ASSET CONTRIBUTION AND SALE AGREEMENT

BY AND BETWEEN

THE FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER

AND

CRE VENTURE 2011-1, LLC

Dated as of August 10, 2011

TABLE OF CONTENTS

Attachments and Schedule

ASSET CONTRIBUTION AND SALE AGREEMENT

THIS ASSET CONTRIBUTION AND SALE AGREEMENT (as the same shall be amended or supplemented, this "**Agreement**") is made and entered into as of the 10th day of August, 2011 by and between the Federal Deposit Insurance Corporation, as Receiver for the Failed Banks (the "**Transferor**"), and CRE Venture 2011-1, LLC, a Delaware limited liability company (the "**Company**").

RECITALS

WHEREAS the Transferor owns the Assets described on the Asset Schedule attached to this Agreement as Attachment A (the "**Asset Schedule**"); and

WHEREAS the Transferor has determined to liquidate the Assets; and

WHEREAS the Transferor has formed the Company and holds the sole membership interest in the Company; and

WHEREAS the Transferor desires to transfer the Assets to the Company, partly as a capital contribution and partly as a sale, in the manner and on the terms and conditions more fully set forth in this Agreement; and

WHEREAS the Transferor and the Private Owner agree that the transfer of the Assets by the Transferor to the Company occurs partly as a sale of an undivided interest in each Asset to the Company and partly] as a contribution of an undivided interest in each Asset to the Company (which undivided interests, for the avoidance of doubt, aggregate 100%) and, furthermore, the Transferor and the Private Owner agree that the amount of the undivided interest in each Asset that is sold to the Company, and the amount of the undivided interest in each Asset that is contributed to the Company, is as determined pursuant to Schedule I hereto;

WHEREAS the Transferor and the Company desire that, in consideration of the transfer of the Assets to the Company to the extent such transfer constitutes a sale, the Company will issue, execute and deliver to the Transferor the Purchase Money Note dated as of the Closing Date with the maturity date and in the principal amount set forth on Schedule II hereto; and

WHEREAS, immediately following the execution and delivery hereof, pursuant to the Private Owner Interest Sale Agreement, the Transferor will sell and transfer the Private Owner Interest (as defined therein) to the Private Owner for the Private Owner Interest Sale Price; and

WHEREAS the Transferor and the Company desire to memorialize their agreement relating to the contribution and sale of the Assets to the Company and certain other matters as set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements hereinafter contained, and for other good and valuable consideration the receipt and

sufficiency of which are hereby acknowledged, the Transferor and the Company hereby agree as follows:

ARTICLE I
Definitions and Construction

Section 1.1. Definitions. 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, by and 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 respective meanings and definitions given, or referred to, in such Agreement of Definitions.

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

ARTICLE II
Contribution and Sale of Assets

Section 2.1. Assets Acquired by the Company. The Transferor hereby conveys to the Company, and the Company hereby acquires and accepts from the Transferor, in each case effective as of the Closing Date, without recourse, by way of a sale to the extent of the initial aggregate principal amount of the Purchase Money Notes and otherwise as a capital contribution, all right, title and interest of the Transferor in and to:

(a) the Assets (including all Receiver Acquired Property, equity and other interests in the Ownership Entities identified on Attachment C attached to this Agreement, Notes, other Assets Documents and Related Agreements), including all future advances made with respect thereto, and all rights in the Collateral pursuant to the Collateral Documents;

(b) all amounts payable to the Transferor pursuant to the Asset Documents, and all obligations owed to the Transferor in connection with the Assets and the Asset Documents, in each case, after the Closing Date;

(c) all claims, suits, causes of action or other rights of the Transferor, whether known or unknown, against a Borrower or any Obligor or any of their respective Affiliates, agents, representatives, contractors or advisors or any other Person arising in connection with or pursuant to 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 pursuant to or in connection with the Asset Documents or the transactions related thereto or contemplated thereby;

(d) all cash, securities or other property received or applied after the Closing Date by or for the account of the Transferor under the Assets, including all distributions received

through redemption, consummation of a plan of reorganization, restructuring, liquidation or otherwise of a Borrower or Obligor pursuant to 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; and

(e) all distributions on, or proceeds or products of or with respect to, any of the foregoing, and the rights to receive such distributions, proceeds or products thereof;

provided, however, that the Transferor does not hereby convey to the Company (or any other Person) (i) any right, title or interest in, to or under any claim, property or asset described in the last sentence of Section 2.6, or in Section 2.7, or in, to or under any contract or other instrument that is not a Transferred Contract, (ii) for the avoidance of doubt, any portion of its limited liability company interest in the Company or any of its right, title or interest under the Organizational Documents of the Company or (iii) any distributions on, or proceeds or products of or with respect to, any of the foregoing described in clauses (i) and (ii), or any rights to receive such distributions, proceeds or products thereof. The Transferor and the Company agree that the conveyance and transfer contemplated by this Section 2.1 and the other provisions of this Agreement is intended to be an absolute conveyance and transfer of ownership of the Assets in part by capital contribution and in part by sale.

Section 2.2. Liabilities Assumed by the Company. The Company (i) hereby assumes as of the Cut-Off Date the Obligations, and agrees to perform and pay the Obligations when due, and (ii) in addition to and without limitation of clause (i), shall indemnify and hold harmless the Transferor from and against all costs and expenses (including attorneys' fees and litigation and similar costs, and other out-of-pocket expenses, actually incurred in investigating, defending, asserting or preparing the defense of any Action), judgments, awards, fines, amounts paid in settlement or penalties incurred by the Transferor (at any time after the Cut-Off Date) arising out of, resulting from or otherwise in connection with any Assumed Closing Date Asset Litigation. Without limitation of the preceding sentence, the Company shall make such payments to the Transferor as shall be necessary to give effect, as between the Company and the Transferor, to the assumption of the Obligations as of the Cut-Off Date (as if this Agreement had been executed and delivered at, and the "Obligations" determined (for purposes of this sentence) as of, the Cut-Off Date (and the Closing Date and the Cut-Off Date were the same date)), including reimbursing the Transferor for any payments made by the Transferor between the Cut-Off Date and the Closing Date in respect of the Obligations (as so determined). Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that the Company does not assume and, except and to the extent provided for in clause (ii) of the first sentence of this Section 2.2 or in Section 4.5(d), is not liable for, any Excluded Liability. If there arises any question as to whether a Liability arising or becoming due or payable pursuant to or in accordance with any Transferred Contract was, in accordance with the FDIC Legal Powers legally binding on and valid against the Receiver, the Transferor's determination in this regard shall be conclusive and binding on the Company.

Section 2.3. Allocation of Payments; Interim Servicing Expenses and Pre-Approved Charges; Offsets Against Accounts at Failed Banks.

(a) All payments and other amounts received on account of any of the Assets or Collateral on or before the Cut-Off Date shall be retained by and shall belong to the Transferor (subject to Section 2.3(d) below). However, notwithstanding that the Assets are conveyed to the Company only on the Closing Date, any and all Asset Proceeds received at any time after the Cut-Off Date shall be allocated and distributed to and shall belong to the Company.

(b) The Transferor shall be paid or reimbursed by the Company as soon as practicable after each Servicing Transfer Date for Interim Servicing Expenses and Pre-Approved Charges that an Existing Servicer pays after the Cut-Off Date through the Servicing Transfer Date out of its own funds (rather than withdrawing such funds from the Collection Account or the Working Capital Reserve Account or otherwise using Asset Proceeds to pay for the respective Interim Servicing Expenses or Pre-Approved Charges). Any such amounts for Interim Servicing Expenses or Pre-Approved Charges paid after the Cut-Off Date through the Servicing Transfer Date owed to but not reimbursed to the Transferor on the Servicing Transfer Date for the respective Asset shall be reimbursed by the Company to the Transferor on demand.

(c) Without limitation of, and subject to, the other provisions of this Agreement (including Sections 2.3(b), and 3.3(e), and the last sentence of Section 3.3(d)), the Transferor shall be responsible for reimbursing each third-party Existing Servicer for any payments made by such third-party Existing Servicer to fund Interim Servicing Expenses or Pre-Approved Charges with respect to an Asset, as well as for any advances of principal or interest or any other advances with respect to an Asset made by such third-party Existing Servicer. Without limitation of, and subject to, the other provisions of this Agreement (including Sections 2.3(b), and 3.3(e), and the last sentence of Section 3.3(d)), the Transferor also shall be responsible for paying any fee owing to an Existing Servicer in connection with the termination of any servicing agreement with such Existing Servicer.

(d) With respect to any Loan, Transferor reserves the right to permit or require offsets against such Loan on account of, and with funds in, any applicable deposit account (of any related Borrower or other Obligor) held with the Failed Bank. If allowed by Transferor (and to the extent so allowed), such offsets will be retroactive to the date that the FDIC was appointed Receiver for the Failed Bank. To the extent that such offset is not already reflected in the Cut-Off Date Unpaid Principal Balance, (a) the Transferor will give notice to the Company of such offset and transfer the amount of such offset (not already reflected in the Cut-Off Date Unpaid Principal Balance) to the Company to be treated as Asset Proceeds relating to such Loan and deposited into the Collection Account (and such offset shall be disregarded for purposes of determination of the Adjusted Unpaid Principal Balance of such Loan and any adjustments pursuant to Sections 2.4(c) or 2.4(d), but shall be taken into account for purposes of determination of the Unpaid Principal Balance of such Loan for all other purposes), and (b) the Company shall (for purposes of the applicable Note(s) (and other Asset Documents) and all

calculations as between the Company and the applicable Borrower (or other Obligor) with respect to the amounts owing under such Loan), credit the amount of such offset (on a dollar-for-dollar basis) to such Loan according to the terms and conditions of the applicable Note(s) (and other Asset Documents) as of the date that the FDIC was appointed Receiver for the Failed Bank.

Section 2.4. Adjustments.

(a) The Private Owner shall, and shall cause the Servicer to, cooperate with the Transferor in reconciling the amounts of advances made with respect to each Asset through the Servicing Transfer Date for such Asset to fund Interim Servicing Expenses, Pre-Approved Charges or otherwise. As soon as practicable after the respective Servicing Transfer Date, the Transferor shall provide the Company with a statement setting forth, for each Asset that is the subject of such Servicing Transfer Date, the amount of all advances made with respect to such Asset prior to the Servicing Transfer Date for such Asset and the amount of any reimbursement of advances that the Transferor has received from the respective Borrower or other Obligor.

(b) As soon as practicable after each respective Servicing Transfer Date, the Transferor shall provide the Company with a statement setting forth, for each Asset that is the subject of such Servicing Transfer Date, the Adjusted Unpaid Principal Balance, Adjusted Escrow Balance and the Unpaid Principal Balance as of the Servicing Transfer Date. Each such statement shall be accompanied by an explanation of the reasons for any adjustment to any Cut-Off Date Unpaid Principal Balance or Escrow Balance. In addition, an amount equal to the positive balance of any Escrow Accounts with respect to the relevant Group of Assets as of each Servicing Transfer Date shall be remitted to the Servicer (and shall not be considered to constitute Asset Proceeds).

(c) If the Adjusted Unpaid Principal Balance of any Asset exceeds the Cut-Off Date Unpaid Principal Balance of such Asset (such excess, the "**Excess Principal**"), the Private Owner shall be liable to the Transferor for an amount equal to the Adjustment Percentage multiplied by the Excess Principal. If the Cut-Off Date Unpaid Principal Balance of any Asset exceeds the Adjusted Unpaid Principal Balance of any Asset (such deficiency, the "**Principal Deficiency**"), the Transferor shall be liable to the Private Owner for an amount equal to the Adjustment Percentage multiplied by the Principal Deficiency. No adjustment will be made for any miscalculation of interest on any Asset.

(d) As soon as practicable after the final Servicing Transfer Date, the aggregate amount owed by the Private Owner to the Transferor pursuant to Section 2.4(c) (excluding the amount of any Interim Servicing Expenses or Pre-Approved Charges due to the Transferor) shall be subtracted from the aggregate amount owed to the Private Owner by the Transferor pursuant to Section 2.4(c). If the resulting amount is a positive number, the Transferor shall pay such amount to the Private Owner, and if the resulting amount is a negative number, the Private Owner shall pay the absolute value of such amount to the Transferor. Any monies due to the Private Owner or the Transferor pursuant to this Section 2.4(d) with respect to

a given Asset shall be paid as soon as practicable after the final Servicing Transfer Date. The Company shall adjust its records to reflect the Adjusted Unpaid Principal Balances, the Adjusted Escrow Balances and the Unpaid Principal Balances with respect to the Assets.

Section 2.5. Rebates and Refunds. The Company is not entitled to any rebates or refunds from the Transferor or any Failed Bank from any pre-computed interest Loan regardless of when the Note matures. Further, on pre-computed interest Loans, neither the Transferor nor any Failed Bank will refund any unearned discount amounts to the Company.

Section 2.6. Interest Conveyed. In the event a foreclosure on Collateral occurs after the Cut-Off Date, or occurred on or before the Cut-Off Date but the Redemption Period had not expired on or before the Cut-Off Date, the Transferor shall convey to the Company all of the Transferor's right, title and interest as of the Closing Date in and to the related Deficiency Balance, if any, and any related Underlying Loan, together with the net proceeds, if any, of such foreclosure sale. If the Transferor was the purchaser at such foreclosure sale, the Transferor shall convey to the Company all right, title and interest of the Transferor as of the Closing Date in and to the Deficiency Balance, if any, and any related Underlying Loan, together with a special warranty deed to the Receiver Acquired Property purchased at such foreclosure sale (unless the Receiver Acquired Property was purchased by an Ownership Entity, in which case the Transferor shall convey to the Company all equity interests in such Ownership Entity). The Company acknowledges and agrees that the Company shall not acquire any interest in or to (a) any Collateral that was foreclosed by the Transferor or any of its predecessors-in-interest on or before the Cut-Off Date and for which the Redemption Period, if any, had expired on or before the Cut-Off Date or (b) any performance or completion bond or letter of credit or other assurance filed with any Governmental Authority with respect to any Asset for the purpose of ensuring that improvements constructed or to be constructed are completed in accordance with any governmental regulations or building requirements applicable to the proposed or completed improvement to the extent that any such performance or completion bond or letter of credit or other assurance constitutes a promise or obligation of the Transferor or any Failed Bank to make any payment or otherwise provide any performance or satisfaction.

Section 2.7. Retained Claims. Notwithstanding anything to the contrary in this Agreement, the Company and the Transferor agree that the contribution and sale by the Transferor pursuant to this Agreement will exclude the transfer to the Company of any right, title and interest of the Transferor, any Failed Bank and any predecessors-in-interest thereto in and to any and all claims of any nature whatsoever that now may exist or hereafter may arise, whether known or unknown, that the Transferor, any Failed Bank or predecessors-in-interest thereto have or had or that any may have or may have had, regardless of when any such claim is discovered, against any of the following: (a) officers, directors, employees, insiders, accountants, attorneys, other Persons employed by the Transferor, any Failed Bank or any of its predecessors-in-interest, underwriters or any other similar Persons who may have caused a loss to the Transferor, any Failed Bank or any of its predecessors-in-interest in connection with the initiation, origination, servicing or administration of an Asset; (b) any appraisers, accountants, auditors, attorneys, investment bankers or brokers, loan brokers, deposit brokers, securities dealers or other

professional individuals or Persons who performed services for the Transferor, any Failed Bank or any of its predecessors-in-interest relative to the initiation, origination, servicing or administration of an Asset; (c) any third parties for alleged fraud, misrepresentation or other misconduct in connection with the initiation, origination or servicing of an Asset; or (d) any appraiser or other Person with whom the Transferor, any Failed Bank or any of their predecessors-in-interest or any servicing agent contracted for services or title insurance or closing protection coverage in connection with the initiation, origination, insuring or servicing of an Asset; provided, however, that claims under and pursuant to a title insurance policy shall not constitute excluded or retained claims pursuant to this Section 2.7.

Section 2.8. Transfer Taxes;. Except as otherwise provided in this Agreement, the Company shall pay, indemnify and hold harmless the Transferor and its Related Persons from and against any Transfer Taxes and shall file timely any returns required to be filed with respect to such Transfer Taxes; provided, however, that the Transferor shall pay (and shall not be entitled to be reimbursed for) any Transfer Taxes in the nature of mortgage recording Taxes and shall file timely any returns required to be filed with respect to such Transfer Taxes required to complete the conveyance of any mortgage under Section 2.1. Transfer Taxes paid by the Company pursuant to this Section shall constitute Pre-Approved Charges.

Section 2.9. Assets Subject to Existing Agreements. Notwithstanding any provision of this Agreement to the contrary, the Company acknowledges and agrees that each Asset is conveyed, contributed and sold to the Company subject to any and all contracts and agreements to which the Transferor or any predecessor-in-interest is a party with respect to such Asset as of the Closing Date, including any settlement agreements, restructuring agreements or sale and purchase agreements (other than any Transferor Loan-Servicing Contract).

Section 2.10. Purchase Money Note..

(a) In consideration of the transfer of the Assets to the Company to the extent such transfer constitutes a sale, the Company is, contemporaneously with the execution and delivery hereof, (i) issuing, executing and delivering to the Transferor the Purchase Money Note dated as of the date hereof with the maturity date and in the principal amounts set forth on Schedule II hereto and (ii) executing and delivering the Reimbursement, Security and Guaranty Agreement, the Custodial and Paying Agency Agreement and the Account Control Agreement. In consideration of the Transferor agreeing to accept the Purchase Money Note, the Transferor shall receive on the Closing Date a fee equal to 4.0% of the original principal amount of the Purchase Money Note (such original principal amount being determined for this purpose prior to giving effect to this sentence) (the "Purchase Money Note Issuance Fee"). The Purchase Money Note Issuance Fee will be added to the principal amount of the Purchase Money Note (and is reflected in the principal amounts set forth in Schedule II hereto) and accordingly will be paid by the Company when and as it pays the Purchase Money Note.

(b) The Transferor, as the initial Holder of the Purchase Money Note, irrevocably acknowledges, and consents and agrees to, the terms of Article XII of the Reimbursement, Security and Guaranty Agreement, and to the terms of any other written agency

or other similar agreement entered into between the PMN Agent and the Required PMN Consenting Parties. Without limitation of the preceding sentence, the PMN Agent shall be authorized to act as the agent or other similar representative of and on behalf of the Holders for purposes of, among other matters, receiving notices and communications and exercising any rights and remedies pursuant to the Transaction Documents at the direction of the Required PMN Consenting Parties, together with such other powers and discretion as are reasonably incidental thereto.

(c) The Transferor hereby agrees to deposit funds into the Defeasance Account (in respect of any Net Loss on Investments) as and when required pursuant to Section 3.3(e) of the Custodial and Paying Agency Agreement.

Section 2.11. Exempt Taxes.

(a) As soon as reasonably practicable, but in no event later than twenty-five Business Days after the Closing Date, the Company shall provide a schedule of any Taxes that the Company believes are Exempt Taxes with respect to the Receiver Acquired Property, indicating, with respect to each such Exempt Tax, the payment due date, tax period, payee and amount thereof, and whether any Governmental Authority has purported to assess such Exempt Tax (in whole or in part) and specifying the relevant Governmental Authority, if applicable. To the extent meeting the requirements of Section 2.11(b) and specifically noted therein, such schedule may also constitute an Assessed Exempt Tax Notice.

(b) Subject to (i) the Transferor's right of contest pursuant to Section 2.11(c) and (ii) the Company providing written notice to the Transferor of the payment due date, tax period, payee and amount of any assessed Taxes with respect to any Receiver Acquired Property that the Transferor believes are Exempt Taxes ("Assessed Exempt Taxes"), and indicating the date upon which each of the applicable Trigger Events (as defined below) is likely to occur (the "Assessed Exempt Tax Notice"), the Transferor shall pay such Assessed Exempt Taxes directly to the applicable taxing authority prior to the earliest of the date (each of the following dates to be determined taking into account the effect thereon of any relevant proceeding conducted as described in Sections 2.11(c) and (d), including, for example, any suspension of the obligation to pay such Assessed Exempt Taxes) upon which (w) such Assessed Exempt Taxes are subject to late charges, or interest, accruing thereon, (x) the relevant Receiver Acquired Property or any portion thereof is in imminent danger of being sold, forfeited, terminated, canceled or lost, (y) the payment of such Exempt Taxes is necessary to release a lien or other encumbrance, the release of which is a necessary condition to the consummation of a sale of any Receiver Acquired Property, or (z) the Company is likely to be subject to civil or criminal damages due to the failure to pay such Assessed Exempt Taxes (clauses (w), (x), (y) and (z), collectively, the "Trigger Events"); provided that the Transferor's payment of any Assessed Exempt Taxes as required hereunder shall not be deemed an admission that such Assessed Exempt Taxes are in fact valid, due or payable and the Transferor may make such payment under protest and use any legal means available to challenge the amount or validity of such Assessed Exempt Taxes and seek reimbursement from the applicable taxing authority. To the extent that

all or any portion of any challenged Assessed Exempt Taxes are reimbursed, such reimbursed amounts shall be the property of the Transferor, and the Company shall have no rights or interest in such amounts (and the Company shall hold in trust for the Transferor, and promptly pay over to the Transferor, any such reimbursed amount that may be paid to the Company in the first instance). Notwithstanding anything to the contrary set forth herein and irrespective of any Trigger Event, the Transferor shall not be required to pay any Assessed Exempt Taxes sooner than thirty days after its receipt of the related Assessed Exempt Tax Notice. If the Transferor determines that any Assessed Exempt Taxes do not constitute Exempt Taxes, it shall provide notice of such determination to the Company; provided that, the Transferor shall have no liability for any failure to provide such notice or any obligation to pay such Assessed Exempt Taxes if it fails to provide such notice.

(c) The Transferor (in its sole discretion) may protest, challenge or otherwise contest the amount or validity of any Assessed Exempt Taxes in any manner that it desires, both before and after paying such Assessed Exempt Taxes, including by seeking to recover any such Assessed Exempt Taxes that it has paid, provided that nothing in this Section 2.11(c) relieves the Transferor of its obligation to pay any particular Assessed Exempt Tax (including under protest) prior to the applicable Trigger Date as set forth in Section 2.11(b).

(d) The Company shall fully cooperate as requested by the Transferor from time to time with respect to any protest, challenge or other contest by the Transferor of any Assessed Exempt Taxes, including in any proceeding to recover any such Assessed Exempt Taxes that it has paid. Such cooperation shall include the Company granting to the Transferor the authority or other rights necessary for it to commence a formal Action in the name of the Company, or assigning to the Transferor any rights the Company may have to protest, challenge or otherwise contest any Assessed Exempt Taxes.

(e) The Transferor's determination as to whether or not, and the extent to which, a particular Tax constitutes an Exempt Tax shall be conclusive and binding for all purposes with respect to this Agreement.

ARTICLE III
Transfer of Assets, Collateral Documents and Interim Servicing

Section 3.1. Delivery of Documents. The Company and the Transferor agree to execute and deliver to one another the following:

(a) On the Closing Date, such Transfer Documents executed by the Transferor as the Transferor elects to deliver to the Company.

(b) Subject to the provisions of the LLC Operating Agreement and Section 3.1(d) hereof below in relation to the Transfer Documents, the Transferor shall deliver or cause to be delivered, at the expense of the Company (which expense shall constitute a Pre-Approved Charge), to the extent they are in the possession of the Transferor or any of its employees or contractors (and have actually been located and separately collected as of the

Closing Date for delivery to the Custodian pursuant to this Agreement), (i) the Notes and other Custodial Documents to the Custodian as soon as is practicable after the Closing Date and (ii) the Asset Files with respect to each Asset to either the Company or the Servicer (as directed by the Company), in either case on or within a reasonable period of time after the Servicing Transfer Date with respect to such Asset. The Company acknowledges and in any event agrees that, so long as the Transferor (or its employees or contractors) holds the Notes and other Custodial Documents prior to their transfer to the Custodian as provided in the preceding sentence, the Transferor shall be deemed to hold such Notes and other Custodial Documents in its capacity as the PMN Agent.

(c) (i) For any of the mortgages and/or other Collateral Documents securing the Assets that are registered on the MERS® System (collectively, the "**MERS Registered Mortgages**"), except as provided otherwise in this Section 3.1(c), the Company shall cause the MERS Registered Mortgages to be transferred on the MERS® System on or within a reasonable time after the Servicing Transfer Date with respect to the applicable Assets. To the extent the cost of transferring the MERS Registered Mortgages is a cost imposed by MERS on the transferor of an Asset, that cost shall be borne by the Transferor. Otherwise, the costs imposed by MERS with respect to the transfer of the MERS Registered Mortgages shall be borne by the Company and all such costs shall constitute Pre-Approved Charges; provided, however, that any such expenses with respect to MERS Registered Mortgages as to which the Company has not initiated the transfer on the MERS® System (in cooperation with the applicable Existing Servicer during the period prior to the applicable Servicing Transfer Date) within six months of the Closing Date shall not constitute Pre-Approved Charges and such charges shall be borne by the Private Owner alone. The Company shall provide a report to the Transferor and the PMN Agent on the progress and status of the transfers on the MERS® System of the MERS Registered Mortgages on the first day of the seventh month following the Closing Date and again on the first anniversary of the Closing Date.

(ii) Notwithstanding any provision of this Agreement to the contrary, the Company (acting by and through the Manager in accordance with the applicable provisions of the LLC Operating Agreement) shall have the right to elect to remove any MERS Registered Mortgage from the MERS® System prior to the Servicing Transfer Date for such MERS Registered Mortgage, in which event the Company (A) must inform the Transferor and the Existing Servicer of its decision to remove such MERS Registered Mortgage from the MERS® System at least two weeks prior to the Servicing Transfer Date for such MERS Registered Mortgage and (B) must satisfy all applicable requirements of the LLC Operating Agreement with respect to the removal of such MERS Registered Mortgage from the MERS® System (including specifically the requirements of Section 12.3(g) of the LLC Operating Agreement). If the Company has not notified the Transferor and the Existing Servicer of its election to remove such MERS Registered Mortgage from the MERS® System at least two weeks prior to the Servicing Transfer Date for such MERS Registered Mortgage, then such MERS Registered Mortgage must be transferred on the MERS® System in accordance with Section 3.1(c)(i) above.

(iii) Further notwithstanding any provision of this Agreement to the contrary, the Company (acting by and through the Manager in accordance with the applicable provisions of the LLC Operating Agreement) shall have the right to elect to remove any MERS Registered Mortgage from the MERS® System after the Servicing Transfer Date for such MERS Registered Mortgage and after such MERS Registered Mortgage has been transferred on the MERS® System, in which event the Company must satisfy all applicable requirements of the LLC Operating Agreement with respect to the removal of such MERS Registered Mortgage from the MERS® System (including specifically the requirements of Section 12.3(g) of the LLC Operating Agreement).

(d) (i) In the event that the Transferor does not deliver all the Transfer Documents on the Closing Date (which the Transferor may do to any extent in its discretion, but shall not be obligated to do), (A) as soon as is practicable following the Closing Date but in any event by the Transfer Document Preparation/Submission Deadline, the Company will properly prepare on behalf of the Transferor, all such Transfer Documents not delivered by the Transferor to the Company on the Closing Date and (B) on or within a reasonable time following the Closing Date, the Transferor will grant a Limited Power of Attorney to selected representatives of the Company for the purpose of executing on behalf of the Transferor such Transfer Documents prepared by the Company pursuant to Section 3.1(d)(i)(A). The Limited Power of Attorney will be in the form attached to this Agreement as Attachment J. Reasonable and customary expenses paid to third parties actually incurred by the Company (or the Manager or the Servicer for the benefit of the Company) in preparing and executing the Transfer Documents on behalf of the Transferor and otherwise complying with the obligations set forth in the preceding sentences shall constitute Pre-Approved Charges; provided, however, that any such expenses with respect to a Transfer Document that is not properly prepared and submitted for recordation or filing by the Transfer Documents Preparation/Submission Deadline shall not constitute Pre-Approved Charges (and shall constitute Excluded Expenses) and shall be borne by the Private Owner alone. All Transfer Documents prepared by the Company shall be in appropriate form suitable for filing or recording (if applicable) in the relevant jurisdiction and otherwise subject to the limitations set forth in this Agreement, and the Company shall be solely responsible for the preparation, contents and form of such documents. The Company hereby releases the Transferor from any loss or damage incurred by the Company due to the contents or form of any documents prepared by the Company pursuant to this Section 3.1(d) (the form of which was not provided by the Transferor as an attachment hereto).

(ii) The Company shall use the forms set forth in Attachment E to Attachment I, inclusive, in preparing the Transfer Documents, in each case with such changes as may be necessary in order to render such document to be in a form so that it will be accepted for recordation or filing in the relevant jurisdiction and/or otherwise sufficient under applicable Law to reflect the transfer intended to be effected thereby. All documents of assignment, conveyance or transfer (not including special warranty deeds to the Receiver Acquired Property, which shall contain the special warranty included therein but no other warranties or representations, but including all other Transfer Documents) shall contain the following sentence: "This assignment is made without recourse, and without representation or warranty,

express, implied or by operation of law, of any kind or nature whatsoever, by the Federal Deposit Insurance Corporation in its capacity as Receiver for the applicable Failed Bank."

(iii) The Company will properly complete all Transfer Documents, and submit the Transfer Documents for recordation or filing them if and as appropriate in accordance with Section 3.2, as soon as is practicable following the Closing Date but in any event by the Transfer Documents Preparation/Submission Deadline. The Company shall provide a report to the Transferor, each Purchase Money Notes Guarantor and the PMN Agent on the progress and status of the preparation, execution, recording and/or filing and delivery of the original documents to the Custodian as required by this Agreement promptly following a request therefor from the Transferor and in any event upon the first day of the seventh month following the Closing Date and again on the first anniversary of the Closing Date.

(iv) For the avoidance of doubt, the Limited Power of Attorney (and any similar power of attorney that the Transferor in its discretion may provide to the Company or representatives of the Company (including the Manager or representatives of the Manager)) may be used solely to effect the transfer (including of record) set forth in Section 2.1 hereof, and (without limitation of the foregoing) may not be used for any other purpose (including to exercise, or otherwise in connection with any exercise of, any rights or remedies under any Collateral Document). In addition to, and without limitation of, the preceding sentence, each FDIC Power of Attorney shall be used strictly in accordance with (i) all applicable terms of (including all relevant restrictions set forth in) the relevant Transaction Documents and (ii) all applicable Laws (including compliance with any applicable notarization requirements and requirements for verification of any facts stated in any instrument or other document executed pursuant to such FDIC Power of Attorney. The Company shall adopt written procedures (which the Company shall memorialize in its books and records) concerning the use of any FDIC Power of Attorney and the selection of the specific individuals that from time to time may be named therein, or otherwise authorized thereby, to act in the name of, or otherwise on behalf of, the Transferor or the FDIC, including procedures to ensure that each such individual (x) is a person that is well-known to the Company, whose background (including absence of any criminal record involving fraud or dishonesty or involving any other matter that might reflect adversely on the Receiver or the FDIC), reputation in the loan servicing and/or asset management industries, and credentials have been investigated by the Company and who is regarded by the Company (in good faith) as competent, reputable, honest and trustworthy and (y) in any event (and without limiting the foregoing) is selected with due regard to preserving the reputation and integrity of the FDIC and (without limiting the foregoing) with at least the same degree of care as the Company would apply in the context of granting such individual a similar power to act on behalf of the Company.

(e) As to Foreign Assets (if any), the Company, at its own expense, must retain counsel licensed in the Foreign Jurisdictions involved with the Foreign Assets. Such foreign counsel must draft the documents necessary to assign the Foreign Assets to the Company. Reasonable and customary expenses paid to third parties and actually incurred by the

Company (or the Manager or the Servicer for the benefit of the Company) in complying with the obligations set forth in the preceding sentence shall constitute Pre-Approved Charges. Documents presented to the Transferor to assign Foreign Assets to the Company must be accompanied by a letter on the foreign counsel's letterhead, signed by the foreign counsel preparing those documents, certifying that those documents conform to the Law of the Foreign Jurisdiction. Each such document and instrument shall be delivered to the Transferor in the English language; provided, however, that any document required for its purposes to be executed by the Transferor in a language other than the English language shall be delivered to the Transferor in such language, accompanied by a translation thereof in the English language, certified as to its accuracy by an executive officer or general counsel of the Company and, if such executive officer or general counsel shall not be fluently bilingual, by the translator thereof.

(f) Nothing contained in this Section 3.1 or elsewhere in this Agreement shall require the Transferor to make any agreement, representation or warranty or provide any indemnity in any such document or instrument or otherwise (except with respect to the special warranty contained in a special warranty deed to any Receiver Acquired Property), nor is the Transferor obligated to obtain any consents or approval to the sale or transfer of the Assets or the related servicing rights, if any, or the assumption by the Company of the Obligations.

(g) The Transferor agrees to execute any additional documents required by applicable Law or necessary to effectively transfer and assign all of the Transferor's right, title and interest in and to any and all Assets to the Company (subject to the rights of the Initial Member pursuant to the LLC Operating Agreement and to the last sentence of Section 2.1). The Transferor shall have no obligation to provide, review or execute any such additional documents unless the same shall have been requested of the Transferor within 365 calendar days after the Closing Date. For the avoidance of doubt, (i) the Transferor in its discretion may satisfy its obligations pursuant to this Section 3.1(g) (generally or in any particular instance) by the execution and delivery of an appropriate power of attorney to the Company authorizing the Company to execute and deliver on behalf of the Transferor additional documents that the Transferor is obligated to deliver pursuant to this Section 3.1(g) (except to the extent that documents executed and delivered pursuant to such power of attorney, as opposed to documents executed and delivered directly by the Transferor, will not suffice under applicable Law), and, at the request of the Transferor, the Company shall enter into an agreement with the Transferor setting forth any conditions, restrictions, notice and reporting obligations, Transferor revocation rights and/or other similar terms that the Transferor in its discretion may specify in relation to the use of any such power of attorney, and (ii) nothing in this Section 3.1(g) qualifies or limits the express obligations of the Company under this Section 3.1 above.

(h) Notwithstanding any provision of this Agreement to the contrary, the Transferor grants to the Manager, acting only by and through a duly authorized officer or representative of the Manager, the limited authority and agency to (i) prepare and record any total or partial satisfactions, releases or reconveyances of any Mortgage related to any Loan that was paid off either fully or partially, as applicable, prior to the Closing Date (and has not been so

prepared or recorded); and (ii) endorse to the Company any checks or other instruments made payable to the Transferor or any Failed Bank if such checks or other instruments evidence or relate to amounts otherwise payable to the Company pursuant to this Agreement; provided, however, that any such endorsement must be made to the Company (as is provided elsewhere in this Agreement) without any representation or warranty of, or recourse to, the Transferor or any Failed Bank whatsoever in a form similar to the form set forth in Attachment E and (y) the Company acknowledges and in any event agrees that neither the Transferor nor any Failed Bank is receiving any consideration for such endorsement (the transfer of the Assets to the Company, to the extent such transfer constitutes a sale, being comprised of a sale of Loans (and of Acquired Property), and not of any particular or other instrument in payment of any such Loan).

Section 3.2. Recordation of Documents.

(a) With respect to all recordable Transfer Documents prepared by the Company pursuant to Section 3.1(d), the Company shall promptly submit all such Transfer Documents for recordation or filing in the appropriate land, chattel, Uniform Commercial Code and other records of the appropriate county, state or other jurisdictions (including any Foreign Jurisdiction) to effect the transfer of the Assets to the Company. All Transfer Documents shall provide that all recorded documents be returned to the Custodian at its notice address set forth in Section 7.3, as such address may be modified in the manner provided in the Custodial and Paying Agency Agreement. The Company shall be responsible for diligently and promptly following up with respect to any non-conforming Transfer Documents that are returned and not recorded, gaps in the chain of title and the like to ensure that each and all of the Transfer Documents are properly filed or recorded as appropriate. The Company shall include in the reports described in and required pursuant to Section 3.1(d)(iii) all required information concerning the recording and/or filing and return of all recordable Transfer Documents.

(b) Reasonable and customary expenses paid to third parties and actually incurred by the Company (or the Manager or the Servicer for the benefit of the Company) in complying with the obligations set forth in this Section 3.2 shall constitute Pre-Approved Charges; provided, however, that any such expenses with respect to a Transfer Document that is not properly prepared and submitted for recordation or filing by the Transfer Documents Preparation/Submission Deadline shall not constitute Pre-Approved Charges (and shall constitute Excluded Expenses) and shall be borne by the Private Owner alone. The Transferor shall, if such is affirmatively required under the applicable Law of a relevant Foreign Jurisdiction, take such actions as are necessary in such Foreign Jurisdiction to effect the purposes of this Article III.

Section 3.3. Transfer of Servicing.

(a) The Assets are conveyed to the Company on a servicing-released basis. Effective from and after the Cut-Off Date, as between the Transferor and the Company, all rights, obligations, liabilities and responsibilities with respect to the servicing of the Assets shall inure to the benefit of and be assumed by the Company, and the Transferor shall be discharged from all responsibility and liability therefore, including any liability arising from any

interim servicing provided by the Transferor pursuant to this Section 3.3. Without limiting the generality of the foregoing, as between the Transferor and the Company, the Company assumes, effective as of the Cut-Off Date, all obligations with respect to special servicing and asset management of the Assets, including any Funding Draws, any advances from the Working Capital Reserve, or any permitted development of any Asset notwithstanding any interim servicing that the Transferor and the Existing Servicers might have performed prior to the Closing Date or might perform on or after the Closing Date and during the Interim Servicing Period; provided, however, that the Company acknowledges and consents that through the Closing Date the Transferor proceeded, and the Company consents and agrees that, from and after the Closing Date, if the Company fails to provide to the Transferor or any Existing Servicer necessary or appropriate direction with respect to any special servicing or asset management of the Assets, the Transferor shall have the right to proceed, in compliance with the Transferor's usual and customary servicing and asset management standards and procedures, which servicing and asset management standards and procedures the Company consents to, acknowledges and accepts.

(b) To provide for the orderly transfer of the servicing to the Company, the Transferor has (during the portion of the Interim Servicing Period through the Closing Date) provided, and will (during the portion of the Interim Servicing Period beginning on the Closing Date (except with respect to the management of any Acquired Property which as provided in clause (h) of this Section 3.3 will transfer immediately on the Closing Date)) provide, interim servicing (including special servicing and, subject to the exception set forth above in this Section 3.1(b) with respect to management of Acquired Property, asset management) of the Assets, or has maintained, or will maintain, as applicable, agreements with third-party Existing Servicers to provide interim servicing (including special servicing and, subject to the exception set forth above in this Section 3.1(b) with respect to management of Acquired Property, asset management) of the Assets, on the Company's behalf for such Asset during the Interim Servicing Period, including provisions requiring that the Existing Servicers continue: (i) to receive payments and post them to the system of record; (ii) to maintain records reflecting payments received; (iii) to provide the Company, on request, a schedule of payments processed; (iv) to make payments (whether from its own funds or otherwise) to fund Interim Servicing Expenses and Pre-Approved Charges; and (v) to provide payoff information to the Company and the Servicer regarding particular Assets, as applicable. The foregoing shall not limit the actions that the Transferor may have taken, or may take, with respect to any Asset prior to the respective Servicing Transfer Date, and absent (from and after the Closing Date) necessary or appropriate direction from the Company with respect to the servicing of the Assets, the Transferor may have taken, or may take, as applicable, such actions with respect to any Asset prior to the respective Servicing Transfer Date as was or is, as applicable, in compliance with the Transferor's usual and customary servicing standards and procedures, which servicing standards and procedures the Company consents to, acknowledges and accepts. In addition, unless the Company and the Transferor agree otherwise, the Transferor shall prepare and deliver the Monthly Reports (including the Cash Flow and Distribution Reports) in accordance with the LLC Operating Agreement and the Custodial and Paying Agency Agreement for all Due Periods ending on or before the last day of the calendar month in which the last Servicing Transfer Date

occurs. The Transferor may have engaged, and may engage, agents of the Transferor's own choosing to perform such interim servicing. Each Existing Servicer shall be (and hereby is) authorized by the Company to use and withdraw funds from the Collection Account, the Working Capital Reserve Account and the Escrow Accounts and to request Excess Working Capital Advances (if necessary) in the performance of the interim servicing duties pursuant to this Section 3.3 during the Interim Servicing Period if it so chooses (including with respect to the payment and satisfaction of any Interim Servicing Expenses or Pre-Approved Charges in full if the amount of Asset Proceeds it has collected and is retaining is insufficient to pay and satisfy such Interim Servicing Expenses or Pre-Approved Charges in full) for the same purposes that the Company and the Servicer will be so permitted after the corresponding Servicing Transfer Date. Subject to the provisions of Sections 4.5(a) and 4.6 (and Section 3.3(h)), the Transferor's performance of this interim servicing shall cease with respect to each Group of Assets on the Servicing Transfer Date for such Group of Assets. For the Due Period in which the Servicing Transfer Date with respect to each Group of Assets occurs, the Transferor will provide (or will cause the applicable Existing Servicer to provide) the Company with a statement setting forth for the period beginning on the first day of the Due Period and ending on the applicable Servicing Transfer Date (i) the amount of payments and other amounts received for each Asset to which such Servicing Transfer Date relates and (ii) the amount of payments made to fund Interim Servicing Expenses made but not reimbursed by the applicable Borrower or Obligor (including payments made from the applicable Existing Servicer's own funds), which amounts are to be reimbursed in accordance with Section 2.3(b). Each such statement also shall include any amounts to be paid to the Transferor on the respective Servicing Transfer Date pursuant to Sections 2.3 and 2.4. This statement will be provided as soon as is reasonably practicable after the Servicing Transfer Date, but in no event later than the due date for the regular Monthly Report for the month in which the Servicing Transfer Date occurs.

(c) To facilitate communication among the Company, the Transferor and the Existing Servicers, on the Closing Date (i) the Company shall designate (and the Private Owner shall cause the Company to designate) a principal contact person whom the Transferor and the Existing Servicers will be authorized to contact with inquiries and requests for guidance or direction concerning the Transferor's and the Existing Servicers' interim servicing responsibilities and (ii) the Transferor shall designate one or more principal contact persons whom the Company and the Servicer will be authorized to contact with inquiries, guidance or directions concerning the Transferor's and the Existing Servicers' interim servicing responsibilities.

(d) The Transferor shall cause all Asset Proceeds received during any particular Due Period during the Interim Servicing Period (and remaining after reimbursement or payment of Interim Servicing Expenses and Pre-Approved Charges and setoff of servicing fees payable to Existing Servicers as set forth in Section 3.3(e))) to be remitted to the Collection Account not later than two Business Days prior to the Distribution Date with respect to such Due Period. The Existing Servicers shall be (and hereby are) authorized by the Company to use Asset Proceeds with respect to any Group of Assets for which the Servicing Transfer Date has not occurred, prior to the time Asset Proceeds are required to be remitted to the Collection

Account, for payment or reimbursement of Interim Servicing Expenses and Pre-Approved Charges (including for the reimbursement of any advances that the Transferor may make during the Interim Servicing Period for payment of Interim Servicing Expenses and Pre-Approved Charges).

(e) In consideration of the services provided by the Transferor with respect to each Group of Assets pursuant to this Section 3.3, the Company shall pay the Interim Servicing Fee to the Transferor for each Due Period in which the Transferor provides interim servicing with respect to such Group of Assets (including the Due Period in which the Servicing Transfer Date with respect to such Group of Assets occurs) in the manner described in the Custodial and Paying Agency Agreement. The Interim Servicing Fee with respect to each Group of Assets will be calculated, earned and due as of the first day of each Due Period in which the Transferor provides interim servicing with respect to such Group of Assets (and, for the avoidance of doubt, shall not be prorated on account of the Servicing Transfer Date with respect to such Group of Assets occurring during such Due Period) and will be payable on each Distribution Date pursuant to the provisions of the Custodial and Paying Agency Agreement. For the avoidance of doubt, any such Interim Servicing Fee payable prior to the last Servicing Transfer Date shall be net of any servicing fees payable to Existing Servicers and such servicing fees will be offset by the Existing Servicers against Asset Proceeds.

(f) The Company hereby ratifies any and all actions taken by the Transferor in performance of interim servicing activities and functions during the Interim Servicing Period (including prior to the Closing Date), including any oversight of the Existing Servicers and in connection with its role of Existing Servicer with respect to a Group of Assets. The Company acknowledges and agrees that the Transferor is performing interim servicing functions for the Company as an accommodation to the Company and that the Transferor shall not have any liability for any acts or omissions taken in connection therewith (other than to correct calculation, allocation or distribution errors). Except for amounts for which the Company may be reimbursed as provided in the LLC Operating Agreement and the Custodial and Paying Agency Agreement, the Company hereby releases and forever discharges the Transferor, the FDIC, each Failed Bank and their respective predecessors-in-interest and all of their respective Related Persons, from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Company had, has or may have in the future, whether known or unknown, that are related in any manner whatsoever to the servicing of the Assets at any time prior to the last Servicing Transfer Date.

(g) The Transferor and the Private Owner shall cooperate (i) to cause all Servicing Transfer Dates to occur prior to the date sixty days from the Closing Date to the extent reasonably practicable, unless a later date is consented to by the Transferor or unless the Transferor and the Company agree, with respect to any particular Group of Assets, upon an earlier date, and (ii) without limitation of clause (i), in the event that the Servicing Transfer Date with respect to any particular Group of Assets does not occur prior to the relevant date specified or described in clause (i), as soon as reasonably practicable after such date.

(h) Notwithstanding anything to the contrary set forth above in this Section 3.3, the Company will assume full responsibility for property management of any Acquired Property immediately on the Closing Date. With respect to such property management, the Servicing Transfer Date shall, in all cases, be the Closing Date.

Section 3.4. Grant of Power of Attorney by Company. The Company hereby irrevocably appoints the Transferor its lawful attorney-in-fact, with full authority in the place and stead of the Company and in the name of the Company, the Transferor 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 the Company is in existence), from time to time in the Transferor's discretion, following a failure by the Company to satisfy promptly its obligations pursuant to Sections 3.1, 3.2, 4.10, 4.11 or 4.12 of this Agreement as they relate to the preparing, furnishing, executing and/or recording of any of the Transfer Documents or any other relevant matter set forth in any such provision, to prepare, furnish, execute and/or record all relevant Transfer Documents and other documents as might be reasonably necessary to satisfy the transfer and recording obligations of the Company pursuant to Sections 3.1, 3.2, 4.10, 4.11 and 4.12 of this Agreement. The Company shall reimburse the Transferor on demand for all costs and expenses incurred by the Transferor in connection with any exercise of the power of attorney set forth in this Section 3.4.

ARTICLE IV
Covenants, Duties and Obligations of the Company

Section 4.1. Servicing of Assets. From and after the Servicing Transfer Date (or, to the extent set forth in Section 3.3(h), the Closing Date), the Company shall service the Assets in compliance with the LLC Operating Agreement.

Section 4.2. Collection Agency/Contingency Fee Agreements. The Company acknowledges and agrees that it accepts and acquires the Assets subject to any agreements with collection agencies or contingency fee agreements with attorneys (in either case that are outstanding and in effect as of the Servicing Transfer Date) that relate only to the Assets (or any of them) and are assignable, and assumes and agrees to fulfill all Obligations of the Transferor and/or any Failed Bank thereunder.

Section 4.3. Insured or Guaranteed Assets. If any Assets being transferred pursuant to this Agreement are insured or guaranteed by any Governmental Authority, and such insurance or guaranty is not being specifically terminated by the Transferor, the Company acknowledges and agrees that such Assets must be serviced by a servicer, lender or mortgagee approved by such Governmental Authority, if such approval is required. The Company further acknowledges and agrees that, upon assumption of the Obligations with respect to the Assets, it assumes full responsibility for determining whether or not any such insurance or guarantees are in effect on the date of this Agreement and, with respect to those Assets with respect to which any such insurance or guarantee is in effect on the date of this Agreement, the Company acknowledges and agrees that, upon assumption of the Obligations with respect to the Assets, it assumes full responsibility for taking any and all actions as may be necessary to insure such

insurance or guarantees remain in full force and effect. The Company acknowledges and agrees that, upon assumption of the Obligations with respect to the Assets, it assumes and agrees to fulfill all of the Transferor's and/or any Failed Bank's Obligations under the contracts of insurance or guaranty. Any out-of-pocket fees due to any insurer or guarantor incurred by the Company (or the Manager or the Servicer for the benefit of the Company) to fulfill its obligations set forth in the preceding sentence shall constitute Pre-Approved Charges.

Section 4.4. Reporting to or for the Applicable Taxing Authorities. With respect to each Asset, the Transferor shall be responsible for submitting all tax information returns with all applicable Governmental Authorities for all applicable periods prior to the respective Servicing Transfer Date, and the Company shall be responsible for submitting all tax information returns with all applicable Governmental Authorities for all applicable periods commencing with the respective Servicing Transfer Date. Information returns include reports on Internal Revenue Service Forms 1098 and 1099. The Company shall be responsible for submitting all information returns required under applicable Law of any Foreign Jurisdiction, to the extent such information returns are required to be filed by the Company or the Transferor under such Law, relating to the Assets, for the calendar or tax year in which the Closing Date falls and thereafter.

Section 4.5. Assets in Litigation.

(a) (i) The Company shall have no obligation to substitute its counsel to represent the Company's interests with respect to any Closing Date Asset Litigation which solely constitutes Retained Closing Date Asset Litigation (and does not also constitute (in whole or in part) Assumed Closing Date Asset Litigation). In such case, the Transferor shall retain all rights and obligations, and shall remain the real party-in-interest, with respect to, and shall retain control over, such Retained Closing Date Asset Litigation. With respect to any Closing Date Asset Litigation which constitutes both Assumed Closing Date Asset Litigation and Retained Closing Date Asset Litigation, the Retained Closing Date Asset Litigation shall be bifurcated from the Assumed Closing Date Asset Litigation, with the Transferor retaining all rights and obligations, and remaining the real party-in-interest, with respect to, and retaining control over, the Retained Closing Date Asset Litigation and with the Company substituting itself as the real party in interest and taking control of the Assumed Closing Date Asset Litigation as is provided otherwise in this Section 4.5. The Company shall be responsible for, and shall pay or reimburse the Transferor for, the reasonable fees and expenses of outside counsel retained by the Transferor to defend any Retained Closing Date Asset Litigation (to the extent that such fees and expenses were or are incurred by the Transferor after the Cut-Off Date), and such obligation of the Company in this sentence shall constitute Servicing Expenses. The Transferor's determination as to whether or not, and the extent to which, a Closing Date Asset Litigation constitutes a Retained Closing Date Asset Litigation shall be conclusive and binding for all purposes with respect to this Agreement.

(ii) The Company shall provide, no later than thirty days after the last of the Litigation Substitution Deadline Dates with respect to the Assumed Closing Date

Asset Litigation, to the Litigation Oversight Attorney for CRE 2011-1 Federal Deposit Insurance Corporation, 1601 Bryan Street, Dallas, Texas 75201-4586, a report (in the form attached to this Agreement as Attachment K) on the status of the substitution of the Company as the real party-in-interest in each Assumed Closing Date Asset Litigation, which report shall include (A) the name of the attorney selected by the Company to represent the Company's interests in each Assumed Closing Date Asset Litigation and (B) with respect to each such Assumed Closing Date Asset Litigation, the date(s) upon which (1) the Company notified the clerk of the court (or other appropriate official) and all counsel of record that ownership of the related Asset was transferred from the Transferor to the Company and (2) the Company's attorney filed with the court (or other appropriate body) substituting the Company's attorney for the Transferor's attorney, removing the Transferor and the Failed Bank as a party to the Assumed Closing Date Asset Litigation and substituting the Company as the real party-in-interest. Before the applicable Litigation Substitution Deadline Date, the Company shall notify the clerk of the court (or other appropriate official) and all counsel of record that ownership of the related Asset was transferred from the Transferor to the Company. Subject to the provisions of Sections 4.5(c), 4.5(d) and 4.15, the Company shall have its attorney file appropriate pleadings and other documents and instruments with the court or other appropriate body before the relevant Litigation Substitution Deadline Date, substituting the Company's attorney for the Transferor's attorney, removing the Transferor and any Failed Bank as a party to the Assumed Closing Date Asset Litigation and substituting the Company as the real party-in-interest. Nothing contained in this Agreement shall preclude the Company from retaining the same attorney retained by the Transferor (or any Failed Bank) to handle such Assumed Closing Date Asset Litigation, provided that, with respect to Closing Date Asset Litigation constituting both Assumed Closing Date Asset Litigation and Retained Closing Date Asset Litigation, and with respect to litigation referred to in Section 4.5(c), the Company shall not retain the same counsel that represents the Transferor unless the FDIC's Regional Counsel (at 1601 Bryan Street, Dallas, Texas 75201-4586) agrees in writing to such dual representation. Subject to the provisions of Section 4.5(b) (and the Company's compliance with its obligations therein), in the event the Company fails, prior to the Litigation Substitution Deadline Date, to remove the Transferor and any Failed Bank as parties to the Assumed Closing Date Asset Litigation and substitute the Company as the real party-in-interest as set forth above in this Section 4.5(a), (x) the Transferor may, but shall have no obligation to, continue to pursue or defend such Assumed Closing Date Asset Litigation on behalf of the Company and (y) in the event the Transferor does continue to pursue or defend such Assumed Closing Date Asset Litigation, the Company shall be liable for and hereby agrees to pay all costs and expenses incurred by the Transferor in connection therewith (which expenses shall constitute Servicing Expenses).

(b) If the Company is unable, as a matter of applicable Law or due to delays in court procedures and practices outside the control of the Company, to cause the Transferor and any Failed Bank to be replaced by the Company as party-in-interest in any Assumed Closing Date Asset Litigation as required by Section 4.5(a)(ii), the Company shall include the facts of such failure (and state the reasons therefor) in the report to be delivered by the Company pursuant to Section 4.5(a)(ii). In any such event, (i) the Company shall cause its attorney to conduct such Assumed Closing Date Asset Litigation at the Company's expense,

which expense shall constitute Servicing Expenses; (ii) the Company shall cause the removal of the Transferor and any Failed Bank and substitution of the Company as party-in-interest in such Assumed Closing Date Asset Litigation at the earliest time possible under applicable Law; (iii) the Company shall use commercially reasonable efforts to cause such Assumed Closing Date Asset Litigation to be resolved by judgment or settlement in as reasonably efficient a manner as practical; (iv) the Transferor shall cooperate with the Company and the Company's attorney as reasonably required in the Transferor's sole judgment to bring such Assumed Closing Date Asset Litigation or any settlement relating thereto to a reasonable and prompt conclusion; and (v) no settlement shall be agreed upon by the Company or its agents or counsel without the express prior written consent of the Transferor, unless such settlement includes an irrevocable and complete waiver and release of any and all potential claims against the Transferor and any Failed Bank (and any predecessor thereto) in relation to such Assumed Closing Date Asset Litigation or the subject Assets or Obligations by any Person asserting any claim in the Assumed Closing Date Asset Litigation and any Borrower, and any and all Losses relating thereto shall be paid by the Company without recourse of any kind to the Transferor or any Failed Bank (other than to the extent the same constitute Servicing Expenses). The Company shall provide to the Transferor no later than twenty Business Days following the Closing Date a report showing the status of each Assumed Closing Date Asset Litigation with respect to the replacement of the Company as the party-in-interest. The Company shall pay all of the costs and expenses incurred by it in connection with the actions required to be taken by it pursuant to Section 4.5(a) and this Section 4.5(b) (which expenses shall constitute Servicing Expenses), including all legal fees and expenses and court costs (which expenses shall constitute Servicing Expenses), and shall reimburse the Transferor, upon demand, for all legal expenses the Transferor incurs on or after the Cut-Off Date with respect to any such Assumed Closing Date Asset Litigation, including costs incurred with the dismissal thereof or withdrawal therefrom (which costs incurred by the Transferor shall constitute Servicing Expenses).

(c) (i) The Company shall, subject to the rights of the Transferor set forth below in this Section 4.5(c), be responsible for and control and assume the investigation and/or defense of any Excluded Liability Company Claim on behalf of the Company and the Company's interest in the Assets, at the Company's expense and with counsel appointed by the Company. Without limitation of, and subject to the Transferor's rights set forth in, this Section 4.5(c), the Company and the Transferor shall cooperate in the defense of any Excluded Liability Company Claim to the extent their interests are not in conflict, and shall use commercially reasonable efforts to work together to resolve or settle such Excluded Liability Company Claim in a manner that is mutually agreeable and in their respective best interests. The Company shall obtain the prior written approval of the Transferor before ceasing to defend against any Excluded Liability Company Claim.

(ii) The Company shall provide written notice in accordance with the notice provisions of Article VII to the Transferor (with a copy to the FDIC's Regional Counsel at the address set forth in Section 4.5(a)(ii) of (A) any Action against (and which names as a party in such Action) the Transferor or the FDIC in its corporate capacity with respect to any Excluded Liability, and (B) any Excluded Liability Company Claim with respect

to which (in the case of this clause (B)) the Company has determined there is a reasonable likelihood it will (1) seek to implead the Transferor into the relevant Excluded Liability Company Action or (2) request that the Transferor intervene in the relevant Excluded Liability Company Action and be involved in the defense of such Action in accordance with Section 4.5(c)(iii). Such notice shall include all court filings and other relevant documents and, in the case of clause (B), shall specify that the Company anticipates seeking to implead the Transferor or requesting the Transferor to intervene (whichever is applicable) and shall include a description, in reasonable detail, of each claim that the Company asserts is an Excluded Liability and the basis for making such assertion. Notice pursuant to this Section 4.5(ii) shall be given within five Business Days of the earlier to occur of service of process of the relevant Action on the Company and the Company's first knowledge of such Action, in the case of any Action described in clause (A), and promptly but in any event no less than fifteen Business Days prior to the date upon which the Company anticipates seeking to implead the Transferor or requesting the Transferor to intervene, in the case of any Excluded Liability Company Claim described in clause (B).

(iii) If the Transferor intervenes in (or is impleaded into) any Excluded Liability Company Action, the Transferor (A) shall have the option, in its sole discretion, (1) to permit the Company's outside counsel to continue to defend any Excluded Liability Company Claim or (2) to retain separate outside counsel of its choosing to defend any Excluded Liability Company Claim and (B) in any event shall have the right thereafter to direct the defense of any Excluded Liability Company Claim, and the Company shall cause its counsel to comply with all such direction. The Company shall cooperate with the Transferor to effect an orderly transition of the defense of any Excluded Liability Company Claim to counsel designated by the Transferor pursuant to this Section 4.5(c)(iii).

(iv) Subject to the provisions of Section 4.5(d), the costs and expenses incurred by the Company in connection with its defense of any Excluded Liability Company Claim, including (A) reasonable attorneys' fees and expenses incurred to defend against (or investigate) the same or pursue counterclaims or cross-claims against other parties, (B) awards or judgments assessed against the Company with respect to any such Excluded Liability Company Claim or (C) the costs of any settlement described in Section 4.5(d)(ii) of such Excluded Liability Company Claim, shall constitute Servicing Expenses. If the Transferor retains separate outside counsel pursuant to Section 4.5(c)(iii)(A)(2), the Company shall be responsible for, and shall pay or reimburse the Transferor for, the reasonable fees and expenses of such counsel, and the Company's obligations under this sentence shall constitute Servicing Expenses.

(v) The Transferor's determination of whether any Liability asserted against the Company is an Excluded Liability, and the extent to which any claim or Action relates to both Excluded Liabilities and other Liabilities, shall be conclusive and binding for all purposes with respect to this Agreement.

(d) If, as a result of any Excluded Liability Company Claim:

(i) there is entered against the Company either (A) a final, non-appealable monetary judgment based upon such Excluded Liability Company Claim holding the Company liable for damages in excess of an amount equal to the Repurchase Asset Value of the Asset relating to or that is the subject of such Excluded Liability Company Claim (such Asset, the "Affected Asset") (such excess amount, an "Excess Damage Liability"), or (B) a final monetary judgment based upon such Excluded Liability Company Claim that is appealable, which the Transferor agrees in writing need not be appealed further by the Company, and that imposes an Excess Damage Liability on the Company, or

(ii) the Company enters into a final settlement agreement with respect to such Excluded Liability Company Claim with the prior written consent of the Transferor (such consent not to be unreasonably withheld), pursuant to which the Company is obligated to pay an Excess Damage Liability,

then, in any such case described in clause (i) or (ii) above, the Transferor shall reimburse the Company for the Excess Damage Liability and the Transferor shall be entitled, at its option, to repurchase the Affected Asset at its Repurchase Price in accordance with the repurchase provisions of Article VI; provided, however, that the Transferor shall not be liable pursuant to this sentence for any Liability imposed upon, or otherwise incurred by, the Company that arises as a result of any act or omission of, or on behalf of, the Company, any Ownership Entity, the Private Owner or the Servicer. Except as expressly set forth in this Section 4.5(d), the Transferor shall not have any Liability to the Company for or in respect of any Excluded Liability Company Claim (including for or in respect of any monetary judgment or monetary settlement described in Section 4.5(d)(i) or 4.5(d)(ii)), and the Company hereby irrevocably waives any such Liability to the Company that the Transferor otherwise would have.

(e) The provisions of Sections 4.5(a), 4.5(b), 4.5(c) and 4.5(d) (i) are subject to the retention by and the related rights of the Transferor with respect to claims described in Section 2.7 of this Agreement, including any such claims as may have been asserted in Assumed Closing Date Asset Litigation, and (ii) do not modify in any manner either the definition of "Obligations" or the definition of "Excluded Liabilities". At the Transferor's discretion, any Closing Date Asset Litigation (constituting Assumed Closing Date Asset Litigation (in whole or in part)) involving any claims retained pursuant to Section 2.7 shall be bifurcated, with the Transferor remaining the real party-in-interest and retaining control over (and being responsible for pursuing and bearing the related costs to pursue) claims retained by it pursuant to Section 2.7, and the Company substituting itself as the real party-in-interest and taking control of (and being responsible for pursuing and bearing the cost of pursuing) the remainder of the Closing Date Asset Litigation (to the extent constituting Assumed Closing Date Asset Litigation). The Transferor's determination of whether or not (and the extent to which) Closing Date Asset Litigation consists of any such claims shall be conclusive and binding for all purposes with respect to this Agreement.

(f) Notwithstanding any provision to the contrary in this Agreement, any payments by the Company of Servicing Expenses pursuant to Section 4.5(c) shall be subject

to the obligation of the Private Owner to reimburse the Transferor under Section 4.6 of the LLC Operating Agreement.

(g) Further notwithstanding any provision to the contrary in this Agreement, in the event that there is instituted any Action challenging the repudiation of any Liability with respect to any Asset by the Transferor and asserting that the Company has any Liability arising from such repudiation, the Transferor shall control and defend such Action (including any claims or actions against the Company) and pay all costs and expenses in respect thereof.

Section 4.6. Assets in Bankruptcy. In accordance with Bankruptcy Rules 3001 and 3002, the Company shall take all actions necessary to file, prior to the respective Servicing Transfer Dates, (i) proofs of claims in pending bankruptcy cases involving any Assets for which the Transferor or the applicable Failed Bank has not already filed a proof of claim, and (ii) all documents required by Rule 3001 of the Federal Rules of Bankruptcy Procedure and to take all such similar actions as may be required in any relevant jurisdiction in any pending bankruptcy or insolvency case or proceeding in such jurisdiction involving any Asset in order to evidence and assert the Company's rights. The Company shall prepare and provide to the Transferor, on or prior to the respective Servicing Transfer Date, an Affidavit and Assignment of Claim in the form attached to this Agreement as Attachment D or any similar forms as may be required in any relevant Foreign Jurisdiction and shall be acceptable to the Transferor, for each Asset where a Borrower or an Obligor with respect to such Asset is in bankruptcy as of the Closing Date. The Company hereby releases the Transferor, the FDIC and each Failed Bank from any claim, demand, suit or cause of action the Company may have as a result of any action or inaction on the part of the Transferor, the FDIC or such Failed Bank with respect to such Asset. In the event the Company fails, prior to the respective Servicing Transfer Date, to take the actions required by this Section 4.6, (a) the Transferor may, but shall have no obligation to, file proofs of claim or other documents as the Transferor determines to be necessary or appropriate to evidence and assert the Company's rights and, (b) in the event the Transferor does take any such actions, the Company shall be liable for and hereby agrees to pay all costs and expenses incurred by the Transferor in connection therewith (which costs incurred by the Transferor shall constitute Servicing Expenses). The provisions of this Section 4.6 are subject to the right of the Transferor to retain claims pursuant to Section 2.7 of this Agreement, including any such claims as may have been asserted in litigation pending as of the Closing Date. At the Transferor's discretion, litigation involving any such claims shall be bifurcated, with the Transferor remaining the real party-in-interest and retaining control over (and being responsible for pursuing and bearing the related costs to pursue) claims retained by it pursuant to Section 2.7 and the Company substituting itself as the real party-in-interest and taking control of (and being responsible for pursuing and bearing the cost of pursuing) the remaining claims in the litigation.

Section 4.7. Asset-Related Insurance. On the Closing Date, (a) the Transferor shall cause to be assigned, to the extent assignable, all existing insurance policies in respect of any Asset or the Collateral for any Asset; (b) the Company shall be responsible for having itself substituted as loss payee on all Asset-related insurance in which any Failed Bank or the

Transferor is currently listed as a loss payee; and (c) the Company shall cause to be put into place such insurance for the Assets and the Collateral for the Assets 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 Assets or the Collateral is located and in such amounts and with such deductibles as, in the reasonable judgment of the Company, are prudent. Upon the cancellation after the Closing Date of any insurance policy maintained by the Transferor or any Failed Bank with respect to any Asset and the receipt by the Company or the Transferor of any refund of any premiums previously paid with respect thereto, such refunded amount shall inure to the benefit of the Borrowers with respect to the affected Assets, and such refunded amount shall be remitted to (or retained by) the Company and applied as appropriate to adjust the Escrow Accounts, if any, or other records with respect to such affected Assets.

Section 4.8. Loans with Escrow Accounts. Amounts or balances related to the Loans on deposit in Escrow Accounts held or controlled by the Transferor or an Existing Servicer shall be transferred to the Company on the respective Servicing Transfer Date. On such date, any positive escrow balances held in the Escrow Accounts, without offset against any negative escrow balances, shall be transferred to the Company. The Company agrees to assume, undertake and discharge any and all Obligations of the holder of the Loans with respect to any Escrow Account and the maintenance of such Escrow Account and the Escrow Payments paid by or on account of the related Borrower.

Section 4.9. Transferor as Lead Lender in Loan Participations. The Transferor hereby assigns and the Company hereby assumes the role of lead lender for any Loan Participations in which a portion of a Loan was participated to one or more Persons and in which the Transferor or any of its predecessors-in-interest was the lead lender as of the Closing Date. The Company hereby agrees to accept any such Loan Participations subject to all participants' right, title and interest in such Loan Participations.

Section 4.10. Contracts for Deed. The Company agrees to comply with all Obligations set forth in any Contract for Deed contained in any Asset subject to this Agreement. Pursuant to the provisions of Section 3.1 hereof, the Transferor may require the Company to prepare and furnish special warranty deeds for the Transferor's approval, conveying the real property subject to any such contract to the Company. The costs and expenses of the Company (or the Manager or the Servicer for the benefit of the Company) for any title curative work, if required, shall constitute Pre-Approved Charges.

Section 4.11. Acquired Property. The Company agrees to comply with all Obligations set forth in any Collateral Document relating to Acquired Property unless (subject in any event to Section 8.13 hereof), in the opinion of the Company, complying with the Obligations pursuant to such Collateral Documents would not be in the best interest (in terms of maximizing the value of the Asset) of the Company and the Initial Member. Pursuant to the provisions of Section 3.1 hereof, the Transferor may require the Company to prepare and furnish special warranty deeds and other applicable Transfer Documents, for the Transferor's approval, to convey the Receiver Acquired Property to the Company.

Section 4.12. Leases. The Company agrees to comply with all Obligations set forth in any lease related to any Asset unless (subject in any event to Section 8.13 hereof), in the opinion of the Company, complying with the Obligations pursuant to such lease would not be in the best interests (in terms of maximizing the value of the Asset) of the Company and the Initial Member. Pursuant to the provisions of Section 3.1 hereof, the Transferor may require the Company to prepare and furnish applicable Transfer Documents for the Transferor's approval and execution.

Section 4.13. Notice to Borrowers. The Company, on a timely basis in accordance with and to the extent (if any) required by any applicable Laws, and pursuant to the Limited Powers of Attorney granted to it pursuant to Section 3.1(d)(i), shall prepare and transmit to each Borrower a joint "hello" and "goodbye" letter, at the Company's expense, which letter shall be subject to the review and reasonable approval of the Transferor. The Company shall, on a timely basis in accordance with the HFSH Act, prepare and transmit to each Borrower any notice required by the HFSH Act.

Section 4.14. Notice of Claims. The Company immediately shall notify the Transferor, in accordance with the notice provisions of Section 7.4, of any claim, threatened claim or litigation against the Transferor or any Failed Bank arising out of any Asset.

Section 4.15. Use of the FDIC's Name and FDIC Legal Powers.

(a) The Company shall not use, or permit the use by its agents, successors or assigns or any Ownership Entity of, any name or combination of letters that is similar to "FDIC" or "Federal Deposit Insurance Corporation." The Company shall not, and shall cause the Ownership Entities not to, represent or imply that it is affiliated with, authorized by or in any way related to the FDIC except that, for so long as the FDIC is a member of the Company, the Company may represent that fact.

(b) (i) Subject to the terms of Section 4.15(b)(ii), the Company shall not, and shall cause the Ownership Entities not to, in any manner assert or otherwise plead, assert or otherwise use, refer to or describe any FDIC Legal Power in any Action or in writing to any third party; provided, however, that the Company shall be entitled to assert (and claim the benefit of) the statute of limitations established under 12 U.S.C. §1821(d)(14).

(ii) The Company shall not make, and shall cause the Ownership Entities not to make, any Interpretive Statement except in strict accordance with this Section 4.15(b). If the Company or any Ownership Entity desires to make an Interpretive Statement, the Company agrees that any such Interpretative Statement may be made only (A) upon (1) delivery of written notice of its desire to make such Interpretative Statement, which notice shall include a draft of the Interpretative Statement and a corresponding legal analysis supporting the interpretations therein, to the Transferor no less than ten Business Days prior to the date upon which the Company proposes to make such Interpretative Statement, and (2) the receipt, prior to the Company making such proposed Interpretive Statement, by the Company of the Transferor's written consent thereto, which consent shall not be withheld so

long as the interpretation set forth in the proposed Interpretive Statement is, in the FDIC's sole and absolute discretion, consistent with the FDIC's interpretation, and (B) under the oversight, and at the direction of, the Transferor.

(iii) The Company shall, and shall cause its counsel to: (A) comply in all respects with (1) all of the Transferor's directions regarding any Interpretive Statement, and (2) all protocols, directives or interpretive memoranda issued from time to time by the Transferor (and any amendment, modification or replacement thereof or successor thereto) that the Transferor has notified the Company in writing that the Company must comply with in connection with making an Interpretive Statement; and (B) with respect to any Action in which the Company has made an Interpretive Statement, notify the Transferor (1) immediately of any judgment or significant order issued therein and (2) upon the Transferor's request, of the status thereof.

Section 4.16. Prior Servicer Information. The Company acknowledges and agrees that the Transferor may not have access to information from servicers of an Asset prior to the appointment of the FDIC as receiver of the applicable Failed Bank and that the Transferor has not requested any information not in the possession of the Transferor or its servicing contractor from any prior servicer of an Asset. The Company acknowledges and agrees that the Transferor will not be required under the terms of this Agreement to request any information from any prior servicer.

Section 4.17. Release of Transferor, FDIC and Failed Bank.

(a) Except as otherwise specifically provided in Article VI of this Agreement or in the LLC Operating Agreement or any other Transaction Document, the Company hereby releases and forever discharges the Transferor, the FDIC, each Failed Bank and all of their respective Related Persons (other than the Company) from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Company had, has or might have in the future, whether known or unknown, which are related in any manner whatsoever to the Assets, the servicing of the Assets (before or after the Cut-Off Date) by (i) the Transferor, any Failed Bank or their predecessors-in-interest, (ii) the FDIC or (iii) any Person acting on behalf of the Transferor, the FDIC or any Failed Bank or their predecessors-in-interest, or the acquisition of the Assets (other than gross negligence or willful misconduct); provided, however, that nothing contained in this Section 4.17(a) shall constitute or be interpreted as a waiver of any express right that the Company has under this Agreement or any of the Transaction Documents.

(b) The Company agrees that it will not renew, extend, renegotiate, compromise, settle or release any Note or Asset or any right of the Company founded upon or growing out of this Agreement, except upon payment in full thereof, unless the Borrower and all Obligors on said Note or Asset first shall release and discharge the FDIC, the Transferor and the applicable Failed Bank with respect to such Asset, and their respective agents and assigns, other than the Company (the "**Released Parties**"), from all claims, demands and causes of action that

any such Borrower may have against any such Released Party arising out of or resulting from any act or omission occurring prior to the date of such release.

ARTICLE V
Assets Conveyed "As Is" and Without Recourse

Section 5.1. Assets Conveyed "As Is". THE ASSETS (INCLUDING ANY INTERESTS IN OWNERSHIP ENTITIES AND RECEIVER ACQUIRED PROPERTY) ARE CONVEYED AND ASSIGNED TO THE COMPANY "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION, WARRANTY OR GUARANTY WHATSOEVER, INCLUDING AS TO COLLECTABILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE, WHETHER EXPRESS OR IMPLIED OR BY OPERATION OF LAW (INCLUDING PURSUANT TO SECTION 3-417 OF THE NYUCC OR SECTION 3-416 OF THE UNIFORM COMMERCIAL CODE), BY ANY PERSON, INCLUDING THE TRANSFEROR, ANY FAILED BANK OR THE FDIC, OR ANY PREDECESSORS-IN-INTEREST OR AFFILIATES OF THE TRANSFEROR, ANY FAILED BANK OR THE FDIC, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. THE TRANSFEROR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS, IMPLIED, OR BY OPERATION OF LAW, CONCERNING THE ASSETS, THE COLLATERAL OR THE COLLATERAL DOCUMENTS, OR WITH RESPECT TO THE LEGALITY, VALIDITY, EFFECTIVENESS, ADEQUACY OR ENFORCEABILITY OF ANY SWAP AGREEMENT OR ANY DOCUMENTS RELATING THERETO OR TO THE CONDITION, FINANCIAL OR OTHERWISE, OF THE PARTIES TO ANY SWAP AGREEMENT OR ANY OTHER PERSON OR FOR THE PERFORMANCE AND OBSERVANCE BY THE PARTIES TO ANY SWAP AGREEMENT OR ANY OTHER PERSON OF ANY OF ITS OBLIGATIONS PURSUANT TO ANY SWAP AGREEMENT OR ANY DOCUMENTS RELATING THERETO OR WITH RESPECT TO ANY OTHER MATTER WHATSOEVER RELATING TO ANY SWAP AGREEMENT.

Section 5.2. No Warranties or Representations with Respect to Escrow Accounts. Without limiting the generality of Section 5.1, the Transferor makes no warranties or representations of any kind or nature as to the sufficiency of funds held in any Escrow Account to discharge any obligations related in any manner to an escrow obligation, as to the accuracy of the amount of any monies held in any Escrow Account or as to the propriety of any previous disbursements or payments from any Escrow Account.

Section 5.3. No Warranties or Representations as to Amounts of Unfunded Principal. Without limiting the generality of Section 5.1, the Transferor makes no warranties or representations of any kind or nature as to the amount of any additional or future advances of principal the Company may be obligated to make pursuant to the Asset Documents.

Section 5.4. Disclaimer Regarding Calculation or Adjustment of Interest on any Asset. Without limiting the generality of Section 5.1, the Transferor makes no warranties or representations of any kind or nature as to the accuracy of any calculation or adjustment of interest on any Loan, including any adjustable rate Loan, whether such calculation or adjustment is made by the FDIC, any Failed Bank, the Transferor or any Affiliate, agent or contractor of any of the foregoing, or any predecessor-in-interest of the Transferor or any other party.

Section 5.5. No Warranties or Representations With Regard to Information. The Transferor makes no warranties or representations of any kind or nature as to the completeness or accuracy of any information provided with respect to any Asset. The Company acknowledges that, for example, and not by way of limitation, some Asset Files may be missing forms or notices, or may contain incomplete or inaccurate forms or notices, that may be required by one or more federal or state consumer protection statutes. The Company's exclusive remedies with respect to any inaccurate or incomplete information provided by the Transferor are an adjustment in accordance with Section 2.4 or an option to repurchase pursuant to Article VI, and such exclusive remedies are available only if all other conditions theretofore expressed in this Agreement have been met.

Section 5.6. Intervening or Missing Assignments. The Company acknowledges and agrees that the Transferor shall have no obligation to secure or obtain any missing intervening Mortgage Assignment or other assignment to the Transferor or any Failed Bank that is not contained in the documents or files delivered to the Company or the Custodian pursuant to Section 3.1(b). Neither the absence of any intervening Mortgage Assignment or any Mortgage Assignment to the Transferor, the FDIC or any Failed Bank, nor the existence of any Lien on the Asset or its Collateral, nor any defect in the Lien or priority of the Transferor's or the applicable Failed Bank's security interest in the Collateral shall give rise to any claim for purchase under Article VI. The Company shall bear all responsibility and expense of securing from the appropriate source any intervening Mortgage Assignment or any other assignment to the Transferor, the FDIC or any Failed Bank that may be missing from the documents or files delivered to the Custodian pursuant to Section 3.1(b), but the costs thereof incurred by the Company (or the Manager or the Servicer for the benefit of the Company) shall constitute Pre-Approved Charges.

Section 5.7. No Warranties or Representations as to Documents. The Transferor makes no warranties or representations of any kind or nature as to the effectiveness or enforceability in any Foreign Jurisdiction of this Agreement or any other document or instrument delivered or prepared in connection herewith, whether or not prepared and executed in the forms provided herewith, all of such forms being provided for reference only.

Section 5.8. No Warranties or Representations as to Real Estate Taxes or Other Potential Liens Affecting Collateral. Without limiting the generality of Section 5.1, the Transferor makes no warranties or representations of any kind or nature as to the existence or amount of any unpaid back real estate Taxes, penalties, interest or other amounts due or overdue and payable or to become due and payable with respect to any Asset or Collateral or related

Liens against any Asset or Collateral which amounts may be subject to payment by the Company in accordance with the terms of the Transaction Documents. The Transferor retains no obligations with respect to payment or discharge of any real estate Taxes, penalties, interest or other amounts or any Liens or other encumbrances resulting from the nonpayment thereof without regard to when such Taxes, penalties, interest or other amounts became due and without regard to when such Liens or other encumbrances arose.

Section 5.9. No Warranties or Representations as to Assets or Liabilities of Ownership Entities. Without limiting the generality of Section 5.1 or Section 5.8, the Transferor makes no warranties or representations of any kind or nature as to the assets or Liabilities of any Ownership Entity included in the Assets.

ARTICLE VI
Repurchase by Transferor at Company's Option

Section 6.1. Repurchases at Company's Option. The Company, at its option, and upon satisfaction of the procedures and other requirements set forth below, may require the Transferor to repurchase an Asset, if, and only if, (i) prior to the Closing Date, one of the events described in Section 6.1(a) through (h) has occurred or (ii) after the Closing Date, there is issued by a court of competent jurisdiction with respect to such Asset a final, non-appealable (unless the Transferor has agreed in writing that no appeal need be taken) order or judgment or there is entered into, with the consent of the Transferor, a final settlement of any claim, action or litigation (the "**Order**") that requires the assignment and transfer of such Asset back to the Transferor. IN NO EVENT SHALL THE OCCURRENCE OF ANY SUCH EVENT OR THE OBLIGATION TO REPURCHASE AN ASSET PURSUANT TO THIS ARTICLE VI BE EVIDENCE OF ANY BAD FAITH, MISCONDUCT OR FRAUD ON THE PART OF THE TRANSFEROR, THE FDIC OR ANY FAILED BANK OR ANY PREDECESSOR-IN-INTEREST OR ANY AFFILIATE THEREOF, OR ANY OF THEIR RESPECTIVE DIRECTORS, EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS, EVEN IF IT IS SHOWN THAT THE TRANSFEROR, THE FDIC OR ANY FAILED BANK OR ANY PREDECESSOR-IN-INTEREST OR ANY AFFILIATE THEREOF, OR ANY OF THEIR RESPECTIVE DIRECTORS, EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS, (A) KNEW OR SHOULD HAVE KNOWN OF THE EXISTENCE OF ANY FACTS RELATING TO THE OCCURRENCE OF SUCH EVENT, (B) CAUSED SUCH EVENT OR (C) FAILED TO MITIGATE SUCH EVENT OR ANY OF THE LOSSES RESULTING THEREFROM.

(a) If the Asset is a Loan, the Borrower had been discharged in a no asset bankruptcy proceeding, there is no Collateral securing such Loan and out of which such Loan may be satisfied, and all other Obligors with respect to the Note, if any, or the obligations contained therein, have similarly been discharged in no asset bankruptcies.

(b) If the Asset is a Loan, a court of competent jurisdiction had entered a final, non-appealable judgment or order (unless the Transferor has agreed in writing that no appeal need be taken other than a bankruptcy decree or judicial foreclosure order) holding that

neither the Borrower nor any other Obligors, owe an enforceable obligation to pay the holder of the Note or its assignees.

(c) If the Asset is a Loan, the Transferor or the applicable Failed Bank had executed and delivered to the Borrower a release of liability from all obligations under the Note.

(d) A title defect exists in connection with the property that is the subject of a Contract for Deed, which title defect requires a prior order or judgment of a court to enable the Company to convey title to such property in accordance with the terms and conditions set forth in the Contract for Deed.

(e) The Transferor is not the owner of the Asset (or, in the case of a Loan Participation, the Transferor is not the owner of the *pro rata* interest in such Loan Participation set forth on the Asset Schedule) and such is not curable by the Transferor so as to permit ownership of the Asset to be transferred to the Company.

(f) There exists an Environmental Hazard, in which case the Company's recourse with respect to this Section 6.1(f) shall be conditioned upon: (i) the presence of the Environmental Hazard not being disclosed in the Asset Documents, Asset File or other material provided by the FDIC to the Private Owner prior to submission of the Bid; (ii) such Asset having an Adjusted Unpaid Principal Balance greater than $250,000.00; and (iii) the Company delivering, along with the notice required by Section 6.2, the following, each of which must be satisfactory in form and substance to the Transferor in its discretion:

(x) A Phase I environmental assessment, from a qualified and reputable firm, of the Acquired Property or the Mortgaged Property securing such Loan, as the case may be, and

(y) A Phase II environmental assessment or lead-based paint survey of such Acquired Property or Collateral from a qualified and reputable firm, which assessment shall confirm (A) the existence of such Environmental Hazard on such Acquired Property or Mortgaged Property and (B) that the regulator is likely to require remediation of such Environmental Hazard; and

(z) written certification of the Company under penalty of perjury that no action has been taken by or on behalf of the Company, with respect to a Loan, (A) to initiate foreclosure proceedings or (B) to accept a deed-in-lieu-of-foreclosure in connection with such Loan.

(g) The Transferor or the applicable Failed Bank, or its respective officers, directors or employees, fraudulently caused the Borrower to receive less than all of the proceeds and benefits of a Note. The Company's recourse with respect to this Section 6.1(g) shall be conditioned upon the Company delivering, along with the notice required by Section 6.2,

written evidence of such fraud, which evidence must be satisfactory in form and substance to the Transferor in its discretion.

(h) There is instituted after the Cut-Off Date any Action that (i) is asserted by more than one Borrower and any Affiliates (with multiple Borrowers with respect to Loans secured by the same Collateral being considered a single Borrower for purposes of this Section) with respect to more than one Asset (with multiple Loans secured by the same Collateral being considered a single Asset for purposes of this Section), (ii) includes allegations of fraud on the part of the Transferor or any Failed Bank in connection with the Transferor's or such Failed Bank's origination of such Assets (or the related Underlying Loans) and (iii) names the Transferor or any Failed Bank as a defendant and that asserts liability on the part of the Transferor or such Failed Bank for which the Company is not liable as assignee, as a matter of Law, with respect to such Assets.

Section 6.2. Notice to Transferor. The Company shall notify the Transferor of each Asset with respect to which the Company seeks to exercise its rights pursuant to Section 6.1. Such notice shall be on the Company's letterhead and include the following information: (a) the Company's tax identification number, (b) the Company's wire transfer instructions, (c) the asset number and other identifying information related to the Asset, (d) the subsection of Section 6.1 pursuant to which the Company is seeking to require the Transferor to repurchase the Asset, (e) a summary of the reasons the Company believes that the Asset should be repurchased by the Transferor and (f) a certification by the Company that the request for repurchase is being submitted in good faith and is complete and accurate in all respects to the best of the Company's knowledge. The notice shall be accompanied by evidence supporting the basis for the Transferor's repurchase of such Asset. Promptly upon request by the Transferor, the Company shall supply the Transferor with any additional evidence that the Transferor reasonably may request. The Transferor shall have no obligation to repurchase any Asset pursuant to this Article VI for which notice and all supporting evidence reasonably required by the Transferor have not been received by the Transferor at the addresses specified in Article VII no later than the first Business Day after the expiration of (x) in the case of any purchase demand pursuant to Section 6.1(a) through (h), one hundred and eighty calendar days after the Closing Date, or in the case of a Contract for Deed, the first Business Day after the expiration of three hundred and sixty calendar days after the Closing Date, and (y) in the case of any purchase demand with respect to the issuance of an Order, thirty days after the issuance of the Order.

Section 6.3. Re-delivery of Notes, Files and Documents. For any Asset that qualifies for re-purchase pursuant to this Article, the Company shall: (a) re-endorse and deliver the Note with respect to any Loan or Underlying Loan to the Transferor (or its designee); (b) assign all Collateral Documents associated with such Asset and reconvey any real property subject to a Contract for Deed or any related Receiver Acquired Property or Company Acquired Property, together with such other documents or instruments as shall be necessary or appropriate to convey the Asset (including any related Receiver Acquired Property or Company Acquired Property and including any related equity interests in an Ownership Entity) back to the Transferor (or its designee); (c) deliver to the Transferor (or its designee) the Asset File, along

with any additional records compiled or accumulated by the Company pertaining to the Asset; (d) take such actions as are necessary, or as the Transferor reasonably may specify, to transfer from the Company to the Transferor any litigation (including any Assumed Closing Date Asset Litigation) or bankruptcy action involving the subject Asset (including to transfer from the Company to the Transferor sole control over such litigation or bankruptcy action), including substituting the duties of the Company for the Transferor and the Transferor for the Company, and with respect to the Affidavit and Assignment of Claim, the form of which is attached to this Agreement as Attachment D, substituting the duties of the Assignor (as such term is defined therein) for the Assignee (as such term is defined therein) and the Assignee for the Assignor; (e) transfer to the Transferor any positive escrow balances held in the Escrow Accounts with respect to such Asset, without offset against any negative escrow balances; and (f) deliver to the Transferor (or its designee) a certification, notarized and executed under penalty of perjury by a duly authorized representative of the Company, certifying that (i) as of the date of repurchase by the Transferor none of the conditions relieving the Transferor of its obligation to repurchase the Asset as specified in Section 6.4 has occurred and (ii) the Company has complied with the requirements of clauses (a) through (e) of this sentence. The documents evidencing the conveyance of the Asset to the Transferor shall be substantially the same as those executed pursuant to Article III of this Agreement to convey the Asset to the Company. In all cases in which the Company recorded or filed among public records any document or instrument evidencing a transfer of the Asset to the Company, the Company shall cause to be recorded or filed among such records a similar document or instrument evidencing the reconveyance of the Asset to the Transferor. Upon compliance by the Company with the provisions of this Section 6.3, the Transferor shall pay to the Company the Repurchase Price, and the Repurchase Price shall be deposited into the Collection Account (and a portion of such Repurchase Price equal to the sum of the Purchase Money Notes Asset Value and the Adjusted Equity Asset Value of the relevant Asset (each of which the Transferor shall specify to the Paying Agent) shall be applied in the manner set forth in Section 5.1(c) of the Custodial and Paying Agency Agreement).

Section 6.4. Waiver of Company's Repurchase Option. The Transferor will be relieved of its obligation to repurchase any Asset for any reason set forth in Section 6.1 if the Company: (a) except in the case of the permanent refinance of a Loan in connection with the final Authorized Funding Draw with respect to such Loan, modifies any of the terms of the Loan (including the terms of any Collateral Document or Contract for Deed); (b) exercises forbearance with respect to any scheduled payment on the Loan; (c) accepts or executes new or modified lease documents assigned by the Transferor to the Company; (d) sells, assigns or transfers the Asset or any interest therein; (e) (i) fails to comply with the LLC Operating Agreement in the maintenance, collection, servicing and preservation of the Asset, including delinquency prevention, collection procedures and protection of collateral as warranted, or (ii) without limiting the generality of clause (i), settles or compromises (without the Transferor's written consent), or fails diligently to conduct (including if relevant to defend), any litigation or bankruptcy action described in Section 6.3(d) with respect to the Asset; (f) initiates any litigation in connection with the Asset or the Mortgaged Property securing the Asset other than litigation to force payment or to realize on the Collateral securing the Asset; (g) completes any action with respect to foreclosure on, or accepts a deed-in-lieu of foreclosure for, any Collateral securing the

Asset; (h) causes, by action or inaction, the priority of title to the Asset, Mortgaged Property and other security for the Asset to be less than that conveyed by the Transferor; (i) causes, by action or inaction, the security for the Asset to be different than that conveyed by the Transferor, except as may be required by the terms of the Collateral Documents; (j) causes, by action or inaction, a claim of third parties to arise against the Company that, as a result of purchase under this Agreement, may be asserted against the Transferor; (k) causes to arise, by action or inaction, a Lien of any nature to encumber the Asset; (l) is the Borrower or any other Obligor, or any Affiliate thereof, with respect to such Asset; or (m) makes any disbursement of principal or otherwise incrementally funds any Loan. For the avoidance of doubt, and without limitation of clause (g) of the preceding sentence, it is understood and agreed that the Transferor will not have any obligation pursuant to this Section 6.1 to repurchase any Acquired Property that, as of the Closing Date, constituted Collateral (and was not Acquired Property).

ARTICLE VII
Notices

Section 7.1. Notices. All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be given by certified or registered mail, postage prepaid, delivered by hand or by nationally recognized air courier service, or sent via electronic mail followed up by a hard copy of such notice, in any case directed to the address of such Person as set forth in the applicable Section of this Article VII. Any such notice shall become effective when received (or when receipt is refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day of the recipient. From time to time, any Person may designate a new address for purposes of notice hereunder by notice to such effect to the other Persons identified in this Article VII.

Section 7.2. Article VI Notice. Any notice, request, demand or other communication required or permitted to be given to the Transferor pursuant to the provisions of Article VI shall be delivered to:

Transferor:

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

with a copy to:

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

Section 7.3. Transfer Documents. For purposes of designating the Custodian as the return addressee on Transfer Documents, the following address shall be used:

Custodian:

Wells Fargo Bank, National Association
9062 Old Annapolis Road
Columbia, MD 21045
Attention: Client Services Manager
Reference: CRE Venture 2011-1, LLC
E-mail Addresses: [redacted]

Section 7.4. All Other Notices. Any notice, request, demand or other communication required or permitted to be given pursuant to any provision of this Agreement and that is not governed by the provisions of Section 7.2 or 7.3 shall be delivered to:

Company before Closing:

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

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

Company after Closing:

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

ARTICLE VIII
Miscellaneous Provisions

Section 8.1. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (a) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (b) without limitation of clause (a), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (c) without limitation of clauses (a) or (b), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (p) modify such provision (including without limitation, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such

jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (q) enforce such provision, as so modified pursuant to clause (p), in such proceeding. Nothing in this Section 8.1 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 8.2.

Section 8.2. 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 MAY 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. NOTHING IN THIS AGREEMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS AGREEMENT.

Section 8.3. Cost, Fees and Expenses. Except as otherwise provided in this Agreement, each party to this Agreement agrees to pay all costs, fees and expenses which it has incurred in connection with or incidental to the matters contained in this Agreement, including fees and disbursements to its accountants, brokers, financial advisors and counsel.

Section 8.4. Waivers; Amendment and Assignment.

(a) No provision of this Agreement may be amended or waived except in writing executed by all of the parties to this Agreement. This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits set forth in this Agreement shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors and permitted assigns, and (except as specified in Section 8.4(f)) no other Person or Persons (including Borrowers or any co-lender or other Person with any interest in or liability under any of the Assets) shall have any rights or remedies pursuant to or by reason of this Agreement. Notwithstanding the foregoing, this Agreement may not be transferred or assigned by the Company without the express prior written consent of the Transferor, and any attempted assignment without such consent shall be void *ab initio*.

(b) (i) Subject to the requirements and restrictions for the transfer of the Purchase Money Notes pursuant to the Custodian and Paying Agency Agreement (but otherwise any term of any Transaction Document to the contrary notwithstanding), the FDIC shall be permitted, without restriction, to effect any number of FDIC Purchase Money Note Dispositions.

(ii) Each of the Company and the Private Owner agrees to cooperate in all respects with and assist, and the Private Owner agrees to cause the Company to

cooperate in all respects with and assist, the FDIC in any actual or proposed FDIC Purchase Money Note Disposition, including by, as and to the extent requested by the FDIC, (w) providing such information and documentation as may be reasonably requested by the FDIC, including such information and documentation as may be necessary or advisable for compliance with the Securities Act, the Exchange Act, the Investment Company Act and other applicable Laws (as determined in good faith by the FDIC), or as would be otherwise customarily provided in connection with the issuance or sale of securities similar to the Purchase Money Notes, (x) entering into an indenture, fiscal and paying agent agreement or other similar agreement, and other agreements, with respect to the Purchase Money Notes or the FDIC Purchase Money Note Disposition, satisfactory to the FDIC, (y) causing legal counsel for each of the Company and the Private Owner to issue such legal opinions as may reasonably be requested or as would be otherwise customarily provided in connection with the issuance or sale of securities similar to the Purchase Money Notes and (z) providing certificates and other closing documents, in form and substance satisfactory to the FDIC.

(iii) Each of the Company and the Private Owner shall cooperate in all respects with and assist, and the Private Owner agrees to cause the Company to cooperate in all respects with and assist, the FDIC to effect any amendments or modifications to the Transaction Documents (including this Agreement and the Purchase Money Notes) that the FDIC may request from time to time in connection with any actual or proposed FDIC Purchase Money Notes Disposition, including to increase or decrease the aggregate outstanding principal amount of any Class of Purchase Money Notes that is FDIC-Owned (with an appropriate corresponding decrease or increase in the aggregate outstanding principal amount of another Class of Purchase Money Notes that is FDIC-Owned) or to make such Class of Purchase Money Notes interest bearing (with an appropriate decrease in the aggregate outstanding principal amount of such, or another, Class of Purchase Money Notes that is FDIC-Owned), provided that no such amendment or modification will increase the aggregate outstanding principal amount of such Class of Purchase Money Notes (except as expressly provided above).

(iv) Any terms of this Agreement or any other Transaction Document to the contrary notwithstanding, the Transferor may, at any time or from time to time provide, or arrange for the provision by any Person of, a guaranty with respect to any Class of Purchase Money Notes, substantially in the form of Attachment L hereto (or substantially in such form except for such changes thereto as do not materially adversely affect the Company). If requested by the Transferor, the Company forthwith shall (and the Private Owner shall cause the Company forthwith to) execute and deliver the acknowledgement in respect of each Purchase Money Notes Guaranty contemplated by the form of guaranty set forth in Attachment L hereto.

(v) At the request of the FDIC at any time or from time to time (whether or not in connection with any proposed FDIC Purchase Money Notes Disposition), the Company shall, at its own expense (which shall be a Pre-Approved Charge), use its best efforts to, as promptly as practicable after such request of the FDIC, make any Class of Purchase Money Notes that is FDIC-Owned DTC Eligible (which efforts shall include making any

amendments to, or exchanges of, the Transaction Documents (including the Purchase Money Notes), executing any Letter of Representations or other documentation required by the DTC, and securing CUSIP and ISIN numbers for such Class of Purchase Money Notes, in each case to the extent requested by the FDIC).

(c) In addition to (and not in limitation of) the rights of the FDIC under Section 8.4(b) above and the rights of any Purchase Money Notes Guarantor under Section 2.8 of the Custodial and Paying Agency Agreement, in order to facilitate, or in connection with or in contemplation of, any restructuring of the Purchase Money Notes, any FDIC Purchase Money Notes Disposition (or any reissuance, restructuring or sale of any promissory notes to be issued pursuant to Section 2.8 of the Custodial and Paying Agency Agreement) or the delivery of any Purchase Money Notes Guaranty, the FDIC, without the consent of the Private Owner, the Initial Member, the Company or any Holder, may, at any time (and from time to time) that any Class of Purchase Money Notes is FDIC-Owned, require the Company to (i) replace such Class of Purchase Money Notes with another class or classes of promissory notes, or otherwise reissue one or more of any such Classes of Purchase Money Notes, including in each case to have maturity date(s) and principal amount(s) that are different from those of such Class or Classes of Purchase Money Notes prior to such replacement or reissuance, and (ii) make related changes, modifications or amendments to this Agreement, such replacement or reissued promissory notes and the Transaction Documents (and the Company shall comply with any such requirement). Any such class of replacement or reissued promissory notes shall be considered to constitute a "Class" of "Purchase Money Notes" for all purposes of the Transaction Documents. The aggregate outstanding principal amount of all such replacement or reissued Purchase Money Notes at the time of their original issuance or reissuance, as the case may be, pursuant to this Section 8.4(c) shall be equal to the aggregate outstanding principal amount of all Classes of Purchase Money Notes so being replaced and/or reissued immediately prior to such replacement and/or reissuance.

(d) The maturity date of any amended, replacement or reissued Purchase Money Notes pursuant to this Section 8.4 shall not be later than, and prior to the Guaranty Issuance Date shall be August 10, 2018. No change, amendment or modification to the Transaction Documents pursuant to this Section 8.4 shall adversely affect in any material respect the amount or timing of distributions to the Initial Member or the Private Owner pursuant to the Priority of Payments or any other direct rights or obligations of, or the need for direct advances, contributions or payments from, the Private Owner or the Initial Member pursuant to any Transaction Document (other than the Purchase Money Notes), in each case unless such adversely affected Private Owner or Initial Member, as applicable, shall have consented to the applicable provisions resulting in such adverse effect. Any change, amendment or modification to the Transaction Documents pursuant to this Section 8.4 at a time when any of the Purchase Money Notes are not FDIC-Owned shall require the consent of the Required PMN Consenting Parties. Prior to effecting any changes, amendments or modifications to the Transaction Documents pursuant to this Section 8.4, the FDIC shall notify each of the Private Owner and the Company of any such contemplated changes, amendments or modifications. For the avoidance of doubt, nothing in this Section 8.4(d) (i) applies to any amendment or modification of the

definition of the term "Required PMN Consenting Parties" in accordance with the definition of such term (it being understood and agreed that the Required PMN Consenting Parties have absolute discretion to modify such term in any manner it desires in connection with any such Purchase Money Notes Disposition (or otherwise)) or (ii) modifies or qualifies the last sentence of Section 12.1 of the Reimbursement, Security and Guaranty Agreement. The Company and the Private Owner shall cooperate in all respects with and assist (and the Private Owner agrees to cause the Company to cooperate in all respects with and assist) the FDIC in effecting all replacements and reissuances of Purchase Money Notes, and all changes, amendments or modifications therein and to the other Transaction Documents, required by the FDIC pursuant to this Section 8.4, including causing legal counsel for the Company to issue such legal opinions as may reasonably be requested or required in connection therewith. The issuance of any amended, replacement or reissued Purchase Money Notes as described in this Section 8.4(c) shall be at the cost and expense of the Company and any such cost and expense shall be deemed a Pre-Approved Charge. For the avoidance of doubt, any applicable fees of the Custodian in connection with additional reporting required by the FDIC pursuant to this Section 8.4 shall be considered as part of fees of the Custodian to be paid by the Company pursuant to the Custodial and Paying Agency Agreement.]

(e) The terms of Sections 8.4(b) and (c) above, and Section 8.4(f) below, shall apply notwithstanding anything to the contrary contained elsewhere in this Agreement (including Section 8.4(a) or in any other Transaction Document).

(f) Each of the FDIC, and each Purchase Money Notes Guarantor, is hereby constituted an express third party beneficiary of this Section 8.4 and of, to the extent relevant to this Section 8.4, the remainder of this Article VIII, and neither this Section 8.4 nor, in relation to this Section 8.4, the remainder of this Article VIII, may be amended or modified without the consent of the FDIC (acting in its Corporate capacity) and each Purchase Money Notes Guarantor. The FDIC is hereby constituted an express third party beneficiary of Section 8.13 and of, to the extent relevant to Section 8.13, the remainder of this Article VIII, and neither Section 8.13 nor, in relation to Section 8.13, the remainder of this Article VIII, may be amended or modified without the consent of the FDIC (acting in its Corporate capacity). For the avoidance of doubt, each of the Transferor and the FDIC may enforce the provisions of Section 8.13 (and any other indemnity set forth herein) with respect to any Related Person in relation to itself (in its own name and/or in the name of and/or otherwise on behalf of such other Related Person).

Section 8.5. No Presumption. This Agreement shall be construed fairly as to each party hereto 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 hereto.

Section 8.6. Entire Agreement. This Agreement and the Transaction Documents contain the entire agreement between the Transferor and the Company and its

Affiliates with respect to the subject matter hereof and supersede any and all other prior agreements, whether oral or written; provided, however, that any confidentiality agreement between the FDIC and the Private Owner or any Affiliates of the Private Owner (including by way of joinder) with respect to the transaction that is the subject of this Agreement and the Transaction Documents (including the Confidentiality Agreement) shall remain in full force and effect to the extent provided therein, except that the Company's rights under Article VI shall not be deemed a repurchase option for purposes of Section 2 of the Confidentiality Agreement (or any corresponding provision of any other such confidentiality agreement). In the event of a conflict between the terms of this Agreement and the terms of any Transfer Document or other document or instrument executed in connection herewith or in connection with the transactions contemplated hereby, including any translation into a foreign language of this Agreement for the purpose of any Transfer Document, or any other document or instrument executed in connection herewith which is prepared for notarization, filing or any other purpose, the terms of this Agreement shall control, and furthermore, the terms of this Agreement shall in no way be or be deemed to be amended, modified or otherwise affected in any manner by the terms of such Transfer Document or other document or instrument.

Section 8.7. Jurisdiction; Venue and Service.

(a) The Company, on behalf of itself and its Affiliates, hereby irrevocably and unconditionally:

(i) consents to the jurisdiction of the United States District Court for the Southern District of New York and to the jurisdiction of the United States District Court for the District of Columbia for any suit, action or proceeding against it or any of its Affiliates commenced by the Transferor or the FDIC arising out of, relating to, or in connection with this Agreement or any Transaction Document, and waives any right to:

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

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

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

(ii) consents to the jurisdiction of the Supreme Court of the State of New York, County of New York, for any suit, action or proceeding against it or any of its Affiliates commenced by the Transferor or the FDIC arising out of, relating to, or in

connection with this Agreement or any 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 Transferor or the FDIC, as the case may be;

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

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

(iii) agrees to bring any suit, action or proceeding by the Company, or its Affiliate against the Transferor or the FDIC arising out of, relating to, or in connection with this Agreement or any Transaction Document, in only the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Transferor or the FDIC, as the case may be, 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 Transferor or the FDIC, as the case may be; 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 8.7(a)(iii), to bring that suit, action or proceeding in only the Supreme Court of the State of New York, County 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 Transferor or the FDIC, as the case may be.

(b) Each of the Private Owner and the Company, 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 8.7(a) may be enforced in any court of competent jurisdiction.

(c) Subject to the provisions of Section 8.7(d), each of the Private Owner and the Company, on behalf of itself and its Affiliates, and the Transferor hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 8.7(a) or Section 8.7(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 Sections 7.1 and 7.4 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 8.7(c) shall affect the right of any party to serve process in any other manner permitted by Law.

(d) Nothing in this Section 8.7 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Section 8.7(a)(iii) and Section 8.7(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 8.8. Waiver of Jury Trial. EACH OF THE COMPANY, FOR ITSELF AND ITS AFFILIATES, AND THE TRANSFEROR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

Section 8.9. 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 hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No signatory to this Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

Section 8.10. Headings. Article, section or paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof. All article, section and paragraph references contained in this Agreement shall refer to articles, sections and paragraphs in this Agreement unless otherwise specified.

Section 8.11. Compliance with Law. Except as otherwise specifically provided in this Agreement, each party to this Agreement shall, at its own cost and expense, obey and comply with all Laws, as they may pertain to such party's performance of its obligations hereunder.

Section 8.12. Right to Specific Performance. THE COMPANY HEREBY ACKNOWLEDGES AND AGREES THAT THE DAMAGES TO BE INCURRED BY THE TRANSFEROR AS A RESULT OF THE COMPANY'S BREACH OF THIS AGREEMENT WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN, THAT DAMAGES WILL NOT BE AN ADEQUATE REMEDY AND THAT ANY BREACH OR THREATENED BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT BY THE COMPANY MAY CAUSE IMMEDIATE IRREPARABLE HARM FOR WHICH THERE MAY BE NO ADEQUATE REMEDY AT LAW. ACCORDINGLY, THE PARTIES AGREE THAT, IN THE EVENT OF ANY SUCH BREACH OR THREATENED BREACH, THE TRANSFEROR SHALL BE ENTITLED TO (I) IMMEDIATE AND PERMANENT EQUITABLE RELIEF

(INCLUDING INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE OF THE PROVISIONS OF THIS AGREEMENT) FROM A COURT OF COMPETENT JURISDICTION (IN ADDITION TO ANY OTHER REMEDY TO WHICH IT MAY BE ENTITLED AT LAW OR IN EQUITY), AND (II) SOLELY IN THE CASE OF A BREACH OF SECTION 4.15 HEREOF, LIQUIDATED DAMAGES IN THE AMOUNT OF $25,000 FOR EACH BREACH OF SUCH SECTION. THE PARTIES AGREE AND STIPULATE THAT THE TRANSFEROR SHALL BE ENTITLED TO EQUITABLE (INCLUDING INJUNCTIVE) RELIEF WITHOUT POSTING A BOND OR OTHER SECURITY, AND THE COMPANY FURTHER WAIVES ANY DEFENSE IN ANY SUCH ACTION FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF THAT A REMEDY AT LAW WOULD BE ADEQUATE AND ANY REQUIREMENT UNDER LAW TO POST SECURITY AS A PREREQUISITE TO OBTAINING EQUITABLE RELIEF. NOTHING CONTAINED IN THIS SECTION SHALL LIMIT EITHER PARTY'S RIGHT TO ANY REMEDIES AT LAW, INCLUDING THE RECOVERY OF DAMAGES FOR BREACH OF THIS AGREEMENT.

Section 8.13. Indemnity.

(a) The Company shall indemnify and hold harmless the Transferor and the FDIC, and their respective Related Persons (all of the foregoing, collectively, the "**Indemnified Parties**"), from and against any and all Losses whatsoever directly or indirectly resulting from, connected with, arising out of or related to (i) any failure by the Company to pay and perform the Obligations when due (including any such failure pursuant to the express provisions of Sections 4.11 and 4.12 hereof permitting the Company to, under circumstances, refrain from performing certain Obligations), (ii) the services (including in any event all Servicing) provided (or caused to be provided) or contemplated to be provided (or to be caused to be provided) by the Transferor and/or any Existing Servicer pursuant to, or as described in, Section 3.3 hereof (including all such services, and in any event all Servicing, provided (or caused to be provided) by the Transferor and/or any Existing Servicer between the Cut-Off Date and the Closing Date) or any action taken or not taken by the Transferor and/or any Existing Servicer, or any Related Person of the Transferor and/or any Existing Servicer, in relation to any of the foregoing, provided that the Company shall not be required pursuant to clause (ii) to indemnify or hold harmless any Indemnified Party from any Losses to the extent directly or indirectly resulting from, connected with, arising out of or related to any gross negligence, bad faith or willful misconduct (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law) on the part of such, or any other, Indemnified Party, (iii) the contents or form of any endorsement or allonge to a Note, Assignment and Lost Instrument Affidavit, Mortgage Assignment, deed, assignment of lease, assignment of Ownership Entity interests or other document of assignment, conveyance or transfer used in connection with the transfer to the Company of any Asset, any Collateral or any Collateral Document (or of the Transferor's rights with respect thereto) (x) the form of which was not provided by the Transferor as an attachment hereto (including any Losses whatsoever directly or indirectly resulting from, connected with, arising out of or related to any claim relating to the adequacy or inadequacy of any such document or instrument for the purposes thereof) or (y) that does not comply with the requirements for recordation or filing thereof in the relevant jurisdiction or

otherwise is not sufficient under applicable Law to reflect the transfer intended to be effected thereby or otherwise does not comply with applicable Law (regardless of whether or not the form thereof was provided by the Transferor as an attachment hereto), or (iv) any use of any FDIC Power of Attorney (x) in any manner not expressly permitted by the terms of such FDIC Power of Attorney, (y) without limiting the generality of clause (x), in violation of any restrictions on the use thereof set forth in such FDIC Power of Attorney or any Transaction Document (or any other agreement between the FDIC and the Company) or otherwise communicated to the Company by the FDIC in writing or (z) in any manner constituting, or as part of or otherwise in connection with any conduct or course of conduct constituting, bad faith, willful misconduct, theft, embezzlement, breach of trust or any violation of any Law. 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 8.13(a) (a "**Third Party Claim**"), to the Company promptly after receipt by such Indemnified Party of written notice of the Third Party Claim, describing such Third Party Claim in reasonable detail. The failure or delay to provide such notice, however, shall not release the Company from any of its obligations under this Section 8.13(a) except to the extent that it is materially prejudiced by such failure or delay.

(b) If for any reason the indemnification provided for herein is unavailable or insufficient to hold harmless the Indemnified Parties, the Company 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 Company and its Related Persons, on the other hand, in connection with the matters that are the subject of such Losses.

(c) If the Company confirms in writing to the Indemnified Party within fifteen days after receipt of a Third Party Claim the Company's responsibility to indemnify and hold harmless the Indemnified Party therefor, the Company may elect to assume control over the compromise or defense of such Third Party Claim at the Company's sole expense and with counsel selected by the Company, which counsel must be reasonably satisfactory to the Indemnified Party, provided that (i) the Indemnified Party may, if such Indemnified Party so desires, employ counsel at such Indemnified Party's own expense to assist in the handling (but not control the defense) of any Third Party Claim; (ii) the Company shall keep the Indemnified Party advised of all material events with respect to any Third Party Claim; (iii) the Company shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any Third Party Claim or entering into any settlement, adjustment or compromise of such Third Party Claim involving injunctive or similar equitable relief being imposed upon the Indemnified Party or any of its Affiliates; and (iv) the Company will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened action in respect of which indemnification may be sought hereunder (whether or not any such Indemnified Party is a party to such action), unless such settlement, compromise or consent by its terms obligates the Company to satisfy the full amount of the liability in connection with such Third Party Claim and includes an

unconditional release of such Indemnified Party from all liability arising out of such Third Party Claim.

(d) Notwithstanding anything contained herein to the contrary, the Company 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 Company 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 Company (and/or the Private Owner (in any capacity, including as the Manager)) or any Affiliate of the Company (and/or the Private Owner), on one hand, and the Indemnified Party, on the other hand, are named as parties and either the Company (and/or the Private Owner) (or such Affiliate of the Company (and/or the Private Owner)) 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 Transferor or the FDIC under any Law. In addition to the foregoing, if the Company 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 Company 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 Company or the Indemnified Party), all of the parties hereto shall, and shall cause their respective Affiliates to, cooperate in the defense or prosecution thereof and to in good faith retain and furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested by a party hereto in connection therewith.

(e) To the extent that an Indemnified Party is entitled to indemnification both under this Section 8.13 and under Section 4.6 of the LLC Operating Agreement, (i) such Indemnified Party in its discretion may proceed under either or both of such provisions, (ii) to the extent that such Indemnified Party proceeds under this Section 8.13 (whether solely or in addition to proceeding under Section 4.6 of the LLC Operating Agreement), as between the Company and the Private Owner (and solely as between the Company and the Private Owner), the Private Owner shall be liable for any amount for which the Company may be liable to such Indemnified Party pursuant to this Section 8.13 with respect to such indemnification claim, (iii) to the extent that such Indemnified Party proceeds under both this Section 8.13 and Section 4.6 of the LLC Operating Agreement, Sections 4.6(c) and (d) of the LLC Operating Agreement shall apply, and Sections 8.13(c) and (d) shall not apply, to such indemnification claim, and (iv) to the extent that such Indemnified Party proceeds solely under this Section 8.13, the Private Owner shall have the right (subject to Section 8.13(d)) to exercise the rights of the Company pursuant to Section 8.13(c) with respect to such indemnification claim

(in which event the Private Owner shall be obligated to perform all the obligations of the Company pursuant to Section 8.13(c) with respect to such indemnification claim).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

TRANSFEROR:

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

By: [redacted]
Name: Heidi Silverberg
Title: Senior Capital Markets Specialist

COMPANY:

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: [redacted]
Name: Heidi Silverberg
Title: Senior Capital Markets Specialist

ATTACHMENT A
to
Asset Contribution and Sale Agreement

ASSET SCHEDULE

[Attach]

ATTACHMENT B
to
Asset Contribution and Sale Agreement

ASSET VALUE SCHEDULE

[Attach]

ATTACHMENT C
to
Asset Contribution and Sale Agreement

OWNERSHIP ENTITY SCHEDULE

Fund No.	Ownership Entity Name	LMS Loan Credit Facility Name	State	EIN Number

None

ATTACHMENT D
to
Asset Contribution and Sale Agreement

(For use with Assets in Bankruptcy)

(Note to Preparer: When preparing the actual Affidavit and Assignment, delete this instruction and the reference to Attachment D above.)

State of _____ §
§
County of _____ §

AFFIDAVIT AND ASSIGNMENT OF CLAIM

The undersigned, being first duly sworn, deposes and states as follows:

Federal Deposit Insurance Corporation in its capacity as Receiver for _____ ("Assignor"), acting by and through its duly authorized officers and agents, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged does hereby sell, transfer, assign and set over to CRE Venture 2011-1, LLC ("Assignee") of [Address], and its successors and assigns, all of the Assignor's interest in any claim in the bankruptcy case commenced by or against *{insert Obligor's name}*("Obligor") in the *{insert appropriate U. S. Bankruptcy Court, including the district of the court, such as for the Western District of Texas,* being designated as Case Number *{insert docket number assigned case}* ("Bankruptcy Claim"), or such part of said Claim as is based on the promissory note of *{insert the names of the makers of the note exactly as they appear on the note}*, dated *{insert the date the note was made}*, and made payable to *{insert the name of the payee on the note exactly as it appears on the note}*, provided, however, that this assignment is made pursuant to the terms and conditions as set forth in that certain Asset Contribution and Sale Agreement between the Assignor, the Assignee and others dated August 10, 2011 (the "Agreement").

For purposes of Rule 3001 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule 3001"), this assignment and affidavit represent the unconditional transfer of the Bankruptcy Claim or such part of the Claim as is based on the promissory note or notes above and shall constitute the statement of the transferor acknowledging the transfer and stating the consideration therefore as required by Bankruptcy Rule 3001.

This transfer was not for the purpose of the enhancement of any claim in a pending bankruptcy. The transfer of the debt was pursuant to the Agreement, through which numerous debts were sold; no specific amount of the total consideration was assigned to the debt that forms the basis of claim.

This assignment also shall evidence the unconditional transfer of the Assignor's interest in any security held for the claim.

IN WITNESS WHEREOF, the Assignor has caused this Affidavit and Assignment of Claim to be executed this __ day of _____, _____.

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [insert name of appropriate Failed Bank]

By: _____
Name: _____
Title: [_____]

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

Before me, the undersigned authority, a Notary Public in and for the county and state aforesaid, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, as Attorney-in-Fact of the Federal Deposit Insurance Corporation in its capacity as Receiver for [insert name of appropriate Failed Bank], acting in the capacity stated above, and acknowledged to me that s/he executed the same as the act of the Federal Deposit Insurance Corporation in its capacity as Receiver for [insert name of appropriate Failed Bank], for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office on this the __ day of _____, ____.

_____
Notary Public
[SEAL] My Commission expires: _____

ATTACHMENT E
to
Asset Contribution and Sale Agreement

(Note to Preparer: When preparing an actual Allonge, delete this instruction and the reference to Attachment E above.)

ALLONGE

THIS ALLONGE IS TO BE ATTACHED TO AND MADE AN INTEGRAL PART of the following instrument:

Note [Insert proper name of Note]
Dated: [Insert Date of Execution of Note]
Payable by _____ [Insert Name of Borrower], a _____ [Insert State of Formation] [Kind of Entity] [If known]
Payable to the Order of: [Insert name of Original Payee]
Original Principal Amount: _____ Dollars [Insert Original Principal Amount in words] ($_____) [Insert amount in numerals.]

PAY TO THE ORDER OF CRE VENTURE 2011-1, LLC, A DELAWARE LIMITED LIABILITY COMPANY, WITHOUT RECOURSE AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, OF ANY KIND OR NATURE WHATSOEVER.

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [insert name of appropriate Failed Bank]

By: _____
Name: _____
Title: [_____]

Dated as of [Insert Date]

ATTACHMENT F
to
Asset Contribution and Sale Agreement

(Note to Preparer: When preparing the actual Affidavit delete this instruction and the reference to Attachment F above.)

STATE OF _____ §
§
COUNTY OF _____ §

ASSIGNMENT AND LOST INSTRUMENT AFFIDAVIT

Before me, the undersigned authority, personally appeared _____, who upon being duly cautioned and sworn, deposes and says, to the best of his/her knowledge, as follows:

1. That s/he is the _____ for the Federal Deposit Insurance Corporation in its capacity as Receiver for [insert name of appropriate Failed Bank] whose address is 550 17th Street NW, Washington, DC 20429 (the "Transferor").

2. That at the time of the preparation of transfer to CRE VENTURE 2011-1, LLC (the "Company"), the Transferor was the owner of that certain loan, obligation or interest in a loan or obligation evidenced by a promissory note, evidencing an indebtedness or evidencing rights in an indebtedness (the "Instrument"), as follows:

Loan Number: _____

Name of Maker: _____

Original Principal Balance: _____

Date of Instrument: _____

3. That the original Instrument has been lost or misplaced. The Instrument was not where it was assumed to be, and a search to locate the Instrument was undertaken, without results. Prior to the transfer to the Company the Instrument had not been assigned, transferred, pledged or hypothecated.

4. That if the Transferor subsequently locates the Instrument, the Transferor shall use reasonable efforts to provide written notice to the Company and deliver and endorse the

Instrument to the Company in accordance with written instructions received from the Company (or such other party designated in writing by the Company).

5. That the purpose of this affidavit is to establish such facts. This affidavit shall not confer any rights or benefits, causes or claims, representations or warranties (including, without limitation, regarding ownership or title to the Instrument or the obligations evidenced thereby) upon the Company, its successors or assigns. All such rights, benefits, causes or claims, representations and warranties (if any) shall be as set forth in the Asset Contribution and Sale Agreement between the Company and the Transferor dated as of August 10, 2011 (the "Contribution Agreement").

6. That pursuant to the terms and conditions of the Contribution Agreement, the Instrument (including, without limitation, any and all rights the Transferor might have to enforce payment and performance of the Instrument, including any rights under Section 3-309 of the Uniform Commercial Code) is hereby assigned effective as of the date hereof, without recourse, representation or warranty, to the Company. A copy of the Instrument is attached to this affidavit, if available.

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [insert name of appropriate Failed Bank]

By: _____
Name: _____
Title: [_____]

Signed and sworn to before me this ____day of _____, 20____.

_____
Notary Public

[SEAL]

My Commission expires: _____

ATTACHMENT G-1
to
Asset Contribution and Sale Agreement

Upon recordation, return to:
[Insert name and address of Person to whom recorded original Assignment is to be returned. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution.*]

Name:
Address:

_____
_____

Tax Map No. or Tax Parcel Identification No.: _____
[Insert if local recording office requires.] *[Note to preparer, delete the instruction upon completion of documentation and prior to submission for execution.]*

ASSIGNMENT OF REAL ESTATE MORTGAGE
(Book _____, Page ____)

On **[insert date of failure]**, [insert name of appropriate Failed Bank] (the "**Failed Bank**") was closed by its supervising institution, and the Federal Deposit Insurance Corporation (acting in any capacity, the "**FDIC**") was appointed as Receiver.

THE FDIC, **AS RECEIVER FOR THE FAILED BANK** at 550 17th Street, NW, Washington, D.C. 20429-0002 (hereinafter referred to as "Assignor"), for value received, does by these presents, grant, bargain, sell, assign, transfer and set over to CRE Venture 2011-1, LLC, a Delaware limited liability company, its successors and assigns, at [ADDRESS], all right, title and interest in and to those documents listed immediately below, which relate to the property described on the attached Exhibit A:

> Note and Real Estate Mortgage, each dated [Insert Date], executed by [Insert Name of Borrower], a [Insert Kind of Entity], each being in the original principal sum of [Write out amount] and ____/100 Dollars ($[Insert Numerals]) and which Note was made payable to [Insert name of original lender] and which Mortgage was recorded on [Insert Date], in Book _____, Page _____ with the [Register of Deeds, [Insert] County, State of [Insert]] ("Register's Office").

[Insert the following paragraph only if original real estate mortgage was originated by and executed in favor of another lender and then transferred to the Failed Bank. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution*:

Such Note and Mortgage were assigned by [Name of original lender] to [Insert Name of Failed Bank] pursuant to that certain Assignment of Real Estate Mortgage dated [Insert Date] and recorded on [Insert Date] in Book _____, Page _____ in the Register's Office ("Assignment").]

[Insert the following paragraph only if the Real Estate Mortgage was modified or amended and a document was recorded to reflect the modification and amendment. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution:*

Such Note and Real Estate Mortgage were modified pursuant to that certain [Insert Correct Name of Document, e.g., Modification and Ratification of Note and Real Estate Mortgage Agreement] dated [Insert Date] and recorded on [Insert Date] in Book _____, Page _____ in the Register's Office ("Modification").]

TO HAVE AND TO HOLD the same unto said CRE VENTURE 2011-1, LLC, ITS SUCCESSORS AND ASSIGNS.

THIS ASSIGNMENT IS MADE WITHOUT RECOURSE, AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, OR BY OPERATION OF LAW, OF ANY KIND OR NATURE WHATSOEVER, BY THE FDIC IN ITS CAPACITY AS RECEIVER FOR [INSERT NAME OF APPROPRIATE FAILED BANK] OR IN ITS CORPORATE CAPACITY. THE LOAN IS CONVEYED "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING AS TO COLLECTABILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, BY ANY PERSON, INCLUDING THE FDIC OR ITS OFFICERS EMPLOYEES, AGENTS OR CONTRACTORS.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Federal Deposit Insurance Corporation in its capacity as Receiver for [insert name of appropriate Failed Bank] has caused this instrument to be executed this _____ day of _____, 20__, effective as of the _____ day of _____, 20__.

ASSIGNOR:

Signed, sealed and delivered
in the presence of:

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [INSERT NAME OF APPROPRIATE FAILED BANK]

ATTEST: _____
Print Name: _____
Title: _____

By: _____
Name: _____
Title: _____

_____
Witness #1
Print Name: _____

SEAL

_____
Witness #2
Print Name: _____

Note: State law has various execution requirements, including attestations or witnesses or both. Preparer delete foregoing note once local requirements are determined.

ACKNOWLEDGMENT

[UNIVERSAL FORM OF ACKNOWLEDGMENT] [*Note to Preparer, delete the designation, Universal Form of Acknowledgement prior to execution. Use only one of the two acknowledgements: this designation or the California form.*]

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 20__, before me personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the person(s) who executed the foregoing instrument, and he/she thereupon duly acknowledged to me that he/she executed the same to be his/her free act and deed.

WITNESS my hand and official seal.

_____
Name of Notary:_____
My commission expires:_____

[CALIFORNIA FORM OF ACKNOWLEDGMENT] *Note to Preparer, delete the designation, California Form of Acknowledgement prior to execution if you using this acknowledgement. Use only one of the two acknowledgements: this designation or the Universal form.*]

STATE OF CALIFORNIA)
) SS:
COUNTY OF _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
(Legal Description)

ATTACHMENT G-2
to
Asset Contribution and Sale Agreement

Upon recordation, return to:
[Insert name and address of Person to whom of recorded original Assignment is to be returned. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution.*]

Name:_____
Address:

_____
_____

Tax Map No. or Tax Parcel Identification No.: _____
[Insert if local recording office requires.] *[Note to preparer, delete the instruction upon completion of documentation and prior to submission for execution.]*

ASSIGNMENT OF REAL ESTATE DEED OF TRUST
(Book _____, Page ____)

On **[insert date of failure]**, [insert name of appropriate Failed Bank] (the "Failed Bank") was closed by its supervising institution, and the Federal Deposit Insurance Corporation (acting in any capacity, the "**FDIC**") was appointed as Receiver.

THE FDIC, **AS RECEIVER FOR THE FAILED BANK** at 550 17th Street, NW, Washington, D.C. 20429-0002, (hereinafter referred to as "Assignor"), for value received, does by these presents, grant, bargain, sell, assign, transfer and set over to CRE VENTURE 2011-1, LLC, a Delaware limited liability company, its successors and assigns, at [_____], all right, title and interest in and to those documents listed immediately below, which relate to property described on the attached Exhibit A:

> Real Estate Deed of Trust executed by [Insert name of Borrower], a [Insert Kind of Entity], organized and existing under the laws of [Insert State], dated [Insert Date of Execution], in the original principal sum of [Insert Amount in words] and __/100 Dollars ($[Insert Numbers]) of Deed of Trust in favor of [Name of Trustee], a resident of _____, _____ [if more than one Trustee and [Name of Trustee], a resident of _____, _____,] Trustee [or Trustees] for, and on behalf of, [_____] [Insert Name of appropriate Failed Bank] (the "Mortgage"), which Mortgage was recorded on [Insert Date], in the Clerk's Office [of the Circuit Court of the City of _____, or of the Court of _____] [State] ("Clerk's Office") in Book _____, Page _____.

[Insert the following paragraph only if original real estate deed of trust was originated by and executed in favor of another lender and then transferred to the applicable Failed Bank. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution*:

Such Mortgage was assigned by [original lender] to [Insert Name of Failed Bank] pursuant to that certain Assignment of Real Estate Deed of Trust dated [Insert Date] ("Assignment"), which Assignment was recorded on [Insert Date] in the Clerk's Office in Book _____, Page _____.]

[Insert the following paragraph only if the Real Estate Deed of Trust was modified or amended and a document was recorded to reflect the modification and amendment. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution*:

The Mortgage was modified by that certain [Insert Correct Name of Document, e.g., Modification and Ratification of Note and Real Estate Deed of Trust] dated _____ ("Modification"), which Modification was recorded on _____ in the Clerk's Office in Book _____, Page _____.]

THIS ASSIGNMENT IS MADE WITHOUT RECOURSE, AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, OF ANY KIND OR NATURE WHATSOEVER, BY THE FDIC IN ITS CAPACITY AS RECEIVER FOR [INSERT NAME OF APPROPRIATE FAILED BANK] OR IN ITS CORPORATE CAPACITY. THE LOAN, AS ASSIGNED AND MODIFIED, IS CONVEYED "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING AS TO COLLECTABILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, BY ANY PERSON, INCLUDING THE FDIC OR ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [insert name of appropriate Failed Bank] has caused this instrument to be executed this _____ day of _____, 20__, to be effective as of the ____ day of _____, 20__.

ASSIGNOR:

Signed, sealed and delivered
in the presence of:

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [INSERT NAME OF APPROPRIATE FAILED BANK]

ATTEST: _____
Print Name:_____
Title:_____

By: _____
Name: _____
Title: _____

_____
Witness #1
Print Name:_____

SEAL

_____
Witness #2
Print Name:_____

Note: State law has various execution requirements, including attestations or witnesses or both. Prepare delete foregoing note once local requirements are determined.

ACKNOWLEDGMENT

[UNIVERSAL FORM OF ACKNOWLEDGMENT] [*Note to Preparer, delete the designation, Universal Form of Acknowledgement prior to execution. Use only one of the two acknowledgements: this designation or the California form.*]

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the person(s) who executed the foregoing instrument, and he/she thereupon duly acknowledged to me that he/she executed the same to be his/her free act and deed.

WITNESS my hand and official seal.

_____
Name of Notary:_____
My commission expires:_____

[CALIFORNIA FORM OF ACKNOWLEDGMENT] [*Note to Preparer, delete the designation, Universal Form of Acknowledgement prior to execution. Use only one of the two acknowledgements: this designation or the Universal form.*]

STATE OF CALIFORNIA)
) SS:
COUNTY OF _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
(Legal Description)

ATTACHMENT H
to
Asset Contribution and Sale Agreement

Upon recordation, return to:
[Insert name and address of Person to whom recorded original Assignment is to be returned. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution.*]

Name:
Address:_____
_____
_____

Tax Map No. or Tax Parcel Identification No.: _____
[Insert if local recording office requires.] *[Note to preparer, delete the instruction upon completion of documentation and prior to submission for execution.]*

ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS AND OTHER LOAN DOCUMENTS

[*Note to Preparer, insert correct name of instrument here and in body of Assignment below. Delete this instruction prior to execution.*]

On **[insert date of failure]**, [insert name of appropriate Failed Bank] (the "Failed Bank") was closed by its supervising institution, and the Federal Deposit Insurance Corporation (acting in any capacity, the "FDIC") was appointed as Receiver.

THE FDIC, **AS RECEIVER FOR THE FAILED BANK**, at 550 17th Street, NW, Washington, D.C. 20429-0002, (hereinafter referred to as "Assignor"), for value received, does by these presents, grant, bargain, sell, assign, transfer and set over to [CRE VENTURE 2011-1, LLC], a Delaware limited liability company, its successors and assigns, at [_____], all right, title and interest in and to those documents listed immediately below, which relate to property described on the attached Exhibit A:

1. Assignment of Leases and Rents, dated [Insert Date] ("Assignment of Leases"), made by [Insert Name of Borrower], a [Insert Kind of Entity], in favor of [Insert name of original lender] and which Assignment of Leases was recorded on [Insert Date], in Book _____, Page _____ with [the Register of Deeds, [Insert] County, State of [Insert] ("Register's Office") as Document No. _____;] and

[2.] [Insert similar description, with recording information, for each additional recorded Loan Document, with definition][*note to preparer, delete the instruction upon completion of documentation and prior to submission for execution.*]; and

[3.] Any notes and or other agreements evidencing the indebtedness and/or the obligations secured by the Assignment of Leases and the other recorded loan documents identified in Paragraph 2 through ___ above; and

[4.] Any and all other documents and instruments evidencing, securing and or relating to the indebtedness and or obligations secured by the Assignment of Leases and the other recorded loan documents identified in Paragraph 2 through ___ above.

[Insert the following paragraph only if original assignment of leases and rents was originated by and executed in favor of another lender and then transferred to the Failed Bank. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution:*

The Assignment of Leases was assigned by [Name of original lender] to [Insert Name of Failed Bank] pursuant to that certain Assignment of Assignment of Leases and Rents dated [Insert Date] and recorded on [Insert Date] in Book _____, Page _____ in the Register's Office as Document No._____.]

[Insert the following paragraph only if the original Assignment of Leases and Rents Mortgage was modified or amended and a document was recorded to reflect the modification and amendment. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution:*

The Assignment of Leases and Rents was modified pursuant to that certain [Modification of Assignment of Leases] [Insert Correct Name of Document] dated [Insert Date] and recorded on [Insert Date] in Book _____, Page _____ in the Register's Office as Document No. _____("Modification").]

[Insert similar additional paragraphs for each additional recorded loan document as necessary. *Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution.*]

THIS ASSIGNMENT IS MADE WITHOUT RECOURSE, AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, OF ANY KIND OR NATURE WHATSOEVER, BY THE FDIC IN ITS CAPACITY AS RECEIVER FOR [INSERT NAME OF APPROPRIATE FAILED BANK] OR IN ITS CORPORATE CAPACITY. THE LOAN IS CONVEYED "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING AS TO COLLECTABILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, BY ANY PERSON, INCLUDING THE FDIC OR ITS OFFICERS EMPLOYEES, AGENTS OR CONTRACTORS.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [INSERT NAME OF APPROPRIATE FAILED BANK] has caused this instrument to be executed this _____ day of _____, 20__, effective as of the _____ day of _____, 20__.

ASSIGNOR:

Signed, sealed and delivered
in the presence of:

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [INSERT NAME OF APPROPRIATE FAILED BANK]

ATTEST: _____
Print Name: _____
Title: _____

By: _____
Name: _____
Title: _____

_____
Witness #1
Print Name: _____

SEAL

_____
Witness #2
Print Name: _____

Note: State law has various execution requirements, including attestations or witnesses or both. Preparer delete foregoing note once local requirements are determined.

ACKNOWLEDGMENT

[UNIVERSAL FORM OF ACKNOWLEDGMENT] [*Note to Preparer, delete the designation, Universal Form of Acknowledgement prior to execution. Use only one of the two acknowledgements: this designation or the California form.*]

STATE OF _____)
) SS:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the person(s) who executed the foregoing instrument, and he/she thereupon duly acknowledged to me that he/she executed the same to be his/her free act and deed.

WITNESS my hand and official seal.

_____
Name of Notary:_____
My commission expires:_____

[CALIFORNIA FORM OF ACKNOWLEDGMENT] *Note to Preparer, delete the designation, California Form of Acknowledgement prior to execution if you using this acknowledgement. Use only one of the two acknowledgements: this designation or the Universal form.*]

STATE OF CALIFORNIA)
) SS:
COUNTY OF _____)

On _____ before me, (here insert name and title of the officer), personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
(Legal Description)

ATTACHMENT I
to
Asset Contribution and Sale Agreement

ASSIGNMENT AND ACCEPTANCE OF LIMITED LIABILITY COMPANY INTEREST

FOR VALUE RECEIVED, pursuant to the terms and conditions set forth in that certain Asset Contribution and Sale Agreement, dated as of August 10, 2011, between **THE FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR** [insert name of appropriate Failed Bank] at 550 17th Street, NW, Washington, D.C. 20429-0002 ("Assignor"), **CRE VENTURE 2011-1, LLC**, a Delaware limited liability company, its successors and assigns, at [ADDRESS] ("Assignee"), and others, Assignor, being the sole member of [Insert Name of Subsidiary Entity], a [Insert State of Formation] limited liability company (the "Limited Liability Company"), by these presents grants, bargains, sells, assigns, transfers and sets over to Assignee all right, title and interest in and to Assignor's entire interest in the Limited Liability Company (the "Limited Liability Company Interest"), which Limited Liability Company Interest includes, without limitation, Assignor's capital and profits interest, capital account balance, distributions and liquidation rights and voting and any management rights and powers in the Limited Liability Company.

Assignee accepts the Limited Liability Company Interest, assumes all covenants, conditions, obligations, liabilities and responsibilities required to be kept, performed and fulfilled by Assignor with respect to the Limited Liability Company Interest and agrees to be bound by all the terms and conditions of the [Operating Agreement/Limited Liability Company Agreement] *{Note to preparer, delete "Operating Agreement" or "Limited Liability Company Agreement" as appropriate}* of the Limited Liability Company (the "Operating Agreement"), a copy of which Operating Agreement is attached to this Assignment and Acceptance of Limited Liability Company Interest as Exhibit A and made a part of this Assignment and Acceptance of Limited Liability Company Interest by reference.

This Assignment and Acceptance of Limited Liability Company Interest is made, delivered and effective as of the date first noted above.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Acceptance of Limited Liability Company Interest to be executed and delivered as of the ____ day of _____, 20__.

ASSIGNOR:

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [INSERT NAME OF APPROPRIATE FAILED BANK]

By:_____
Name:
Title:

ASSIGNEE:

[_____], LLC

By: [_____], its Manager

By: [_____], its [_____]

By: _____
Name:
Title:

[[Insert the following consent for [_____], [_____] and [_____] to address Operating Agreement prohibitions against transfer.] *{Note to preparer, delete this instruction upon completion of documentation and prior to submission for execution.}*

Acknowledged, consented to, approved and agreed to by the Company as of the _____ day of _____, 201_, which confirms that Assignee, pursuant to the attached Assignment and Acceptance of Limited Liability Company Interest, has become and at all times hereafter will be the substitute member of the Company, with all right, title and interest in the Company provided in the Operating Agreement and any and all rights and limitations of Assignor pursuant to the Operating Agreement.

CRE VENTURE 2011-1, LLC

By: **FEDERAL DEPOSIT INSURANCE CORPORATION in its capacity as Receiver for [INSERT NAME OF APPROPRIATE FAILED BANK], AS SOLE MEMBER**

By: _____
Name:
Title:

Exhibit A

Copy of Operating Agreement

[Attached]

ATTACHMENT J
to
Asset Contribution and Sale Agreement

(Note to FDIC Preparer: When preparing the actual Limited Power of Attorney, delete this instruction and the reference to Attachment J above)

LIMITED POWER OF ATTORNEY
CRE Venture 2011-1 Structured Transaction

KNOW ALL PERSONS BY THESE PRESENTS that the FEDERAL DEPOSIT INSURANCE CORPORATION, a corporation organized and existing under an Act of Congress, hereafter called the "FDIC," pursuant to the applicable resolutions of the Board of Directors of the FDIC, and redelegations thereof, hereby designates the individuals set forth on Exhibit A, attached hereto and made a part hereof (the "Attorneys-in-Fact"), to act on behalf of the FDIC as receiver for each of various failed financial institutions listed on Exhibit B attached hereto (each a "Failed Bank") (the FDIC, in its separate capacities as receiver with respect to each such receivership, the "Receiver") and, upon termination of the Receiver, to act on behalf of the FDIC in its Corporate capacity as successor to the Receiver, in each case for the sole purpose of executing the documents outlined below; and

WHEREAS the undersigned has full authority to execute this Limited Power of Attorney on behalf of the FDIC;

NOW THEREFORE, the FDIC grants to the Attorneys-in-Fact the authority, subject to the limitations herein, as follows:

1. To execute, acknowledge, seal and deliver on behalf of the FDIC, individually and not jointly by and through the FDIC, acting in any capacity, any and all deeds of trust/mortgage note endorsements, assignments of deeds of trust/mortgages and other recorded documents, partial or total satisfaction/release/reconveyances of deeds of trust/mortgages, UCC transfer documents, subordinations, tax authority notifications and declarations, deeds, bills of sale, and other instruments of sale, transfer and conveyance, appropriately completed, with all ordinary or necessary endorsements, acknowledgments, affidavits and supporting documents as may be necessary or appropriate to evidence the sale and transfer of any asset pursuant to that certain Asset Contribution and Sale Agreement dated as of August 10, 2011 between CRE Venture 2011-1, LLC and the Receiver.

The form which the Attorney(s)-in-Fact shall use for endorsing promissory notes or preparing allonges to promissory notes is as follows:

Pay to the order of CRE Venture 2011-1, LLC
Without Recourse and Without Representation or
Warranty, Express, Implied or By Operation of
Law, of any Kind or Nature Whatsoever

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR [INSERT NAME OF APPROPRIATE FAILED BANK]

By: _____
Name: _____
Title: _____

All documents of assignment, conveyance or transfer shall contain this sentence: "This assignment is made without recourse, and without representation or warranty, express, implied or by operation of law, of any kind and nature whatsoever, by the Federal Deposit Insurance Corporation in any capacity."

2. To grant to each Attorney-in-Fact full power and authority to do and perform all acts necessary to carry into effect the powers granted by this Limited Power of Attorney as fully as the FDIC in any capacity might or could do with the same validity as if all and every such act had been herein particularly stated, expressed and especially provided for.

This Limited Power of Attorney shall be effective from August 10, 2011 and shall continue in full force and effect through August 10, 2012, unless otherwise terminated by an official of the FDIC or its successors and assigns authorized to do so ("Revocation"). At such time this Limited Power of Attorney will be automatically revoked. Any third party may rely upon this document as the named individual(s)' authority to continue to exercise the powers herein granted unless a Revocation has been recorded in the public records of the jurisdiction where this Limited Power of Attorney has been recorded, or unless a third party has received actual notice of a Revocation.

IN WITNESS WHEREOF, the FDIC by its duly authorized officer empowered to act on its behalf by appropriate resolution of its Board of Directors, or redelegations thereof, has caused these presents to be executed and subscribed in its name this August [__], 2011.

FEDERAL DEPOSIT INSURANCE CORPORATION

By:_____
Name:_____
Title: _____

Signed, sealed and delivered
in the presence of

By:_____
Name:_____
Witness

By:_____
Name:_____
Witness

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

ACKNOWLEDGMENT

UNITED STATES OF AMERICA)
)
DISTRICT OF COLUMBIA)

_____, affiant, for her/himself says that s/he is the Attorney-in-Fact, Division of Resolutions and Receiverships, of the Federal Deposit Insurance Corporation, the Corporation in whose name the foregoing Limited Power of Attorney has been subscribed, that the said Limited Power of Attorney was subscribed on behalf of the said Corporation by due authority of the Corporation's Board of Directors, and that the said Attorney-in-Fact for the Division of Resolutions and Receiverships of the Federal Deposit Insurance Corporation acknowledges the said Limited Power of Attorney to be the free act and deed of the said Corporation.

Subscribed and sworn to before me this [__]th day of August, 2011.

_____
Notary Public, District of Columbia
United States of America

My Commission Expires:

_____

EXHIBIT A
TO LIMITED POWER OF ATTORNEY

Attorneys-in-Fact

[list names and organizations of Attorney(s)-in-Fact]

THIS EXHIBIT A TO LIMITED POWER OF ATTORNEY HAS BEEN PREPARED BY THE FDIC AND MAY NOT BE AMENDED, REVISED, ALTERED OR SUBSTITUTED IN ANY WAY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE FDIC.

EXHIBIT B
TO LIMITED POWER OF ATTORNEY

List of Various Failed Financial Institutions

Bank Name	State	Fund	Closing Date
Community Bank Of Nevada	NV	10100	August 14, 2009
Dwelling House Savings & Loan	PA	10104	August 14, 2009
Irwin Union Bank & Trust Co.	IN	10120	September 18, 2009
Irwin Union, FSB	IN	10121	September 18, 2009
Warren Bank	MI	10125	October 2, 2009
Hillcrest Bank Florida	FL	10131	October 23, 2009
Republic Federal Bank, NA	FL	10158	December 11, 2009
Citizens State Bank	MI	10162	December 18, 2009
RockBridge Commercial Bank	GA	10164	December 18, 2009
Independent Bankers' Bank	IL	10166	December 18, 2009
Barnes Banking Company	UT	10171	January 15, 2010
Carson River Community Bank	NV	10188	February 26, 2010
Waterfield Bank	MD	10190	March 5, 2010
Centennial Bank	UT	10193	March 5, 2010
Desert Hills Bank	AZ	10205	March 26, 2010
Lakeside Community Bank	MI	10215	April 16, 2010
Riverside National Bank of Florida	FL	10216	April 16, 2010
Citizens Bank Trust Co. Chicago	IL	10220	April 23, 2010
Lincoln Park Savings Bank	IL	10221	April 23, 2010
Wheatland Bank	Il	10224	April 23, 2010
The Bank Of Bonifay	FL	10234	May 7, 2010
First National Bank	GA	10251	June 25, 2010
Ideal Federal Savings Bank	MD	10257	July 9, 2010
Crescent Bank and Trust Company	GA	10265	July 23, 2010
SouthwestUSA Bank	NV	10267	July 23, 2010
LibertyBank	OR	10273	July 30, 2010
The Cowlitz Bank	WA	10275	July 30, 2010
Ravenswood Bank	IL	10276	August 6, 2010
Maritime Savings Bank	WI	10291	September 17, 2010
Shoreline Bank	WA	10295	October 1, 2010
Wakulla Bank	FL	10296	October 1, 2010
Premier Bank	MO	10297	October 15, 2010
Security Savings Bank, FSB	KS	10298	October 15, 2010
The Gordon Bank	GA	10305	October 22, 2010
First Arizona Savings A FSB	AZ	10306	October 22, 2010

K Bank	MD	10308	November 5, 2010
First Banking Center	WI	10315	November 19, 2010
Earthstar Bank	PA	10317	December 10, 2010
The Bank Of Miami, NA	FL	10324	December 17, 2010
Enterprise Banking Company	GA	10329	January 21, 2011
American Trust Bank	GA	10336	February 4, 2011
Charter Oak Bank	CA	10343	February 18, 2011

ATTACHMENT K
to
Asset Contribution and Sale Agreement

FORM OF LITIGATION SUBSTITUTION REPORT TO BE PROVIDED

BY THE COMPANY AFTER CLOSING

ATTACHMENT L
to
Asset Contribution and Sale Agreement

FORM OF PURCHASE MONEY NOTES GUARANTY SEPARATELY PROVIDED

[Attach]

ATTACHMENT L
to
Asset Contribution and Sale Agreement

PURCHASE MONEY NOTES GUARANTY AGREEMENT

BY AND BETWEEN

[_____]

AND

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER

Dated as of [_____], 20[__]

TABLE OF CONTENTS

PURCHASE MONEY NOTES GUARANTY AGREEMENT

THIS PURCHASE MONEY NOTES GUARANTY AGREEMENT (this "**Purchase Money Notes Guaranty**") is entered into as of [_____] [__], 20[__], by and between [_____] (the "**Purchase Money Notes Guarantor**"), and the [Federal Deposit Insurance Corporation in its capacity as Receiver] (the "**Initial Holder**"). Terms used herein (including in this preamble and the 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 August 10, 2011 among the Initial Holder, CRE Venture 2011-1, LLC and others (as [amended pursuant to [____] but otherwise as] originally executed and as the same hereafter may be amended from time to time in accordance with the terms set forth herein for the amendment of this Purchase Money Notes Guaranty) (the "**Agreement of Definitions**"), and are not otherwise defined herein, shall have the respective meanings and definitions given, or referred to, in such Agreement of Definitions. The Rules of Construction apply to this Purchase Money Notes Guaranty.

RECITALS

WHEREAS, pursuant to the Transaction Documents (including Sections 2.10 and 8.4(c) of the Contribution Agreement), as of the date hereof, [___] [(__)] Classes of Purchase Money Notes, in the aggregate unpaid principal amount as of the date hereof of $[_____.00], are outstanding;

WHEREAS, to provide **[ALTERNATIVE ONE: ALL CLASSES OF PURCHASE MONEY NOTES ARE TO BE GUARANTEED PURSUANT TO THIS AGREEMENT:** the Holders support for the payment and performance of the Company's obligations pursuant to the Purchase Money Notes] **[ALTERNATIVE TWO: LESS THAN ALL CLASSES OF PURCHASE MONEY NOTES ARE TO BE GUARANTEED PURSUANT TO THIS AGREEMENT:** the Holders of the Class [__] and Class [___] Purchase Money Notes (such Classes of Purchase Money Notes, the "**Guaranteed Purchase Money Notes**"; and the Holders of the Guaranteed Purchase Money Notes, the "**GPMN Holders**") support for the payment and performance of the Company's obligations pursuant to the Guaranteed Purchase Money Notes], the Purchase Money Notes Guarantor has agreed to enter into this Purchase Money Notes Guaranty and to perform the obligations of the Purchase Money Notes Guarantor described in this Purchase Money Notes Guaranty;

[**WHEREAS**, the aggregate unpaid principal amount of the [Guaranteed] Purchase Money Notes as of the date hereof is $[_____.00] for the Class [__] Purchase Money Notes, and $[_____.00] for the Class [__] Purchase Money Notes;][1]

[**WHEREAS,** pursuant to 12 U.S.C. §1825(d), if the principal amount of an obligation issued by the Federal Deposit Insurance Corporation after August 9, 1989 is stated in the obligation and the term to maturity or the date of maturity of such obligation is stated in the obligation, then the full faith and credit of the United States is pledged to the payment of such obligation with respect to both principal and interest; and

WHEREAS, because the principal of the Guaranteed Obligations is stated in this Purchase Money Notes Guaranty, the date of maturity of the Purchase Money Notes Guarantor's obligations pursuant to this Purchase Money Notes Guaranty is stated in this Purchase Money Notes Guaranty and the Federal Deposit Insurance Corporation is the Purchase Money Notes Guarantor pursuant to this Purchase Money Notes Guaranty, the full faith and credit of the United States is pledged to the Purchase Money Notes Guarantor's obligation to pay the Guaranteed Obligations pursuant to 12 U.S.C. §1825(d);][2]

NOW, THEREFORE, [in consideration of the payment to the Purchase Money Notes Guarantor of a guaranty fee agreed upon by the Purchase Money Notes Guarantor and Initial Holder and paid by the Initial Holder, the sufficiency of which is hereby acknowledged,] the Purchase Money Notes Guarantor and the Initial Holder hereby agree as follows:

Section 1. Guaranty. The Purchase Money Notes Guarantor hereby absolutely, irrevocably, completely, unconditionally and immediately guarantees all of the following (collectively, the "**Guaranteed Obligations**"): the due and punctual payment of the outstanding principal of each Class of [Guaranteed] Purchase Money Notes, in an aggregate amount of $[_____.00], when such principal shall become due and payable in accordance with the terms of each respective Class of [Guaranteed] Purchase Money Notes, the Reimbursement, Security and Guaranty Agreement and the Custodial and Paying Agency Agreement (whether at stated maturity, by acceleration or otherwise), which $[_____] shall constitute the principal amount of the Guaranteed Obligations. The date of maturity of the Purchase Money Notes Guarantor's obligations pursuant to this Purchase Money Notes Guaranty shall be August 10, 2018, which date shall be the date on which the Purchase Money Notes Guarantor's obligation to pay the Guaranteed Obligations shall be due (if and to the extent the same are not discharged, satisfied or paid on or prior thereto). [The full faith and credit of the United States is

---

1 Insertion to be determined by the Initial Holder and the Purchase Money Notes Guarantor.

2 Insertion to be determined by the Initial Holder and the Purchase Money Notes Guarantor (if the Purchase Money Notes Guarantor is the Federal Deposit Insurance Corporation in its corporate capacity).

pledged to the Purchase Money Notes Guarantor's obligation to pay the Guaranteed Obligations pursuant to 12 U.S.C. §1825(d).][3]

Section 2. Guaranty Absolute. The Purchase Money Notes Guarantor guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of each Class of [Guaranteed] Purchase Money Notes regardless of any Law now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the [GPMN] Holders with respect thereto. The liability of the Purchase Money Notes Guarantor pursuant to this Purchase Money Notes Guaranty shall be absolute, irrevocable and unconditional in accordance with its terms and shall, to the fullest extent permissible under applicable Law, remain in full force and effect without regard to, and shall not be released, suspended, discharged, terminated, modified or otherwise affected by, any circumstance or occurrence whatsoever, including, without limitation, any of the following (whether or not the Purchase Money Notes Guarantor consents thereto or has notice thereof):

(i) any lack of validity, legality or enforceability of any [Guaranteed] Purchase Money Note or this Purchase Money Notes Guaranty;

(ii) any furnishing to the [GPMN] Holders of any security for the Guaranteed Obligations;

(iii) any bankruptcy, insolvency, reorganization, composition, adjustment, merger, consolidation, dissolution, liquidation or other like proceeding relating to the Purchase Money Notes Guarantor, the Company or any other Person, or any action taken with respect to this Purchase Money Notes Guaranty by any trustee or receiver, or by any court, in any such proceeding; or

(iv) any defect, limitation or insufficiency in the rights of the Company or any other Person under any [Guaranteed] Purchase Money Note or in the exercise thereof.

Section 3. Action with Respect to Guaranteed Obligations. Unless otherwise consented to in writing by the Purchase Money Notes Guarantor, the [GPMN] Holders may not take any of the following actions: (i) amend, modify, alter or supplement the terms of any of the Guaranteed Obligations, including, but not limited to, extending or shortening the time of payment of any of the Guaranteed Obligations or modifying the amount of any of the Guaranteed Obligations; (ii) amend, modify, alter or supplement any [Guaranteed] Purchase Money Note; (iii) release any other Person liable in any manner for the payment or collection of the Guaranteed Obligations; or (iv) exercise, or refrain from exercising, any rights against Company or any other Person; provided, however, that any such action taken by the [GPMN] Holders with

---

[3] Insertion to be determined by the Initial Holder and the Purchase Money Notes Guarantor (if the Purchase Money Notes Guarantor is the Federal Deposit Insurance Corporation in its corporate capacity).

the written consent of the Purchase Money Notes Guarantor shall not discharge the Purchase Money Notes Guarantor from its obligations hereunder. For the avoidance of doubt, nothing in this Section 3 modifies the definition of, or the rights of, the "Required PMN Consenting Parties".

Section 4. Representations and Warranties. The Purchase Money Notes Guarantor hereby makes the following representations and warranties to the Holders:

(i) The Purchase Money Notes Guarantor has the right and power to execute and deliver, and has taken all necessary action to authorize the execution and delivery of, this Purchase Money Notes Guaranty and to perform its obligations pursuant to this Purchase Money Notes Guaranty in accordance with its terms. This Purchase Money Notes Guaranty has been duly executed and delivered by a duly authorized officer of the Purchase Money Notes Guarantor, and this Purchase Money Notes Guaranty is a legal, valid and binding obligation of the Purchase Money Notes Guarantor enforceable against it in accordance with its terms;

(ii) The execution, delivery and performance of this Purchase Money Notes Guaranty does not and will not, by the passage of time, the giving of notice or both: (i) require any governmental approval that has not been obtained or violate any Law relating to the Purchase Money Notes Guarantor; (ii) conflict with, result in a breach of or constitute a default under the Organizational Documents of the Purchase Money Notes Guarantor, or any agreement or other instrument to which the Purchase Money Notes Guarantor is a party or by which it or any of its respective properties might be bound; or (iii) result in or require the creation or imposition of any lien upon or with respect to any property now owned or hereafter acquired by the Purchase Money Notes Guarantor; and

(iii) No action, suit, proceeding, governmental investigation or arbitration, at law or in equity, or before or by any Governmental Authority, is pending, or, to the knowledge of the Purchase Money Notes Guarantor, threatened against the Purchase Money Notes Guarantor or any of its property that will affect the ability of the Purchase Money Notes Guarantor to perform its obligations pursuant to this Purchase Money Notes Guaranty.

Section 5. Waiver. Except with respect to the Purchase Money Notes Guarantor's consent rights under Section 3 or as[, or as part of,] the Required PMN Consenting Parties, which consent rights shall not be limited, waived or otherwise modified by operation of this Section 5, the Purchase Money Notes Guarantor, to the fullest extent permitted by Law, hereby waives notice of acceptance hereof or any presentment, demand, protest or notice of any kind, and any other act or thing, or omission or delay to do any other act or thing, that in any manner or to any extent might vary the risk of the Purchase Money Notes Guarantor or that otherwise might operate to discharge the Purchase Money Notes Guarantor from its obligations pursuant to

this Purchase Money Notes Guaranty. The Purchase Money Notes Guarantor acknowledges that it will receive direct and indirect benefits from the arrangements contemplated in this Purchase Money Notes Guaranty and that the waivers set forth in this Section 5 are knowingly made in contemplation of such benefits. The Purchase Money Notes Guarantor hereby waives any right to revoke this Section 5 and acknowledges that this Section 5 is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Section 6. Reinstatement of Guaranteed Obligations. This Purchase Money Notes Guaranty shall in all respects be a continuing and irrevocable guaranty of payment and (i) shall remain in full force and effect until the indefeasible payment in full and in cash of the Guaranteed Obligations, (ii) be binding upon the Purchase Money Notes Guarantor, its successors and assigns and (iii) inure to the benefit of, and be binding upon and enforceable by, the [GPMN] Holders and their respective successors, pledgees, transferees and assigns. If any claim is ever made on any [GPMN] Holder for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations, and such [GPMN] Holder repays all or part of said amount by reason of (y) any judgment, decree or order of any court or administrative body of competent jurisdiction or (z) any settlement or compromise of any such claim effected by the [GPMN] Holder with any such claimant (including, without limitation, the Company or a trustee in bankruptcy for the Company), then and in such event the Purchase Money Notes Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding on it, notwithstanding any revocation hereof or the cancellation of this Purchase Money Notes Guaranty, any [Guaranteed] Purchase Money Note or any other instrument evidencing any liability of the Company, and the Purchase Money Notes Guarantor shall be and remain liable to such [GPMN] Holder for the amounts so repaid or recovered to the same extent as if such amount had never originally been paid to such [GPMN] Holder and the Purchase Money Notes Guarantor's obligations and liabilities to such [GPMN] Holder pursuant to this Purchase Money Notes Guaranty shall be reinstated to such extent and this Purchase Money Notes Guaranty and any collateral for this Purchase Money Notes Guaranty shall remain in full force and effect (or shall be reinstated) to such extent.

Section 7. Subrogation; Assignment of Claims. If and to the extent the Purchase Money Notes Guarantor makes any payment to the [GPMN] Holders pursuant to or in connection with this Purchase Money Notes Guaranty, the Purchase Money Notes Guarantor shall be subrogated to all of the rights of the [GPMN] Holders with respect to any claim to which such payment relates to the extent of such payment, and the [GPMN] Holders, upon acceptance of any such payment, will be deemed to have assigned to the Purchase Money Notes Guarantor any and all claims such [GPMN] Holders might have against the Company or others and for which such [GPMN] Holders receive payment from the Purchase Money Notes Guarantor pursuant to this Purchase Money Notes Guaranty. Upon the request of the Purchase Money Notes Guarantor, the [GPMN] Holders shall execute written assignments of such claims.

Section 8. Status Under Transaction Documents; Required PMN Consenting Parties; Purchase Money Notes Guarantor's Right to Control Remedies. This Purchase Money Notes

Guaranty constitutes a "Purchase Money Notes Guaranty" for all purposes of the Transaction Documents. [As contemplated by the definition of the term "Required PMN Consenting Parties" set forth in the Agreement of Definitions, the Initial Holder, as the Person currently constituting the "Required PMN Consenting Parties," hereby specifies that, from and after the date hereof (and unless and until the definition of the term "Required PMN Consenting Parties" is further modified as set forth in the second sentence of the definition of such term in the Agreement of Definitions (and, for the avoidance of doubt, subject to and without limitation of the last sentence of such definition)), the "Required PMN Consenting Parties" means [(i) until the Guaranteed Purchase Money Notes Satisfaction Date, each of the Purchase Money Notes Guarantors, and (ii) after the Guaranteed Purchase Money Notes Satisfaction Date, the Holders in the aggregate of a majority in principal amount of all of the Purchase Money Notes].][4] Without limitation of the rights of the Required PMN Consenting Parties, if there shall occur an "Event of Default" pursuant to the Reimbursement, Security and Guaranty Agreement, the Required PMN Consenting Parties shall have the right to control any and all remedies available to the [GPMN] Holders in respect thereof pursuant to any [Guaranteed] Purchase Money Note, and the [GPMN] Holders hereby agree to take any and all actions available to the [GPMN] Holders pursuant to such [Guaranteed] Purchase Money Note as the Required PMN Consenting Parties shall direct.

Section 9. Information. The Purchase Money Notes Guarantor (i) assumes all responsibility for being and keeping itself informed of the financial condition of the Company, and of all other circumstances bearing upon the risk of nonpayment of any of the Guaranteed Obligations and the nature, scope and extent of the risks that the Purchase Money Notes Guarantor assumes and incurs pursuant to this Purchase Money Notes Guaranty, and (ii) agrees that the [GPMN] Holder shall not have any duty whatsoever to advise the Purchase Money Notes Guarantor of information regarding such circumstances or risks.

Section 10. Governing Law. THIS PURCHASE MONEY NOTES GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH [FEDERAL LAW, BUT IF FEDERAL LAW DOES NOT PROVIDE A RULE OF DECISION, IT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH][5] THE LAW OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS PURCHASE MONEY NOTES GUARANTY TO THE LAW OF ANOTHER JURISDICTION. NOTHING IN THIS PURCHASE MONEY NOTES GUARANTY SHALL REQUIRE ANY

---

4 Insertion of language is optional. If inserted, the bracketed language may be modified as determined by the Initial Holder and the Purchase Money Notes Guarantor in their discretion (subject to the last sentence of the definition of the term "Required PMN Consenting Parties" as set forth in the Agreement of Definitions as originally executed and any further restriction on such modification set forth in the definition of the term "Required PMN Consenting Parties" as then in effect (immediately prior to the execution of this Purchase Money Notes Guaranty)).

5 Insertion to be determined by the Initial Holder and the Purchase Money Notes Guarantor.

UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS PURCHASE MONEY NOTES GUARANTY.

Section 11. Records and Accounts. The [GPMN] Holders may maintain books and accounts setting forth the amounts paid and payable with respect to the Guaranteed Obligations, and in the case of any dispute relating to any of the outstanding amount, payment or receipt of any of the Guaranteed Obligations or otherwise, the entries in such books and accounts shall constitute *prima facie* evidence of amounts and other matters set forth therein. The failure of the [GPMN] Holders to maintain such books and accounts shall not in any way relieve or discharge the Purchase Money Notes Guarantor of any of its obligations pursuant to this Purchase Money Notes Guaranty.

Section 12. Waiver of Remedies. No failure on the part of the [GPMN] Holders to exercise, and no delay in exercising, any right pursuant to this Purchase Money Notes Guaranty or any [Guaranteed] Purchase Money Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the [GPMN] Holders provided pursuant to this Purchase Money Notes Guaranty and in each Class of [Guaranteed] Purchase Money Notes are cumulative and are in addition to, and not exclusive of, any other rights or remedies provided by Law. The rights of the [GPMN] Holders pursuant to this Purchase Money Notes Guaranty and each Class of [Guaranteed] Purchase Money Notes against any other party thereto are not conditional or contingent on any attempt by the [GPMN] Holders to exercise any of their respective rights pursuant to any other document against such party or against any other Person.

Section 13. Termination. The obligations of the Purchase Money Notes Guarantor in respect of the Guaranteed Obligations shall remain in full force and effect until, and shall terminate upon, the earliest of the indefeasible satisfaction and payment in full of the Guaranteed Obligations and the termination or cancellation of each [Guaranteed] Purchase Money Note in accordance with its terms.

Section 14. Successors and Assigns. Each reference in this Purchase Money Notes Guaranty to the [GPMN] Holders or to the Purchase Money Notes Guarantor shall be deemed to include their respective successors and assigns, in whose favor the provisions of this Purchase Money Notes Guaranty also shall inure and upon whom this Purchase Money Notes Guaranty also shall be binding; provided, however, that, for each Class of [Guaranteed] Purchase Money Notes, the Purchase Money Notes Guarantor may not assign or transfer its obligations pursuant to this Purchase Money Notes Guaranty to any Person without the prior written consent of the [GPMN] Holders of 100% of the outstanding principal balance of such Class, and any such assignment or other transfer to which such [GPMN] Holders have not so consented shall be null and void *ab initio*.

Section 15. Amendments. For each Class of [Guaranteed] Purchase Money Notes, no amendment of any provision of this Purchase Money Notes Guaranty shall be effective unless it is in writing and signed by the Purchase Money Notes Guarantor and the Holders of more than

50.0% of the outstanding principal balance of such Class; provided, however, that any amendment, waiver or other modification of or in respect of this Purchase Money Notes Guaranty that would (i) affect adversely the interests, rights or obligations of any Holder of [Guaranteed] Purchase Money Notes or (ii) release the Purchase Money Notes Guarantor from all or any part of its obligation to make each and every payment pursuant to this Purchase Money Notes Guaranty shall not be effective unless it is in writing and signed by each affected Holder of [Guaranteed] Purchase Money Notes, and in each case, such consent, amendment, waiver or other modification shall be effective only in the specific instance and for the specific purpose for which given.

Section 16. Payments.

(a) Any and all payments to be made by the Purchase Money Notes Guarantor pursuant to this Purchase Money Notes Guaranty in respect of the Guaranteed Obligations shall be made in legal currency of the United States of America, in immediately available funds, by 12:00 p.m. New York time on the date that is one Business Day prior to the applicable Distribution Date or Maturity Date, provided that the Purchase Money Notes Guarantor has received written demand therefor by the applicable [GPMN] Holder or by the Paying Agent on such [GPMN] Holder's behalf, in each case in substantially the form attached hereto as Exhibit A, no later than 5:00 p.m. New York time on the date that is four Business Days prior to such Distribution Date or Maturity Date. The deposit of any such payments by the Purchase Money Notes Guarantor into the Defeasance Account pursuant to the Custodial and Paying Agency Agreement for further distribution by the Paying Agent to the [GPMN] Holders shall constitute payment in satisfaction of this Section with respect to the Guaranteed Obligations.

(b) In addition, the Purchase Money Notes Guarantor agrees that to the extent the full principal amount of any [Guaranteed] Purchase Money Note is not paid when due, for whatever reason, the Purchase Money Notes Guarantor will pay interest on such unpaid principal amount at the rate of [___]%[6] per annum calculated on the basis of a year of three hundred and sixty days and twelve thirty day months. Such interest shall be due and payable by the Purchase Money Notes Guarantor on the day the overdue principal is paid to the [GPMN] Holders, which may be any Business Day without regard to whether or not such date is a Distribution Date or the Maturity Date. Such interest payment shall be made in legal currency of the United States of America to the Paying Agent for further distribution by the Paying Agent to the [GPMN] Holders. Any such interest shall accrue from and including the Distribution Date or Maturity Date on which the principal became due and payable to, but not including, the date on which such principal is actually paid to the [GPMN] Holders. For avoidance of doubt, the agreement to pay interest as described in this Section 16(b) in no way relieves the Purchase Money Notes Guarantor of its obligations to make full and timely payment of amounts due with respect to the Guaranteed Obligations as provided in the first sentence of Section 1 and in the first sentence of Section 16(a), nor does it relieve any Person from any liability for breach by such Person of any

---

6 Rate to be Inserted to be determined by the Initial Holder and the Purchase Money Notes Guarantor.

obligation that results in the failure of any payment of principal on any [Guaranteed] Purchase Money Note to be made when due.

Section 17. 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 Purchase Money Notes Guaranty 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) (x) if delivered by hand or by nationally recognized courier service, when signed for (or refused) by or on behalf of the relevant party hereto; (y) if delivered by mail, four Business Days after deposit in the mails, postage prepaid; and (z) if delivered by electronic mail (which form of delivery is subject to the provisions of this paragraph), when delivered. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder. The Purchase Money Notes Guarantor shall send a copy of any notice by it hereunder of any change of address or electronic mail address to each of the parties to the Custodial and Paying Agency Agreement.

Address for notices or communications to the Purchase Money Notes Guarantor:

[_____]

with a copy to:

[_____]

Address for notices or communications to the Initial Holder:

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

with a copy to:

Supervisory Counsel
FDIC Legal Division
Litigation and Resolutions Branch, Receivership Section

Special Issues Unit
3501 Fairfax Drive (Room D-7102)
Arlington, Virginia 22226
Attention: Kathleen Russo
E-mail Address: krusso@fdic.gov

Section 18. Severability. Any provision of this Purchase Money Notes Guaranty that is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Purchase Money Notes Guaranty. Without limitation of the preceding sentence, it is the intent of the parties to this Purchase Money Notes Guaranty that, in the event that in any court proceeding, such court determines that any provision of this Purchase Money Notes Guaranty 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, (A) modify such provision (including, without limitation, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (B) enforce such provision, as so modified pursuant to clause (A), in such proceeding. Nothing in this Section 18 is intended to, or shall, limit (x) the ability of any party to this Purchase Money Notes Guaranty to appeal any court ruling or the effect of any favorable ruling on appeal or (y) the intended effect of Section 10.

Section 19. Headings. Section titles or captions contained in this Purchase Money Notes Guaranty are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Purchase Money Notes Guaranty or the intent of any provisions hereof. All Section, paragraph and clause references contained in this Purchase Money Notes Guaranty shall refer to Sections, paragraphs and clauses in this Purchase Money Notes Guaranty unless otherwise specified.

Section 20. Limitation of Liability. Neither the [GPMN] Holders nor any of their respective Affiliates, officers, directors, employees, attorneys or agents shall have any liability with respect to, and the Purchase Money Notes Guarantor hereby waives, releases and agrees not to sue any of them upon, any claim for any special, indirect, incidental or consequential damages suffered or incurred by the Purchase Money Notes Guarantor in connection with, arising out of or in any way related to this Purchase Money Notes Guaranty or any of the transactions contemplated by this Purchase Money Notes Guaranty. The Purchase Money Notes Guarantor hereby waives, releases and agrees not to sue the Holders or any of their respective Affiliates, officers, directors, employees, attorneys or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Purchase Money Notes Guaranty or any of the transactions contemplated by this Purchase Money Notes Guaranty.

Section 21. Waiver of Jury Trial. EACH OF THE PURCHASE MONEY NOTES GUARANTOR AND EACH [GPMN] HOLDER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MIGHT HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS PURCHASE MONEY NOTES GUARANTY AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

Section 22. Jurisdiction; Venue and Service.

(a) Each [GPMN] Holder (if such [GPMN] Holder is not the FDIC; any [GPMN] Holder that is not the FDIC, a "**Non-FDIC Holder**"), on behalf of itself and its Affiliates, hereby irrevocably and unconditionally:

(i) consents to the jurisdiction of the United States District Court for the Southern District of New York and to the jurisdiction of the United States District Court for the District of Columbia for any suit, action or proceeding against it or any of its Affiliates commenced by the Purchase Money Notes Guarantor or any other Holder (if such other Holder is the FDIC; the Holder that is the FDIC, the "**FDIC Holder**") arising out of, relating to, or in connection with this Purchase Money Notes Guaranty or any 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 Purchase Money Notes Guarantor or the FDIC Holder files the suit, action or proceeding without the consent of the Purchase Money Notes Guarantor or the FDIC Holder, as applicable;

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

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

(ii) consents to the jurisdiction of the Supreme Court of the State of New York for any suit, action or proceeding against it or any of its Affiliates commenced by the Purchase Money Notes Guarantor or the FDIC Holder arising out of, relating to, or in connection with this Purchase Money Notes Guaranty or any 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 Purchase Money Notes Guarantor or the FDIC Holder, 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 Non-FDIC Holder, or its Affiliates, against the Purchase Money Notes Guarantor or the FDIC Holder arising out of, relating to, or in connection with this Purchase Money Notes Guaranty or any other 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 Purchase Money Notes Guarantor or the FDIC Holder, 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 Purchase Money Notes Guarantor or the FDIC Holder, 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 22(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 Purchase Money Notes Guarantor or the FDIC Holder, as applicable.

(b) Each Non-FDIC Holder, 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 22(a) may be enforced in any court of competent jurisdiction.

(c) Subject to the provisions of Section 22(d), each [GPMN] Holder, on behalf of itself and its Affiliates, and the Purchase Money Notes Guarantor, hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 22(a) or Section 22(b) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to (in the case of the Purchase Money Notes Guarantor) it at its address for notices pursuant to Section 17 (with copies to such other Persons as specified therein) or (in the case of any [GPMN] Holder) to it at its address set forth in the Purchase Money Notes Register; provided, however, that nothing contained in this Section 22(c) shall affect the right of any party to serve process in any other manner permitted by Law.

(d) Nothing in this Section 22 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Section 22(a)(iii) and Section 22(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 23. Counterparts; Facsimile Signature. This Purchase Money Notes Guaranty 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 Purchase Money Notes Guaranty and any amendments to it, 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 Purchase Money Notes Guaranty 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.

Section 24. Net Loss on Investments. The Purchase Money Notes Guarantor agrees (jointly and severally with any other "Purchase Money Notes Guarantor" (as defined in the Agreement of Definitions)) to deposit funds into the Defeasance Account (in respect of any Net Loss on Investments) as and when required pursuant to Section 3.3(e) of the Custodial and Paying Agency Agreement. The Company is hereby constituted an express third-party beneficiary of this Section 24 (subject to the terms of Sections 10, 21 and 22 as if the Company was a Non-FDIC Holder) and, in relation to this Section 24, Section 10, and neither this Section 24 nor, in relation to this Section 24, Section 10, may be amended or modified without the consent of the Company.

[Signature page follows.]

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

Purchase Money Notes Guarantor

[_____]

By: _____
Name: [_____]
Title: [_____]

Initial Holder

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR THE FAILED BANKS

By: _____
Name: [_____]
Title: [_____]

Company

THE UNDERSIGNED HEREBY CONFIRMS, AND IN ANY EVENT AGREES, THAT THIS INSTRUMENT ABOVE CONSTITUTES A "PURCHASE MONEY NOTES GUARANTY" FOR ALL PURPOSES OF THE TRANSACTION DOCUMENTS, INCLUDING WITHOUT LIMITATION FOR THE PURPOSES OF SECTION 2.1 OF THE REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT

CRE VENTURE 2011-1, LLC

By: [_____], its [_____]

By: [_____], its [_____]

By: _____
Name: [_____]
Title: [_____]][7]

7 The FDIC has the option of whether to require the Company to execute this confirmation.

EXHIBIT A

Form of Payment Request

PAYMENT REQUEST - NOTE GUARANTY

The following request is made pursuant to the Purchase Money Notes Guaranty Agreement by and between [_____], the Federal Deposit Insurance Corporation in its capacity as Receiver for the Failed Banks, and CRE Venture 2011-1, LLC dated as of August 10, 2011

Request Date:

Date Funds Required:

Reason for Request [1]

Payment Required:

Class [___]

Class [___]

Total Payment Required	**A**
Funds Available for Payment	**B**
Shortfall - Amount Due from FDIC on Guaranty	**A - B**

[1] Indicate whether draw request is due to Note maturity, acceleration, or otherwise.

Certification of Custodian and Paying Agent
To the best of our knowledge and belief, the information shown above is accurate, true and complete.

Name: Date
Title:

Wire Instructions:

SCHEDULE I

Methodology for Determining Percentage Undivided Interest in Each Asset Contributed and Sold

The percentage undivided interest in each Asset that is sold to the Company pursuant to the Agreement (the "Sale Undivided Interest Percentage") equals the quotient (expressed as a percentage) of (i) the initial "issue price" of the Purchase Money Notes as determined in accordance with the Internal Revenue Code and applicable Treasury Regulations, divided by (ii) the sum of (x) the amount described in clause (i) plus (y) the quotient (expressed as a decimal) of (A) the Private Owner Interest Sale Price divided by (B) the Private Owner Interest (as defined in the Private Owner Interest Sale Agreement). The percentage undivided interest in each Asset that is contributed to the Company pursuant to the Agreement equals 100% minus the Sale Undivided Interest Percentage.

SCHEDULE II

LIST OF PURCHASE MONEY NOTES

Class	Original Principal Amount (inclusive of Purchase Money Notes Issuance Fee)	Maturity Date
Class A	$170,224,042.00	August 10, 2018