

**PRIVATE OWNER INTEREST  
SALE AND ASSIGNMENT AGREEMENT**

**by and among  
MOUNTAINVIEW PUBLIC PRIVATE INVESTMENT I, LLC,  
FEDERAL DEPOSIT INSURANCE CORPORATION,  
in its capacity as Receiver,  
and  
SFR VENTURE 2011-1, LLC**

**Dated as of September 1, 2011**

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**PRIVATE OWNER INTEREST  
SALE AND ASSIGNMENT AGREEMENT**

THIS PRIVATE OWNER INTEREST SALE AND ASSIGNMENT AGREEMENT (this "**Agreement**") is made as of September 1, 2011, by and among MountainView Public Private Investment I, LLC, a Delaware limited liability company (the "**Private Owner**"), the Federal Deposit Insurance Corporation in its capacity as Receiver (the "**Initial Member**"), and SFR Venture 2011-1, LLC, a Delaware limited liability company (the "**Company**"). For purposes of this Agreement, all terms used in this Agreement (including in the preamble and recitals hereto) that are defined in, or by reference in, that certain Agreement of Definitions - SFR Venture 2011-1 Structured Transaction dated as of the date hereof among the parties hereto and certain others (as the same may be amended from time to time in accordance with the terms set forth herein for the amendment of this Agreement) (the "**Agreement of Definitions**"), and are not otherwise defined herein, shall have the meanings and definitions given, or referred to, in the Agreement of Definitions.

**RECITALS**

WHEREAS, the Initial Member formed the Company by causing the Certificate of Formation of the Company to be filed with the Secretary of State of the State of Delaware on August 15, 2011, holds the sole limited liability company interest in the Company, and has entered into the Original LLC Operating Agreement;

WHEREAS, pursuant to the Contribution Agreement, the Initial Member has contributed in part and sold in part to the Company all of the Initial Member's right, title and interest in and to the Assets;

WHEREAS, after conducting a sealed bid sale for a forty percent (40%) limited liability company interest in the Company (the "**Private Owner Interest**"), the FDIC selected MountainView Public Private Investment I, LLC, a Delaware limited liability company (the "**Winning Bidder**"), as the successful bidder pursuant to the bid form submitted by it (the "**Bid Form**") and, in accordance with the instructions governing the sealed bid sale, the Winning Bidder has deposited \$300,000.00 with its bid and an additional \$2,469,994.90 after its bid was selected (collectively, the "**Earnest Money Deposit**") with the FDIC;

WHEREAS, following its selection as the successful bidder, the Winning Bidder formed the Private Owner as a Qualified Transferee;

WHEREAS, the Initial Member desires to transfer the Private Owner Interest to the Private Owner (and the Initial Member will retain a sixty percent (60%) limited liability company interest in the Company) and enter into the LLC Operating Agreement in the form attached hereto as Exhibit A, and the Private Owner desires to acquire the Private Owner Interest and enter into the LLC Operating Agreement;

WHEREAS, the Initial Member and the Private Owner desire, as capital contributions to the Company on a *pro rata* basis in accordance with their proportionate interests, to fund the

Working Capital Reserve Account with an aggregate amount of \$705,449.50 (such sum, the "**WCR Account Deposit**"); and

WHEREAS, the Initial Member's sixty percent (60%) share of such WCR Account Deposit is \$423,269.70 (the "**Initial Member WCR Account Deposit**") and the Private Owner's forty percent (40%) share of such WCR Account Deposit is \$282,179.80 (the "**Private Owner WCR Account Deposit**").

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 Initial Member, the Private Owner and the Company hereby agree as follows:

1. **Sale and Assignment; Purchase Price; Funding of Working Capital Reserve; Account Closing.**

(a) **Sale and Assignment.** Subject to the terms and conditions of this Agreement, the Initial Member hereby sells to the Private Owner, and the Private Owner hereby purchases from the Initial Member, all of the Initial Member's right, title and interest in and to the Private Owner Interest for a purchase price of \$27,699,949.00 (the "**Private Owner Interest Sale Price**"). On the date hereof, in satisfaction of its obligation to pay the Private Owner Interest Sale Price, the Private Owner shall (i) remit to the Initial Member, by wire transfer of immediately available funds, to such account as the Initial Member may direct in writing, an amount (the "**Purchase Price Payment**") equal to the positive difference (if any) between (x) the Private Owner Interest Sale Price and (y) the sum of (A) the Earnest Money Deposit, and (B) the Initial Member WCR Account Deposit and (ii) (x) remit, on behalf of the Initial Member, by wire transfer of immediately available funds, an amount equal to the Initial Member WCR Account Deposit to the Paying Agent for credit to the Working Capital Reserve Account, and (y) remit, on its own behalf, by wire transfer of immediately available funds, an amount equal to the Private Owner WCR Account Deposit to the Paying Agent for credit to the Working Capital Reserve Account.

(b) **Closing Procedure.** Upon (i) the receipt by the Initial Member of (x) the Purchase Price Payment, (y) evidence of the establishment of the Working Capital Reserve Account in accordance with the provisions of Section 3.6 of the Custodial and Paying Agency Agreement, and (z) confirmation of receipt by the Paying Agent of each of the Initial Member WCR Account Deposit and the Private Owner WCR Account Deposit, (ii) the delivery of the executed LLC Operating Agreement by the parties thereto (as required by Section 2), (iii) the delivery of the Additional Security (as required by Section 3), (iv) the delivery by each Person specified in Section 4(a) of a Specified Parent/Owner Undertaking, (v) the delivery by the Private Owner of the letter described in Section 4(b), (vi) the delivery of the completed Private Owner Interest Asset Value Schedule, in the form attached hereto as Exhibit B, allocating the Private Owner Interest Sale Price among the Assets (the "**Private Owner Interest Asset Value Schedule**"), which shall be appended to the Contribution Agreement as the Private Owner Interest Asset Value Schedule thereunder, (vii) the delivery of the executed Transferee Acknowledgment and Certification, in the form attached hereto as Exhibit C, and (viii) the delivery of the executed Joinder and Consent Agreement, in the form attached hereto as Exhibit

D, the sale and assignment of the Private Owner Interest to the Private Owner and the closing of the other transactions contemplated hereby (collectively, the “**Closing**”) shall be effective.

2. **LLC Operating Agreement.** Contemporaneously with the execution and delivery of this Agreement, the Private Owner shall execute and deliver to the Company and the Initial Member the LLC Operating Agreement.

3. **Additional Security.** Contemporaneously with the execution of this Agreement and the LLC Operating Agreement, the Private Owner shall (i) pursuant to the applicable provisions in the LLC Operating Agreement and the Custodial and Paying Agency Agreement, establish the Private Owner Pledged Account and (ii) deliver (or cause to be delivered) to the Paying Agent, the Additional Security (which, if in the form of Qualifying Cash Collateral, shall be remitted for deposit into the Private Owner Pledged Account).

4. **Specified Parent/Owner Undertaking; LPOA Letter.**

(a) Contemporaneously with the execution of this Agreement, the Private Owner shall cause to be delivered to the Initial Member and the PMN Agent an instrument in the form attached hereto as Exhibit E (a “**Specified Parent/Owner Undertaking**”), executed by each of (i) the Specified Parent of the Private Owner or, if such Specified Parent consists of more than one Person, each such Person and (ii) each Non-Specified Parent PO Owner. Each Person required pursuant to the preceding sentence to deliver a Specified Parent/Owner Undertaking shall execute and deliver a separate Specified Parent/Owner Undertaking.

(b) Contemporaneously with the execution of this Agreement, the Private Owner shall execute and deliver to the Receiver a letter in the form attached hereto as Exhibit F, appropriately completed.

5. **Representations and Warranties of Private Owner.** The Private Owner hereby represents and warrants separately to each of the Initial Member and the Company as follows:

(a) The Private Owner is a Qualified Transferee, and as such represents and warrants that each item included in such definition is true and correct in all respects as of the date hereof as if set forth herein.

(b) All information and documents provided to the Initial Member or its agents by or on behalf of the Private Owner or any Affiliate thereof (or by or on behalf of any Person comprising the Specified Parent of the Private Owner or any Affiliate thereof) in connection with this Agreement and the transactions contemplated hereby, including, but not limited to, the “Purchaser Eligibility Certification,” the “Bid Certification,” the “Structured Transaction Qualification Request,” the “Bidder Qualification Application,” the “Bid Form” and the “Structured Transaction Confidentiality Agreement,” are true and correct in all respects as of the date hereof and do not fail to state any fact necessary to make the information contained therein not misleading.

(c) As of the date hereof, the only Non-Specified Parent PO Owner is Geneva House, LLC, a Colorado limited liability company.

6. **Exclusivity of Representations.** THE PRIVATE OWNER INTEREST IS SOLD “AS IS” AND “WITH ALL FAULTS,” WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTY OR RECOURSE WHATSOEVER, INCLUDING AS TO ITS VALUE (OR THE VALUE, COLLECTABILITY OR CONDITION OF THE ASSETS HELD BY THE COMPANY OR ANY OF THE COLLATERAL FOR ANY SUCH ASSETS), FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE OR ANY OTHER MATTER, WHETHER EXPRESS OR IMPLIED OR BY OPERATION OF LAW OR OTHERWISE, AND THE INITIAL MEMBER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PRIVATE OWNER INTEREST, THE ASSETS, OR THE COLLATERAL SECURING THE ASSETS.

7. **Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs (in the case of any individual), successors and permitted assigns; provided, however, that the Private Owner may not assign this Agreement or any of its rights, interests or obligations hereunder. Any purported assignment or delegation in violation of this Agreement shall be null and void *ab initio*.

8. **Beneficiaries.** This Agreement shall inure to the benefit of, and may be enforced by, the Initial Member, the Private Owner and the Company and their respective successors and assigns. Except for the FDIC (in its corporate capacity), which shall be considered a third party beneficiary to this Agreement, there shall be no other third party beneficiaries hereunder.

9. **Waivers and Amendments.** No amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and executed by the Initial Member, the Private Owner, the Company and the FDIC (in its corporate capacity).

10. **Governing Law.** EACH PARTY TO THIS AGREEMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION, AND EACH PARTY TO THIS AGREEMENT UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT. Nothing in this Agreement shall require any unlawful action or inaction by any party hereto.

11. **Jurisdiction; Venue and Service.**

(a) Each of the Private Owner and the Company, in each case on behalf of itself and its Affiliates, hereby irrevocably and unconditionally:

(i) consents to the jurisdiction of the United States District Court for the Southern District of New York and to the jurisdiction of the United States District Court for the District of Columbia for any suit, action or proceeding against it or any of its Affiliates

commenced by the Initial Member 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 court or dispute-resolution forum (other than the court in which the Initial Member files the action, suit or proceeding) without the consent of the Initial Member;

(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 Initial Member 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 Initial Member;

(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 it or any of its Affiliates against the Initial Member arising out of, relating to, or in connection with this Agreement or any Transaction Document (other than the LLC Operating Agreement) in only the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member, and agrees to consent thereafter to transfer of the suit, action or proceeding to either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia at the option of the Initial Member; 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 11(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 Initial Member.

(b) Each of the Private Owner and the Company, in each case on behalf of itself and its Affiliates, hereby irrevocably and unconditionally agrees that any final judgment entered against it in any suit, action or proceeding falling within Section 11(a) may be enforced in any court of competent jurisdiction.

(c) Subject to the provisions of Section 11(d), each of the Private Owner and the Company, in each case on behalf of itself and its Affiliates, and the Initial Member, hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Sections 11(a) or (b) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 13 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 11(c) shall affect the right of any party to serve process in any other manner permitted by Law.

(d) Nothing in this Section 11 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Sections 11(a)(iii) and (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 the FDIC in any forum.

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

13. **Notices.** All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be given by certified or registered mail, postage prepaid, by delivery by hand or by nationally recognized courier service, or by electronic mail, in each case mailed or delivered to the applicable address or electronic mail address specified in, or in the manner provided in, this Section 13 below. All such notices, requests, demands and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt (or refusal thereof) by the relevant party hereto and (ii) (A) if delivered by hand or by nationally recognized courier service, when signed for (or refused) by or on behalf of the relevant party hereto; (B) if delivered by mail, when delivered (or refused); and (C) if delivered by electronic mail (which form of delivery is subject to the provisions of this paragraph), when delivered and capable of being accessed from the recipient's office computer, provided that any notice, request, demand or other communication that is received other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day of the recipient. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder. From time to time, any party may designate a new address for purposes of notice to it hereunder by notice to such effect to the other parties hereto in the manner set forth in this Section 13.



If to the Initial Member, to:

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

with a copy to:

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

If to the Private Owner or to the Company, to:

MountainView Public Private Investment I, LLC  
999 18<sup>th</sup> Street, Suite 1001  
Denver, CO 80202  
Attention: Michael P. Morgan  
E-mail Address: [REDACTED]

with a copy to:

MountainView Public Private Investment I, LLC  
999 18<sup>th</sup> Street, Suite 1001  
Denver, CO 80202  
Attention: Susan E. Bow, General Counsel  
E-mail Address: [REDACTED]

14. **Counterparts; Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all parties hereto. 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.

15. **Headings.** 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 Section and paragraph references contained herein shall refer to Sections and paragraphs in this Agreement unless otherwise specified.

16. **Compliance with Law; Rules of Construction.** Except as otherwise specifically provided herein, 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. The Rules of Construction apply to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

**PRIVATE OWNER**

**MOUNTAINVIEW PUBLIC PRIVATE  
INVESTMENT I, LLC**

By: \_\_\_\_\_  
Name: Michael P. Morgan  
Title: CEO and President

**INITIAL MEMBER**

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

By: \_\_\_\_\_  
Name: William P. Stewart  
Title: Senior Capital Markets Specialist

**COMPANY**

**SFR VENTURE 2011-1, LLC**

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

By: \_\_\_\_\_  
Name: William P. Stewart  
Title: Senior Capital Markets Specialist

[Signature Page to Private Owner Interest Sale and Assignment Agreement]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

PRIVATE OWNER

**MOUNTAINVIEW PUBLIC PRIVATE  
INVESTMENT 1, LLC**

By: \_\_\_\_\_  
Name: Michael P. Morgan  
Title: CEO and President

INITIAL MEMBER

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

By: \_\_\_\_\_  
Name: William P. Stewart  
Title: Senior Capital Markets Specialist

COMPANY

**SFR VENTURE 2011-1, LLC**

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

By: \_\_\_\_\_  
Name: William P. Stewart  
Title: Senior Capital Markets Specialist

[Signature Page to Private Owner Interest Sale and Assignment Agreement]

Exhibit A  
**Form of LLC Operating Agreement**

**[See Attached]**

Exhibit B

**Form of Private Owner Interest Asset Value Schedule**

**[See Attached]**

Exhibit C

[FORM OF TRANSFEREE ACKNOWLEDGMENT AND CERTIFICATION]

**TRANSFEREE ACKNOWLEDGMENT AND CERTIFICATION**

Reference is made to the Private Owner Interest Sale and Assignment Agreement, dated as of September 1, 2011 (the "**Private Owner Interest Sale Agreement**") by and among MountainView Public Private Investment 1, LLC, a Delaware limited liability company (the "**Private Owner**"), the Federal Deposit Insurance Corporation in its capacity as Receiver (the "**Initial Member**"), and SFR Venture 2011-1, LLC (the "**Company**"). Capitalized terms used, and not otherwise defined, in this Transferee Acknowledgment and Certification have the meanings given in the Private Owner Interest Sale Agreement (including without limitation in the Agreement of Definitions referred to therein).

The undersigned, the Private Owner, hereby acknowledges and certifies to the Initial Member that it has read and understands, and is prepared to cause the Company to comply with, the obligations imposed upon the Company under the Contribution Agreement and the Transaction Documents. Without limiting the foregoing, and subject to the provisions of the Contribution Agreement and the Transaction Documents, the Private Owner is aware of and prepared to cause the Company to comply with the obligations as specified in the Contribution Agreement (i) to remove the Initial Member and the applicable Failed Bank as a party to any Assumed Closing Date Asset Litigation (including without limitation the actions on the List (as defined below)), and to substitute the Company as the real party-in-interest in any such Assumed Closing Date Asset Litigation and (ii) to take all actions necessary to file (x) proofs of claims in pending bankruptcy cases involving any Assets for which the Initial Member or the applicable Failed Bank has not already filed a proof of claim and (y) 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 Assets in order to evidence and assert the Company's rights.

Attached hereto as Schedule I is a list of litigation made available with respect to the Assets (the "**List**"). The undersigned acknowledges that the Initial Member makes no representation or warranty as to the completeness or accuracy of the List or the information contained or referred to therein and that (without limitation of the foregoing) there may be additional litigation or bankruptcy actions pending against the Failed Banks or the Initial Member with respect to the Assets or with respect to other parties with respect to the Assets.

Date: September 1, 2011

**MountainView Public Private Investment I, LLC**

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

Name: \_\_\_\_\_

Title: Authorized Signatory

**SCHEDULE I TO TRANSFEREE ACKNOWLEDGMENT AND CERTIFICATION**

**LIST OF LITIGATION**

**[See Attached]**



Exhibit D

**[FORM OF JOINDER AND CONSENT AGREEMENT]**

**JOINDER AND CONSENT AGREEMENT**

THIS JOINDER AND CONSENT AGREEMENT, dated as of September 1, 2011, is delivered pursuant to Section 1(b) of the Private Owner Interest Sale and Assignment Agreement, dated as of September 1, 2011, by and among MountainView Public Private Investment I, LLC, a Delaware limited liability company (the "**Private Owner**"), the Federal Deposit Insurance Corporation, in its capacity as Receiver (the "**Initial Member**"), and SFR Venture 2011-1, LLC, a limited liability company organized and existing under the laws of Delaware (the "**Company**") (the "**Private Owner Interest Sale Agreement**"). Capitalized terms used herein without definition are used as defined in the Private Owner Interest Sale Agreement (including without limitation in the Agreement of Definitions referred to therein).

By executing and delivering this Joinder and Consent Agreement, the Private Owner hereby becomes a party to the Asset Contribution and Sale Agreement, dated as of the date of this Joinder and Consent Agreement, by and between the Initial Member and the Company (the "**Contribution Agreement**") with the same force and effect as if originally named as a party to the Contribution Agreement and, without limiting the generality of the foregoing, consents to and assumes all obligations and liabilities imposed upon the Private Owner pursuant to the Contribution Agreement. The Private Owner hereby agrees to be bound for all intents and purposes as a party to the Contribution Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

**PRIVATE OWNER**

**MOUNTAINVIEW PUBLIC PRIVATE INVESTMENT I, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

ACKNOWLEDGED AND AGREED as of the date first above written:

**INITIAL MEMBER**

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

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

**COMPANY**

**SFR VENTURE 2011-1, LLC  
By: Federal Deposit Insurance Corporation  
in its capacity as Receiver for the Failed Banks,  
as Sole Member and Manager**

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

Exhibit E

**[Form of Specified Parent/Owner Undertaking]**

**SPECIFIED PARENT/OWNER UNDERTAKING**

THIS SPECIFIED PARENT/OWNER UNDERTAKING (this "**Undertaking**"), dated as of [\_\_\_\_], 20[\_\_\_]<sup>1</sup> is made by [\_\_\_\_], a [\_\_\_\_] (the "**Promisor**"), for the severable benefit of each of the Company, the Initial Member, the PMN Agent (for the benefit of the Secured Parties) and each Purchase Money Notes Guarantor <sup>2</sup> (as such terms are defined hereinbelow) (collectively, the "**Beneficiaries**").

WITNESSETH:

WHEREAS, Promisor and/or Affiliates of the Promisor, either alone or together with one or more other Persons, Control and/or hold an Ownership Interest in [\_\_\_\_] (the "**Private Owner**");

[WHEREAS, it is contemplated that contemporaneously with the execution and delivery hereof, (i) the Transferor and the Company will execute and deliver the Contribution Agreement, pursuant to which, inter alia, the Assets will be sold in part and contributed in part to the Company, and the Purchase Money Notes will be issued to the Transferor, (ii) the Federal Deposit Insurance Corporation in its capacity as Receiver, the Company and the Private Owner will execute and deliver that certain Private Owner Interest Sale and Assignment Agreement, dated of even date herewith (the "**Private Owner Interest Sale Agreement**"), pursuant to which, inter alia, the Private Owner will acquire the Private Owner Interest and become a member of the Company, and (iii) the Company and the PMN Agent will execute and deliver the Reimbursement, Security and Guaranty Agreement pursuant to which, inter alia, the Company will grant a security interest to the PMN Agent for the benefit of the Secured Parties to secure the Secured Obligations (including the Purchase Money Notes);

WHEREAS, the parties to the Contribution Agreement, the Private Owner Interest Sale Agreement and the Reimbursement, Security and Guaranty Agreement (other than the Private Owner) are not willing to proceed with the execution and delivery thereof unless the Promisor, contemporaneously therewith, executes and delivers this Undertaking (and the Private Owner is required to cause the Promisor to execute and deliver this Undertaking pursuant to the Private Owner Interest Sale Agreement);<sup>3</sup>

- 
1. To be dated as of the Closing Date in the case of any Undertaking delivered on the Closing Date. To be dated as of the date of delivery in the case of any Undertaking delivered after the Closing Date.
  2. If this Undertaking is being executed after the Closing Date, the bracketed language may be omitted if the Secured Obligations have, prior to execution, been indefeasibly paid in full.
  3. This "Whereas" clause, and the immediately preceding "Whereas" clause, are to be included in an Undertaking executed on the Closing Date.

[WHEREAS, prior to the date hereof, (i) the Transferor and the Company executed and delivered the Contribution Agreement, pursuant to which, inter alia, the Assets were sold in part and contributed in part to the Company, and the Purchase Money Notes were issued to the Transferor, (ii) the Federal Deposit Insurance Corporation in its capacity as Receiver and the Private Owner executed and delivered that certain Private Owner Interest Sale and Assignment Agreement, dated as of September 1, 2011 (the “**Private Owner Interest Sale Agreement**”), pursuant to which, inter alia, the Private Owner acquired the Private Owner Interest and become a member of the Company, and (iii) the Company and the PMN Agent executed and delivered the Reimbursement, Security and Guaranty Agreement pursuant to which, inter alia, the Company granted a security interest to the PMN Agent for the benefit of the Secured Parties to secure the Secured Obligations (including the Purchase Money Notes); and

WHEREAS, pursuant to one or more undertakings executed and delivered pursuant to the Private Owner Interest Sale Agreement, one or more other Persons represented and covenanted that the Promisor would execute and deliver this Undertaking (and in any event the failure of the Promisor to execute and deliver this Undertaking would constitute an “Event of Default” under each of the LLC Operating Agreement and the Reimbursement, Security and Guaranty Agreement, to the detriment of the Private Owner and the Promisor).]<sup>4</sup>

NOW, THEREFORE, [in order to induce the parties to the Contribution Agreement, the Private Owner Interest Sale Agreement and the Reimbursement, Security and Guaranty Agreement (other than the Private Owner) to proceed with the execution and delivery thereof, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged,]<sup>5</sup> [in order to fulfill the requirements of the prior undertaking(s), and to avoid the Events of Default, described above,]<sup>6</sup> the Promisor hereby irrevocably and unconditionally undertakes and covenants, for the several benefit of each of the Beneficiaries, as follows:

1. Certain Definitions. Capitalized terms used, but not otherwise defined, in this Undertaking (including in the preamble and recitals hereto) shall have the respective meanings ascribed to such terms in the Private Owner Interest Sale Agreement (including in the Agreement of Definitions referenced therein).

2. Representations and Warranties. The Promisor hereby represents and warrants to each of the Beneficiaries that:

(a) The Promisor has all power and authority necessary to enter into this Undertaking and to perform its obligations hereunder;

(b) This Undertaking has been duly executed and delivered by the Promisor, and constitutes the valid and legally binding agreement of the Promisor, enforceable in

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4. This “Whereas” clause, and the immediately preceding “Whereas” clause, are to be included in an Undertaking executed after the Closing Date.

5. Bracketed language to be included in an Undertaking executed on the Closing Date.

6. Bracketed language to be included in an Undertaking executed after the Closing Date.

accordance with its terms against the Promisor subject to the effect of bankruptcy, insolvency, moratorium and other similar laws relating to creditors' rights generally;

(c) The execution, delivery and performance of (including compliance by the Promisor with) this Undertaking will not result in any violation or breach of, or default under, any contract, agreement or other instrument to which the Promisor or any of its Affiliates is a party or by which the Promisor or any of its Affiliates is bound, any fiduciary duty owed by the Promisor or any of its Affiliates to any third party, or any judgment, order, decree, statute, Law, ordinance, rule or regulation applicable to the Promisor or any of its Affiliates or to the properties of the Promisor or any of its Affiliates; and

(d) No consent, approval, order, or authorization of, or registration, declaration or filing with, any governmental authority remains to be obtained or made by the Promisor or any of its Affiliates in connection with the execution and delivery of this Undertaking by the Promisor or the performance of its obligations hereunder.

### 3. Undertakings.

(a) The Promisor (i) shall not, and it shall represent, warrant and covenant that none of its Affiliates, and no Non-Specified Parent PO Owner, shall, at any time prior to the first day after the sixth anniversary of the Transaction Termination Date, institute or join, or join or assist any other Person in instituting or joining, or cause the Private Owner or the Company to institute, a Specified Proceeding, and (ii) without limitation of clause (i), shall ensure that the Private Owner shall not, prior to the Transaction Termination Date, institute any Specified Proceeding.

(b) The Promisor shall require that each other Non-Specified Parent PO Owner shall, contemporaneously with its first becoming a Non-Specified Parent PO Owner, execute and deliver to the Beneficiaries an instrument in the form of this Undertaking.

4. Binding Effect; Beneficiaries; Assignment. This Undertaking shall be binding upon the successors and assigns of the Promisor. This Undertaking is for the benefit of (but solely for the benefit of) each of the Beneficiaries and its respective successors or assigns (each of whom is hereby constituted an express third-party beneficiary of this Undertaking) and no other Person shall be deemed to have any rights or remedies hereunder or by reason of the existence of this Undertaking or any term hereof.

5. Waivers and Amendments. This Undertaking may not be amended, and no waiver of any provision of this Undertaking shall be effective, in each case except by an instrument in writing and executed by the Promisor and each Beneficiary.

6. Specific Enforcement. The Promisor agrees that there can be no adequate remedy at law for any failure by it to comply with the terms hereof and, accordingly, (i) each Beneficiary shall be entitled to equitable relief, including but not limited to injunction, in the event of any such failure (or any threat thereof), in addition to whatever remedies such Beneficiary might have at law and (ii) the Promisor shall not oppose the granting of such relief and hereby irrevocably waives any requirement for the security or posting of any bond in

connection with such relief. The Promisor agrees to indemnify and hold harmless each Beneficiary from and against any Losses incurred by such Beneficiary in connection with or arising out of any breach of this Undertaking by the Promisor.

7. Governing Law. IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS UNDERTAKING IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS UNDERTAKING TO THE LAW OF ANOTHER JURISDICTION, AND PROMISOR UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT.

8. Jurisdiction; Venue and Service.

(a) The Promisor 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 commenced by any Beneficiary arising out of, relating to, or in connection with this Undertaking, 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 such Beneficiary files the action, suit or proceeding) without the consent of such Beneficiary;

(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 commenced by any Beneficiary arising out of, relating to, or in connection with this Undertaking, 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 such Beneficiary;

(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 it against any Beneficiary arising out of, relating to, or in connection with this Undertaking 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 such Beneficiary, 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 such Beneficiary; 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(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 applicable Beneficiary.

(b) The Promisor hereby irrevocably and unconditionally agrees that any final judgment entered against it in any suit, action or proceeding falling within Section 8(a) may be enforced in any court of competent jurisdiction.

(c) Subject to the provisions of Section 8(d), the Promisor hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Sections 8(a) or (b) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 9; provided, however, that nothing contained in this Section 8(c) shall affect the right of any party to serve process in any other manner permitted by Law.

(d) Nothing in this Section 8 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Sections 8(a)(iii) or (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 the FDIC in any forum.

9. Notices. All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Undertaking to the Promisor shall be in writing and shall be given by certified or registered mail, postage prepaid, by delivery by hand or by nationally recognized courier service, or by electronic mail, in each case mailed or delivered to the applicable address or electronic mail address specified in, or in the manner provided in, this Section 9 below. All such notices, requests, demands and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt (or refusal thereof) by the Promisor and (ii) (A) if delivered by hand or by nationally recognized courier service, when signed for (or refused) by or on behalf of the Promisor, (B) if delivered by mail, when delivered (or refused), and (C) if delivered by electronic mail (which form of delivery is subject to the provisions of this paragraph), when delivered and capable of being accessed from the Promisor's office computer, provided that any notice,

request, demand or other communication that is received other than during regular business hours of the Promisor shall be deemed to have been given at the opening of business on the next Business Day of the Promisor. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder. From time to time, the Promisor may designate a new address for purposes of notice to it hereunder by notice to such effect to each of the Beneficiaries in the manner set forth in the Custodial and Paying Agency Agreement.

[PROMISOR]

[\_\_\_\_\_]
[Address]
Attention: [\_\_\_\_\_]
E-mail Address: [\_\_\_\_\_]

with copies to:

[\_\_\_\_\_]
[Address]
Attention: [\_\_\_\_\_]
E-mail Address: [\_\_\_\_\_]

10. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. 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. The Promisor shall not 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 the Promisor forever waives any such defense.

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

12. Rules of Construction. The Rules of Construction apply to this Undertaking.

13. Severability. Any provision of this Undertaking which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the



case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Undertaking. Without limitation of the preceding sentence, it is the intent of the Promisor that in the event that in any court proceeding, such court determines that any provision of this Undertaking is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason), such court shall have the power to, and shall, (x) modify such provision (including, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding, and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 13 is intended to, or shall, limit the ability of any Beneficiary to appeal any court ruling or the effect of any favorable ruling on appeal or the intended effect of Section 7.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Undertaking as of the date first above written.

[NAME OF SIGNATORY]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit F

**[Form of Letter Designating Individuals for Limited Power of Attorney]**

September 1, 2011

Federal Deposit Insurance Corporation,  
as Receiver for the Failed Banks  
550 17<sup>th</sup> Street, NW (Room F-7015)  
Washington, D.C. 20429-0002  
Attention: Ralph Malami  
Attention: Kathleen Russo

Re: Designation of Individuals for Limited Power of Attorney

Ladies and Gentlemen:

We refer to (i) that certain Private Owner Interest Sale and Assignment Agreement, dated as of the date hereof, by and among MountainView Public Private Investment I, LLC, a Delaware limited liability company, the Federal Deposit Insurance Corporation in its capacity as Receiver, and SFR Venture 2011-1, LLC, a Delaware limited liability company (the "**Private Owner Interest Sale Agreement**"), and (ii) the Contribution Agreement (as defined in the Agreement of Definitions referred to herein). For purposes of this letter, all terms used in this letter that are defined in, or by reference in, that certain Agreement of Definitions - SFR Venture 2011-1 Structured Transaction dated as of the date hereof among the parties to the Private Owner Interest Sale Agreement and certain others (the "**Agreement of Definitions**"), and are not otherwise defined herein, shall have the meanings and definitions given, or referred to, in the Agreement of Definitions. This letter is being delivered pursuant to Section 4(b) of the Private Owner Interest Sale Agreement.

We hereby designate the following individuals as the individuals that should be listed in Exhibit A to the Limited Power of Attorney:


We hereby certify that we have complied with the requirements of Section 3.1(d)(iv) of the Contribution Agreement in relation to the designation set forth in the preceding sentence.

This letter shall be deemed to be a Transaction Document. This letter may be executed and delivered by facsimile or other electronic means, and in any number of counterparts, each of which shall be deemed to be an original and all of which shall together constitute one instrument.

Very truly yours,

**PRIVATE OWNER**

**MOUNTAINVIEW PUBLIC PRIVATE  
INVESTMENT I, LLC**

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

Name: \_\_\_\_\_

Title: Authorized Signatory