responsible for the payment or performance of any of the obligations or liabilities under this Agreement of the "Initial Member"), provided that no such sale, transfer or assignment shall relieve the transferor "Initial Member" from of any liability it may have arising out of any failure by it to have fully paid or performed the obligations or liabilities of the "Initial Member" under

this Agreement required to have been paid or performed prior to the consummation of such permitted sale, transfer or assignment.

Section 13.11 Entire Agreement. This Agreement, together with the other Transaction Documents, contains the entire agreement among the Grantors, the PMN Agent and the Initial Member with respect to the subject matter of this Agreement and supersedes any and all other prior agreements, whether oral or written among the parties with respect to the subject matter hereof and thereof, 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 (including the Confidentiality Agreement) shall remain in full force and effect to the extent provided therein.

Section 13.12 Amendments and Waivers. This Agreement may be amended or modified, and the terms hereof may be waived, only by a written instrument signed by (i) all parties to this Agreement (other than the Initial Member), (ii) each Purchase Money Notes Guarantor and (iii) to the extent that any such action would impose any, or alter any then-existing, obligation of the Initial Member hereunder, or would amend or modify this Section 13.12, the Initial Member. In no event shall any such amendment or waiver limit or affect (including through any amendment or elimination of this sentence) the rights of the Receiver or the FDIC (in each case, as a third party beneficiary hereunder as specified in Section 13.18) without the express written consent of the Receiver or the FDIC, respectively. Nothing in this Section 13.12 limits or qualifies the last sentence of Section 12.1 hereof.

Section 13.13 [Intentionally Omitted]

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 the Debtor shall pay the PMN Agent, each Purchase Money Notes Guarantor and each Holder on demand all reasonable costs and expenses (including reasonable fees of counsel) incurred by the PMN Agent, such Purchase Money Notes Guarantor or such Holder 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 in any event shall 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, if 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, 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, then may 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 representations and warranties made hereunder and in any other Secured Parties Collateral Document shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Secured Parties, regardless of any investigation made by or on behalf of the Secured Parties (or any of them) and notwithstanding that the Secured Parties may have had notice or knowledge of any Default at the Closing Date, and shall continue in full force and effect as long as any Purchase Money Notes or any other Secured Obligation shall remain unpaid or unsatisfied. All obligations made in this Agreement 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 indefeasible 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 PMN Agent, each Purchase Money Notes Guarantor, the other Secured Parties and the Grantors and their respective successors and permitted assigns, and no other Person or Persons (including Borrowers, Obligors, or any co-lender or other Person with any interest in or liability under any of the Assets) shall have any rights or remedies pursuant to or by reason of this Agreement. The preceding sentence notwithstanding, (i) each Purchase Money Notes Guarantor (and its successors or assigns) is hereby constituted (until the Guaranteed Purchase Money Notes Satisfaction Date with respect to such Purchase Money Notes Guarantor) an express third party

beneficiary of this Agreement in its entirety, and, as such, each Purchase Money Notes Guarantor (and its successors or assigns) is entitled to enforce the provisions of this Agreement to the same extent as if such Person were a party hereto, (ii) to the extent that this Agreement confers directly any rights, remedies or other benefits upon the FDIC, the Receiver, any Holder or any other Person (not a party to this Agreement) (other than any Purchase Money Notes Guarantor), this Agreement (subject to Sections 13.6, 13.7 and 13.8 hereof as if such other Person was a party hereto, and in any event to Section 13.12 hereof) also shall inure to the benefit of, and may be enforced by, such Person (and its successors or assigns), and (iii) each of the PMN Agent, each Purchase Money Notes Guarantor, each Holder, the Receiver and the FDIC may enforce Section 13.5 hereof on behalf of or otherwise with respect to any Related Person in relation to itself.

Section 13.19 Counterparts; Facsimile Signatures. This Agreement may be executed in two 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.

PMN Agent

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR THE FAILED BANKS, as PMN Agent

By: _____
Name: Heidi Silverberg
Title: Senior Capital Markets Specialist

Debtor

CRE VENTURE 2011-1, LLC

By: Federal Deposit Insurance Corporation in its capacity as Receiver for the Failed Banks, as Sole Member and Manager

By: _____
Name: Heidi Silverberg
Title: Senior Capital Markets Specialist

Initial Member

FEDERAL DEPOSIT INSURANCE CORPORATION in its capacity as Receiver for the Failed Banks, as Initial Member, solely for purposes of Sections 5.1(a)(vi), 5.1(a)(viii), 5.1(a)(ix), 5.1(a)(x), 8.3 and 13.6 – 13.19

By: _____
Name: Heidi Silverberg
Title: Senior Capital Markets Specialist

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 August 10, 2011, by and among CRE Venture 2011-1, LLC, a Delaware limited liability company, each of the other entities listed on the signature pages thereto or that becomes a party thereto pursuant to Section 8.12 thereof, the Federal Deposit Insurance Corporation in its corporate capacity, the Federal Deposit Insurance Corporation in its capacity as Receiver (as defined in the Agreement of Definitions referred to in Section 1.1(a) thereof), as PMN Agent for the Secured Parties and, solely for purposes of Sections 5.1(a)(vi), 5.1(a)(viii), 5.1(a)(ix), 5.1(a)(x), 8.3 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 in this Joinder Agreement without definition are used as defined in or pursuant to the Reimbursement, Security and Guaranty Agreement (including without limitation pursuant to the Agreement of Definitions referred to in Section 1.1(a) thereof).

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, hereby transfers, assigns, sets over, pledges, conveys, mortgages and grants to the PMN Agent for its benefit and the benefit of the Secured Parties, and hereby grants to the PMN Agent for its benefit and the benefit of the Secured Parties a continuing security interest in, lien on and right of setoff against, all of such Grantor’s right, title and interest in, to or under the Secured Parties Collateral of the undersigned and expressly assumes all obligations and liabilities of a “Subsidiary Grantor”, and of a “Grantor”, thereunder. Without limitation of the preceding sentence, the undersigned hereby agrees to be bound as a “Subsidiary Grantor,” and as a “Grantor,” for all 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 of the date hereof as if made on and as of the date hereof. The undersigned hereby acknowledges that this Agreement and the Reimbursement, Security and Guaranty Agreement will be enforceable against it whether or not this Agreement is formally acknowledged or accepted by the PMN Agent or the Initial Member.

Exhibit A-1

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: