

ADVANCE FACILITY AGREEMENT

Dated as of October 16, 2009

among

CORUS CONSTRUCTION VENTURE, LLC,
as Borrower,

THE LENDERS FROM TIME TO TIME PARTY HERETO,

and

FEDERAL DEPOSIT INSURANCE CORPORATION,
AS RECEIVER FOR CORUS BANK, N.A.,
as Administrative Agent

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- 2.01 Commitments
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- 10.02 Addresses for Notices

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- Form of*
- A Advance and/or Authorized Overage Loan Borrowing Notice
- B Working Capital Loan Borrowing Notice
- C-1 Term Note
- C-2 Working Capital Note
- D U.S. Tax Compliance Certificate
- E Assignment and Assumption

ADVANCE FACILITY AGREEMENT

This ADVANCE FACILITY AGREEMENT (this “**Agreement**”) is entered into as of October 16, 2009, among CORUS CONSTRUCTION VENTURES, LLC, a Delaware limited liability company (the “**Borrower**”), each Lender from time to time party hereto (collectively, the “**Lenders**”), and FEDERAL DEPOSIT INSURANCE CORPORATION (the “**FDIC**”), as Receiver for Corus Bank, N.A., as Administrative Agent (in such capacity, together with its successors and permitted assigns, the “**Administrative Agent**”).

PRELIMINARY STATEMENTS

WHEREAS, on September 11, 2009, the FDIC was appointed receiver for Corus Bank, N.A. (the “**Failed Bank**”);

WHEREAS, the Failed Bank previously owned the Underlying Loans (as defined below), including, through one or more subsidiaries, the Closing Date REO (as defined below);

WHEREAS, the FDIC as receiver for the Failed Bank (in such capacity, the “**Receiver**”) and the Borrower have entered into a Loan Contribution and Sale Agreement dated as of the date hereof (the “**Contribution Agreement**”), pursuant to which (i) the Receiver sold in part and contributed in part, to the Borrower, and the Borrower purchased and assumed from the Receiver, all of the Receiver’s right, title, and interest in and to the Underlying Loans, including the outstanding equity interests in the subsidiaries that hold the Closing Date REO and any REO owned directly by the Receiver, (ii) the Borrower executed and delivered to the Receiver the Purchase Money Note (as defined below) and (iii) the FDIC guaranteed payment of the principal on, and other obligations in respect of, the Purchase Money Note pursuant to the terms pursuant to the Purchase Money Note Guaranty (as defined below);

WHEREAS, in connection with the transactions contemplated by the Contribution Agreement, the Receiver was admitted as the “**Initial Member**” of the Borrower (in such capacity, together with its successors and assigns, the “**Initial Member**”) and received one hundred percent (100%) of the equity interests of the Borrower;

WHEREAS, pursuant to that certain Limited Liability Company Interest Sale and Contribution Agreement dated as of the date hereof (the “**Contribution Agreement**”), the Initial Member is selling to CCV Managing Member, LLC, a Delaware limited liability company, an interest representing forty percent (40%) of the equity interests in the Borrower;

WHEREAS, in connection therewith, the Initial Member and CCV Managing Member, LLC, as managing member (in such capacity, together with its permitted successors and assigns, the “**Managing Member**”), and the Borrower have entered into the Amended and Restated Limited Liability Company Operating Agreement of the Borrower dated as of the date hereof (the “**LLC Operating Agreement**”);

WHEREAS, in connection therewith, the Receiver as Lender hereunder has agreed to make advances to the Borrower to (i) permit the Borrower to issue advances to borrowers under the unfunded commitments associated with such Underlying Loans, (ii) fund certain costs and expenses incurred by the Borrower in connection with the administration and enforcement of the Underlying Loans (and fund certain costs and expenses associated with the ownership and operation of the Closing Date REO and other REO Property (as defined below)

and (iii) pay certain Working Capital Expenses (as defined below), in each case, subject to the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“Account Control Agreement” shall mean one or more Account Control Agreements among the Borrower, the Custodian/Paying Agent and the Collateral Agent entered into in accordance with the Custodial and Paying Agency Agreement.

“Accountants” shall mean the independent certified public accountants of the Borrower.

“Act” has the meaning specified in Section 10.19.

“Acquired Collateral” has the meaning specified in the Custodial and Paying Agency Agreement.

“Administrative Agent” means the Receiver, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Advance Loan” has the meaning specified in Section 2.01(a).

“Advance Loan Borrowing” means a borrowing consisting of Advance Loans made on the same day.

“Advance and/or Authorized Overage Loan Borrowing Notice” means a notice of an Advance Loan Borrowing or Authorized Overage Loan Borrowing substantially in the form of Exhibit A.

“Advance Loan Commitment” means, as to each Lender, its obligation to make Advance Loans to the Borrower pursuant to Section 2.01(a) in an aggregate amount not to exceed the lesser of (i) the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Advance Loan Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto (but such amount may not be less than the Advance Loan Commitment of the transferring Lender), as applicable, as such amount may be adjusted from time to time in accordance with this Agreement, and (ii) such Lender’s Pro Rata Percentage of the lesser of (A) (x)\$1,000,000,000, minus (y) the amount of the Authorized Overage Loan Commitment then in effect, and (B) the sum of (1) aggregate Asset Advance Loan Sublimits in effect from time to time and (2) for any Assets for which there is not yet an Approved Business Plan, the lesser of (x) \$350,000,000 multiplied by the Pro Rata Share for such Assets and (y) the aggregate Unfunded Commitments with respect to such Assets.

“Advance Loan Exposure” means, as to each Lender at any time of determination, the sum of the outstanding principal amount of such Lender’s Advance Loans (excluding any interest that is capitalized in accordance with Section 2.06(b)) at such time.

“Affiliate” means, with respect to any specified Person, (i) any other Person directly or indirectly Controlling or Controlled by or under common Control with such specified Person, (ii) any Person owning or Controlling ten percent (10%) or more of the outstanding voting securities, voting equity interests, or beneficial interests of the Person specified, (iii) any officer, director, general partner, managing member, trustee, employee or promoter of the Person specified or any Immediate Family Member of such officer, director, general partner, managing member, trustee, employee or promoter, (iv) any corporation, partnership, limited liability company or trust for which any Person referred to in clause (ii) or (iii) acts in that capacity, or (v) any Person who is an officer, director, general partner, managing member, trustee or holder of ten percent (10%) or more of the outstanding voting securities, voting equity interests or beneficial interests of any Person described in clauses (i) through (iv); *provided, however*, that for the purposes of this Agreement none of the Initial Member, the Receiver as Lender, any Agent or the Purchase Money Note Guarantor shall be deemed an Affiliate of the Borrower.

“Agent-Related Persons” means the Agents, together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“Agents” means, collectively, the Administrative Agent, the Collateral Agent, each co-agent or sub-agent appointed by the Collateral Agent (if any) from time to time pursuant to the Reimbursement, Security and Guaranty Agreement, the Verification Contractor and the Custodian/Paying Agent.

“Agreement” means this Advance Facility Agreement.

“Alternate Base Rate” means for any day a fluctuating rate per annum equal to the Federal Funds Rate in effect on such day plus ½ of 1%. Any change in the Alternate Base Rate due to a change in the Federal Funds Rate or the Prime Rate shall take effect at the opening of business on the day specified in the public announcement of such change in the Federal Funds Rate.

“Anti-Terrorism Laws” has the meaning specified in Section 5.12.

“Applicable Margin” means (i) for LIBOR Rate Loans, 3.00% per annum, and (ii) for Base Rate Loans, 5.00% per annum.

“Approved Budget” means, with respect to each Asset, a budget approved by the Administrative Agent in accordance with Section 6.11 setting forth in detail and on a line-by-line basis: (i) in the case of an Underlying Loan, (A) the aggregate amount of the Authorized Advances, if any, proposed to be made by the Borrower to the Underlying Borrower with respect to such Underlying Loan and the costs and expenses to which the proceeds of such Authorized Advances are to be applied and (B) the estimated costs and expenses to be incurred by the Borrower in connection with such Underlying Loan and the related Underlying Collateral, and (ii) in the case of an REO Property or a property which, under the Approved Business Plan, is contemplated to become REO Property, the estimated amount of the Servicing Expenses and Pre-Approved Charges to be incurred by the Borrower or a Subsidiary in connection with the ownership, operation, maintenance, leasing and sale of such REO Property and, to the extent

applicable, the estimated costs and expenses associated with the continued construction of such REO Property (which Approved Budget will show, in the cases of this clauses (i)(B) and (ii), the portion of such costs and expenses to be funded out of Working Capital Loans); *provided*, that, subject in all cases to the amount of Commitments available hereunder from time to time, the estimated construction costs and expenses described in clauses (i)(B) and (ii) may include line item variances to account for contingencies but such variances shall in no event exceed ten percent (10%) of such line item before taking into account any such variance). The term **“Approved Budget”** shall include all modifications to an Approved Budget made with the prior written approval of the Administrative Agent.

“Approved Budget Delivery Date” means, with respect to any Project, the date on which the Approved Budget is delivered to the Administrative Agent pursuant to Section 6.11.

“Approved Business Plan” means, with respect to each Asset, a business plan for such Asset approved by the Administrative Agent in accordance with Section 6.11, which shall include an Approved Budget and, in the case of Construction Loans, an Approved Construction Schedule, and shall set forth the Borrower’s plan for (i) the funding, modification, enforcement and/or disposition of the Underlying Loan in question and, to the extent applicable, the continued construction, leasing, operation and disposition (after enforcement of the Borrower’s remedies with respect to such Underlying Loan) of the property which is the subject of such Underlying Loan or (ii) in the case of an REO Property, the ownership and, to the extent applicable, the continued construction, leasing, operation and disposition of such REO Property. The term **“Approved Business Plan”** shall include all modifications to an Approved Business Plan made with the prior written approval of the Administrative Agent in accordance with Section 6.11.

“Approved Construction Schedule” means, with respect to each Construction Loan, the schedule, broken down by trade, that shows the estimated dates of commencement and completion of the applicable construction project as well as appropriate interim milestones and that has been approved by the Administrative Agent in accordance with Section 6.11. The term **“Approved Construction Schedule”** shall include all modifications to an Approved Construction Schedule made with the prior written approval of the Administrative Agent in accordance with Section 6.11.

“Assets” means, collectively, the Underlying Loans and the REO Properties.

“Asset Advance Loan Sublimit” means, with respect to any Asset, (i) on or prior to the Approved Budget Delivery Date for such Asset, the lesser of (A) the Pro Rata Share of such Asset of \$350,000,000 (*provided* that if the Approved Budget Delivery Date for such Asset does not occur before the date that is three (3) months after the Closing Date, such amount shall be reduced to \$0) and (B) in the case of a Construction Loan or an REO Property which remains under construction, the Unfunded Commitment in respect of such Asset and (ii) after the Approved Budget Delivery Date for such Asset, the amount set forth as the **“Asset Advance Loan Sublimit”** in the Approved Budget for such Asset, as such amount may be adjusted from time to time with the written consent of the Administrative Agent.

“Asset Authorized Overage Loan Sublimit” means, with respect to any Asset, (i) on or prior to the Approved Budget Delivery Date for such Underlying Loan, \$0 and (ii) after the Approved Budget Delivery Date for such Asset, the amount set forth as the **“Asset Authorized Overage Loan Sublimit”** in the Approved Budget for such Asset, as such amount may be adjusted from time to time with the prior written consent of the Administrative Agent.

“Asset Management Fee” has the meaning specified for the term “Management Fee” in the Custodial and Paying Agency Agreement.

“Assets” means, collectively, the Underlying Loans and the REO Properties.

“Assignment and Assumption” means an assignment and assumption substantially in the form of Exhibit E, or such other form as may be approved by the Administrative Agent.

“Assignment of Mortgage” means, with respect to each Underlying Loan, a collateral assignment of the mortgage, deed of trust, trust deed or deed to secure debt securing such Underlying Loan (**“Underlying Mortgage”**) or an assignment of blank of such Underlying Mortgage in form suitable for recording in the appropriate public records and otherwise in form reasonably satisfactory to the Administrative Agent.

“Attorney Costs” means and includes all reasonable fees, expenses and disbursements of any law firm or other external legal counsel.

“Authorized Advance” means any advance made by the Borrower to any Underlying Borrower after the Closing Date in respect of a Construction Loan in accordance with the provisions of Section 2.11 of this Agreement (the aggregate principal amount of which advances shall not exceed, as to any Construction Loan, the aggregate principal amount of Advance Loans and Authorized Overage Loans permitted hereunder in respect of such Construction Loan) and the applicable Approved Business Plan.

“Authorized Overage Loan” has the meaning specified in Section 2.01(b).

“Authorized Overage Loan Borrowing” means a borrowing consisting of Authorized Overage Loans made on the same day.

“Authorized Overage Loan Commitment” means, as to each Lender, its obligation to make Authorized Overage Loans to the Borrower pursuant to Section 2.01(b) in an aggregate amount not to exceed the lesser of (i) the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Authorized Overage Loan Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto (but such amount may not be less than the Authorized Overage Loan Commitment of the transferring Lender), as applicable, as such amount may be adjusted from time to time in accordance with this Agreement and (ii) such Lender’s Pro Rata Percentage of the lesser of (A) \$250,000,000 and (B) the aggregate Asset Authorized Overage Loan Sublimits in effect from time to time.

“Authorized Overage Loan Exposure” means, as to each Lender at any time of determination, the sum of the outstanding principal amount of such Lender’s Authorized Overage Loans (excluding any interest that is capitalized in accordance with Section 2.06(b)) at such time.

“Base Rate Loan” means a Loan that bears interest based on the Alternate Base Rate.

“BBA LIBOR” has the meaning specified in the definition of “LIBOR Rate.”

“Borrower” has the meaning specified in the introductory paragraph to this Agreement.

“Borrower Account” means any “Company Account” as defined in, and established and maintained under, the Custodial and Paying Agency Agreement.

“Borrowing” means an Advance Loan Borrowing, an Authorized Overage Loan Borrowing or a Working Capital Loan Borrowing, as the context may require.

“Borrowing Notice” means an Advance and/or Authorized Overage Loan Borrowing Notice or a Working Capital Loan Borrowing Notice, as the context may require.

“Business Day” means any day except (i) a Saturday, Sunday or other day on which commercial banks in Washington, D.C. or United States federal government offices are required or authorized by Law to close and (ii) if such day relates to any interest rate settings as to a LIBOR Rate Loan, any fundings, disbursements, settlements and payments in respect of any such LIBOR Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such LIBOR Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank Eurodollar market.

“Capital Expenditures” means, for any period, the aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capitalized Leases which is capitalized during such period on the consolidated balance sheet of the Borrower and the Subsidiaries) by the Borrower and the Subsidiaries during that period that, in conformity with GAAP, should be set forth as capital expenditures or comparable items reflected in the consolidated statement of cash flows of the Borrower and the Subsidiaries.

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases; *provided*, that for all purposes hereunder the amount of obligations under any Capitalized Lease shall be the amount thereof accounted for as a liability in accordance with GAAP.

“Casualty Event” means any event that gives rise to the receipt by the Borrower or any Subsidiary of any insurance proceeds or condemnation awards in respect of any Asset, either in accordance with the terms of the Underlying Loan Documents or in respect of REO Property.

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as subsequently amended.

“CERCLIS” means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

“Closing Date” means the date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 4.01 and the initial Loans are made.

“Closing Date REO” means the REO Property contributed (or owned by one or more Subsidiaries the Equity Interests in which are contributed) to the Borrower on the Closing Date pursuant to the Contribution Agreement.

“Code” means the U.S. Internal Revenue Code of 1986 and rules and regulations related thereto.

“Collateral” means any and all real or personal property, whether tangible or intangible, securing or pledged to secure the Obligations, including any account, equipment, guarantee or contract right, or other interest that is the subject of any Collateral Document and all “Collateral” as defined in any Collateral Document, including the Underlying Loans.

“Collateral Agent” means the Receiver, in its capacity as collateral agent under the Reimbursement, Security and Guaranty Agreement, or any successor collateral agent.

“Collateral Documents” means, collectively, the Reimbursement, Security and Guaranty Agreement, the Custodial and Paying Agency Agreement, the Account Control Agreements, the Assignments of Mortgage, the Allonges (as defined the Reimbursement, Security and Guaranty Agreement), the Guaranties, the REO Mortgages and each of the other agreements, instruments or documents that creates or purports to create a Lien or guarantee in favor of the Collateral Agent for the benefit of the Secured Parties.

“Commitment” means an Advance Loan Commitment, an Authorized Overage Loan Commitment or a Working Capital Loan Commitment, as the context may require.

“Commodity Agreements” means commodity agreements, commodity hedging agreements and other similar agreements or arrangements designed to protect against price fluctuations of commodities used in the business of the Borrower and the Subsidiaries.

“Construction Loan” means any Underlying Loan the proceeds of which are to be used to fund construction of a Project.

“Contingent Obligation” means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person (i) with respect to any Guarantee, (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings, or (iii) under Hedge Agreements or Commodity Agreements. Notwithstanding the foregoing, Contingent Obligations shall not include standard contractual indemnities entered into in the ordinary course of business.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“Contribution Agreement” has the meaning specified in the recitals hereto.

“Control”, including the phrases **“Controlled by”** and **“under common Control with,”** means, when used with respect to any specified Person, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

“Custodial and Paying Agency Agreement” means the Custodial and Paying Agency Agreement dated as of the date hereof among the Borrower, the Custodian/Paying Agent and the Collateral Agent, and shall include any substantially similar agreement entered into by the Borrower and any new or successor Custodian/Paying Agent in accordance with the LLC Operating Agreement.

“Custodian Amounts” means, collectively, the fees and expenses of the Custodian/Paying Agent payable pursuant to Section 8.1 of the Custodial and Paying Agency Agreement.

“Custodian/Paying Agent” means Wells Fargo Bank, National Association and any successor serving as the “Bank” under and as defined in the Custodial and Paying Agency Agreement.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

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

“Default Rate” means, at any date of determination and to the fullest extent permitted by applicable Law, an interest rate equal to (i) the interest rate otherwise applicable to the Loans on such date, plus (ii) 2.0% per annum, to the fullest extent permitted by applicable Laws.

“Defaulting Lender” means any Lender with respect to which a Lender Default is in effect.

“Disposition” or **“Dispose”** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any sale of Equity Interests) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Distribution Date” has the meaning specified in the Custodial and Paying Agency Agreement.

“Dollar”, **“Dollars”** and **“\$”** mean lawful money of the United States.

“Environmental Hazard Property” means any property held by a Subsidiary pursuant to Section 3.2(b) of the Reimbursement, Security and Guaranty Agreement.

“Environmental Laws” means any and all Federal, state, local, and foreign Laws, regulations, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, the protection of the environment, natural resources, or, to the extent relating to exposure to Hazardous Materials, human health or to the release of any materials into the environment, including those related to Hazardous Materials, air emissions and discharges to waste or public systems.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any of its Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the

environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Environmental Permit**” means any permit, approval, concession, grant, identification number, license or other authorization required under any Environmental Law.

“**Equity Interests**” means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

“**ERISA**” means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute of similar import, in each case, as in effect from time to time. References to sections of ERISA also refer to any successor sections.

“**Event of Default**” has the meaning specified in Section 8.01.

“**Excess Working Capital Advances**” has the meaning specified in the Custodial and Paying Agency Agreement.

“**Executive Order**” has the meaning specified in Section 5.12.

“**Failed Bank**” has the meaning specified in the recitals hereto.

“**FDIC**” has the meaning specified in the introductory paragraph hereto.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; *provided that* (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for the day of such transaction received by the Administrative Agent from three federal funds brokers of recognized standing reasonably selected by it.

“**Fiscal Year**” means the Fiscal Year of the Borrower and the Subsidiaries ending on December 31 of each calendar year.

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time.

“**Governmental Authority**” means any United States or non-United States national, federal, state, local, municipal or provincial or international government or any political subdivision of any governmental, regulatory or administrative authority, agency or commission, or judicial or arbitral body.

“Guarantee” shall mean, with respect to any particular indebtedness or other obligation, (i) any direct or indirect guarantee thereof by a Person other than the obligor with respect to such indebtedness or other obligation or any transaction or arrangement intended to have the effect of directly or indirectly guaranteeing such indebtedness or other obligation, including without limitation any agreement by a Person other than the obligor with respect to such indebtedness or other obligation (A) to pay or purchase such indebtedness or other obligation or to advance or supply funds for the payment or purchase of such indebtedness or other obligation, (B) to purchase, sell or lease (as lessee or lessor) property of, to purchase or sell services from or to, to supply funds to or in any other manner invest in, the obligor with respect to such indebtedness or other obligation (including any agreement to pay for property or services of the obligor irrespective of whether such property is received or such services are rendered), primarily for the purpose of enabling the obligor to make payment of such indebtedness or other obligation or to assure the holder or other obligee of such indebtedness or other obligation against loss, or (C) otherwise to assure the obligee of such indebtedness or other obligation against loss with respect thereto, or (ii) any grant (or agreement in favor of the obligee of such indebtedness or other obligation to grant such obligee, under any circumstances) by a Person other than the obligor with respect to such indebtedness or other obligation of a security interest in, or other lien on, any property or other interest of such Person, whether or not such other Person has not assumed or become liable for the payment of such indebtedness or other obligation.

“Guarantor” means “Subsidiary Grantor” as defined in the Reimbursement, Security and Guaranty Agreement.

“Guaranty” means “Guarantee” as defined in the Reimbursement, Security and Guaranty Agreement.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, radiation, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Immediate Family Member” shall mean, with respect to any individual, his or her spouse, parents, parents-in-law, grandparents, descendants, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children (whether natural or adopted), children-in-law, stepchildren, grandchildren and grandchildren-in-law.

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

“Indemnified Liabilities” has the meaning set forth in Section 9.07.

“Indemnified Parties” has the meaning set forth in Section 10.05.

“Initial Member” has the meaning specified in the recitals hereto.

“Insolvency Event” means, with respect to any specified Person, the occurrence of any of the following events:

- (i) the specified Person makes an assignment for the benefit of creditors;
- (ii) the specified Person files a voluntary petition for relief in any Insolvency Proceeding;
- (iii) the specified Person is adjudged bankrupt or insolvent or there is entered against the specified Person an order for relief in any Insolvency Proceeding;
- (iv) the specified Person files a petition or answer seeking for the specified Person any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Law;
- (v) the specified Person seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the specified Person or of all or any substantial part of the specified Person’s properties;
- (vi) the specified Person files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the specified Person in any proceeding described in clauses (i) through (v) above;
- (vii) the specified Person becomes unable to pay its obligations (other than, with respect to the Borrower, the Purchase Money Notes unless a Purchase Money Note Trigger Event (as defined in the Reimbursement, Security and Guaranty Agreement) has occurred and is continuing and has not been cured within ten (10) Business Days) as they become due; or
- (viii) at least sixty (60) days have passed following the commencement of any proceeding against the specified Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law, and such proceeding has not been dismissed, or at least sixty (60) days have passed following the appointment of a trustee, receiver or liquidator for the specified Person or all or any substantial part of the specified Person’s properties without the specified Person’s agreement or acquiescence, and such appointment has not been vacated or stayed, or if such appointment has been stayed, at least sixty (60) days have passed following the expiration of the stay if such appointment has not been vacated.

“Insolvency Proceeding” means any proceeding under Debtor Relief Laws.

“Interest Period” means, as to each Loan, the period commencing on the first day of each calendar month and ending on the last day of such calendar month.

“Interim Period” has the meaning specified in Section 2.02(a).

“Interim Term Loan Borrowing” has the meaning specified in Section 2.02(a).

“Interim Term Loan Borrowing Delivery Date” has the meaning specified in Section 2.02(a).

“Interim Term Loan Borrowing Limit” means \$100,000,000 (for the period commencing on the date hereof and ending on April 16, 2010), \$75,000,000 (for the period commencing on April 17, 2010 and ending on October 16, 2010) and \$50,000,000 (for the period commencing October 17, 2010 and ending on April 16, 2011).

“Investment” means any acquisition of all or substantially all assets of a Person, any acquisition of record or beneficial ownership of the Equity Interests of a Person, any advance or capital contribution to or other investment in a Person, or any loan or other advance to a Person.

“Law” means any applicable statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or order (including any executive order) of any Governmental Authority.

“Lender” means each party hereto from time to time which holds a Commitment or a Loan.

“Lender Default” means (i) the failure (which has not been cured) of a Lender to make available its portion of any Borrowing that it is required to make available hereunder, (ii) a Lender having notified the Administrative Agent and/or the Borrower that it does not intend to comply with the obligations under Section 2.1(a), 2.1(b) or 2.1(c), as the case may be, or (iii) an Insolvency Event occurs with respect to such Lender.

“Lender’s Account” means, as to any Lender, the account of such Lender specified in writing by such Lender to the Borrower from time to time.

“LIBOR Rate” means, with respect to each day during each Interest Period pertaining to a LIBOR Rate Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (**“BBA LIBOR”**), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by the Administrative Agent from time to time) as determined at approximately 11:00 a.m. New York time two (2) Business Days prior to the first day of such Interest Period, for U.S. Dollar deposits with a term of one month, adjusted for statutory reserve requirements for Eurocurrency liabilities.

“LIBOR Rate Loan” means a Loan that bears interest based on the LIBOR Rate.

“Lien” means any mortgage, deed of trust, deed to secure debt, trust deed, pledge, security interest, charge, restriction on or condition to transfer, voting or exercise or enjoyment of any right or beneficial interest, option, right of first refusal, easement, restrictive covenant and any other lien, claim or encumbrance of any nature whatsoever.

“LLC Interest Sale Agreement” means the Limited Liability Company Interest Sale and Assignment Agreement dated as of the date hereof among CCV Managing Member, LLC, the Receiver and the Borrower.

“LLC Operating Agreement” has the meaning specified in the recitals hereto.

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of an Advance Loan, an Authorized Overage Loan or a Working Capital Loan.

“Loan Documents” means, collectively, (i) this Agreement, (ii) the Notes (if any), (iii) the Reimbursement, Security and Guaranty Agreement, (iv) the Custodial and Paying Agency Agreement, (v) the Account Control Agreements, (vi) the REO Mortgages, (vii) the Guaranties, (viii) the Assignments of Mortgage, (ix) the Allonges and (x) each certificate, agreement or document executed by a Loan Party and delivered to a Lender or any Agent in connection with any of the foregoing.

“Loan Participation” has the meaning specified in the Reimbursement, Security and Guaranty Agreement.

“Loan Participation Agreement” has the meaning specified in the Reimbursement, Security and Guaranty Agreement.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“Loan Repayment” means, with respect to any Underlying Loan, any prepayment or repayment of, or other payment in respect of, the principal amount of, or interest or other amounts in respect of, the related loans received by the Borrower.

“Losses” has the meaning set forth in Section 10.05.

“Managing Member” has the meaning specified in the recitals hereto.

“Material Adverse Effect” means any event, circumstance, development, change or effect that, individually or in the aggregate with all other events, circumstances, developments, changes and effects, is or would be materially adverse to (i) the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower and its Subsidiaries taken as a whole, (ii) the ability of the Loan Parties to perform their obligations under the Loan Documents or (iii) the rights and remedies of the Agents or any Lender under the Loan Documents.

“Maturity Date” means the earlier of (i) the date that is ten (10) years after the Closing Date and (ii) the date upon which all of the Underlying Loans or REO Properties have been fully repaid, liquidated or otherwise disposed of.

“Maximum Rate” has the meaning specified in Section 10.10.

“Modification” means any extension, renewal, substitution, replacement, supplement, amendment or modification of any agreement, certificate, document, instrument or other writing, whether or not contemplated in the original agreement, document or instrument.

“Non-Consenting Lender” has the meaning specified in Section 10.20(b).

“Non-Defaulting Lender” means and includes each Lender other than a Defaulting Lender.

“Non-U.S. Lender” has the meaning specified in Section 3.01(d).

“**Note**” means a Term Note or a Working Capital Loan Note, as the context may require.

“**NPL**” means the National Priorities List under CERCLA.

“**Obligations**” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party and its Subsidiaries arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or Subsidiary of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and of their Subsidiaries to the extent they have obligations under the Loan Documents) include (a) the obligation (including guarantee obligations) to pay principal, interest, charges, expenses, fees, Attorney Costs, indemnities and other amounts payable by any Loan Party or its Subsidiaries under any Loan Document and (b) the obligation of any Loan Party or any of its Subsidiaries to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of such Loan Party or such Subsidiary.

“**OFAC**” has the meaning specified in Section 5.12.

“**Organization Documents**” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Other Taxes**” has the meaning specified in Section 3.01(b).

“**Outstanding Letters of Credit**” means those letters of credit outstanding on the date hereof that were issued with respect to Underlying Loans by the Failed Bank to third parties on behalf of Underlying Borrowers.

“**Ownership Entity**” has the meaning specified in the Reimbursement, Security and Guaranty Agreement.

“**Participant**” has the meaning specified in Section 10.07(d).

“**Permitted Encumbrances**” means the following types of Liens (excluding any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Code or by ERISA, any such Lien relating to or imposed in connection with any Environmental Liability, and any such Lien expressly prohibited by any applicable terms of any of the Collateral Documents):

(a) Liens for taxes, assessments or governmental charges not overdue or which are being contested in good faith and by appropriate proceedings, so long as (i) such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts, and (ii) in the case of a Lien with respect to any portion of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral on account of such Lien;

(b) Liens incurred or deposits made in the ordinary course of business to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations in respect of Indebtedness), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(c) leases or subleases granted to third parties, and contracts for the sale of condominiums and cooperative units entered into with third parties, each in accordance with the applicable Approved Business Plan or otherwise permitted under the Transaction Documents;

(d) easements, rights-of-way, restrictions, encroachments, and minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of the Borrower or any of the Subsidiaries or the use or proposed used of any Collateral or REO Property or result in a material diminution in the value of any Collateral or REO Property or which are otherwise determined to be acceptable by the Collateral Agent;

(e) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property; and

(f) subject to Section 7.02(a), Liens existing on the Closing Date.

“**Person**” means any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity.

“**Pre-Approved Charges**” has the meaning specified in the Contribution Agreement.

“**Proceeds**” means “Loan Proceeds” as defined in the Custodial and Paying Agency Agreement.

“**Project**” means each construction project associated with an Underlying Loan as set forth on Schedule 1.01.

“**Pro Rata Percentage**” means, with respect to each Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), (i) the numerator of which is the sum of the aggregate amount of the Commitments of such Lender at such time and the aggregate outstanding principal amount of such Lender’s Term Loans at such time, and (ii) the denominator of which is sum of the aggregate amount of the Commitments of all Lenders at such time and the aggregate outstanding principal amount of all Term Loans at such time.

“Pro Rata Share” means, with respect to any Asset, a fraction, the numerator of which is the Unpaid Principal Balance of such Asset as of the Closing Date, and the denominator of which is the aggregate Unpaid Principal Balances of all Assets as of the Closing Date.

“Protective Constructive Advance” means a Term Loan advance hereunder, the proceeds of which are used (either by the Borrower or an Underlying Borrower) to protect or preserve the value of a Project, or prevent the interruption of construction of a Project, when construction is underway or nearly complete.

“Purchase Money Notes” means, collectively, the three (3) Purchase Money Notes dated the date hereof made by the Borrower to the Receiver and includes any promissory note reissued in respect of a Purchase Money Note as contemplated by Section 2.8 of the Custodial and Paying Agency Agreement.

“Purchase Money Note Guaranty” means the Guaranty date the date hereof made by the FDIC, in its corporate capacity, in favor of the holders of the Purchase Money Notes.

“Receiver” has the meaning specified in the recitals hereto.

“Register” has the meaning specified in Section 10.07(c).

“Reimbursement, Security and Guaranty Agreement” means the Reimbursement, Security and Guaranty Agreement dated as of the date hereof among the Borrower, the Collateral Agent, the Administrative Agent and the FDIC.

“Reimbursement Obligations” means the reimbursement obligations of the Borrower under Section 2.1 of the Reimbursement, Security and Guaranty Agreement.

“Related Parties” has the meaning specified in Section 10.05.

“REO Mortgage” means, with respect to each REO Property, a mortgage, deed of trust, trust deed or deed to secure debt securing the Obligations in form suitable for recording in the appropriate public records and otherwise in form and substance satisfactory to the Collateral Agent (which REO Mortgage may, if the Underlying Mortgage on the applicable REO Property has not been discharged and if the Collateral Agent agrees, consist of such Underlying Mortgage, as assigned to the Collateral Agent and including such modifications thereto as the Collateral Agent may require).

“REO Property” means each property which is “REO Property” as such term is defined in the Reimbursement, Security and Guaranty Agreement.

“Required Documentation” means, with respect to any Borrowing the proceeds of which are to be used to make Authorized Advances, all documents required to be delivered pursuant to Section 2.11 as a condition precedent to the making of such Authorized Advance.

“Required Lenders” means, as of any date of determination, Non-Defaulting Lenders having more than 50% of the sum of (a) the aggregate unused Term Commitments on such date (excluding Term Commitments of Defaulting Lenders), (b) the aggregate principal amount of Term Loans outstanding as of such date (excluding Term Loans made by Defaulting Lenders), (c) the aggregate Working Capital Commitments on such date (excluding Working Capital Commitments of Defaulting Lenders) and (d) the aggregate principal amount of Working

Capital Loans outstanding as of such date (excluding Working Capital Loans made by Defaulting Lenders).

“Responsible Officer” means the Chairman, Chief Executive Officer, Interim Co-President, Interim Chief Financial Officer, Secretary or Deputy Secretary of the Managing Member, as the context may require. Any document delivered hereunder that is signed by a Responsible Officer shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company and/or other action on the part of the Managing Member and a Responsible Officer of Managing Member shall be conclusively presumed to have acted on behalf of Managing Member and/or the Borrower.

“Restricted Payment” means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock or other equity Securities of the Borrower or any Subsidiary now or hereafter outstanding, (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock or other equity Securities of the Borrower or any Subsidiary now or hereafter outstanding, (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock or other equity Securities of the Borrower or any Subsidiary now or hereafter outstanding and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance or similar payment with respect to, the Purchase Money Note.

“Secured Obligations” has the meaning specified in the Reimbursement, Security and Guaranty Agreement.

“Secured Parties” means, collectively, the Agents, the Lenders, the Purchase Money Note Guarantor and each co-agent or sub-agent appointed by the Collateral Agent from time to time pursuant to Reimbursement, Security and Guaranty Agreement.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Servicer” means (i) any Person retained by the Managing Member to service, manage or administer any Underlying Loans or Underlying Collateral and (ii) any Person retained by any Person referred to in clause (i) to service, manage or administer any of the Underlying Loans or Underlying Collateral.

“Servicing Agreement” has the meaning specified in the Custodial and Paying Agency Agreement.

“Servicing Expenses” has the meaning specified in the LLC Operating Agreement.

“Single Purpose Entity” has the meaning specified in the Reimbursement, Security and Guaranty Agreement.

“Subsidiary” means, with respect to any specified Person, each of (i) any other Person not less than a majority of the overall economic equity in which is owned, directly or indirectly through one or more intermediaries, by such specified Person, and (ii) without limitation of clause (i), any other Person who or which, directly or indirectly through one or more intermediaries, is Controlled by such specified Person (it being understood that with respect to each of clauses (i) and (ii) that a pledge for collateral security purposes of an equity interest in a Person shall not be deemed to affect the ownership of such equity interest by the pledgor or the Control of such Person so long as such pledgor continues to be entitled, in all material respects, to all the voting power and all the income with respect to such equity interest).

“Taxes” has the meaning specified in Section 3.01(a).

“Term Availability Period” means the period commencing on the Closing Date and ending on the earliest to occur of (i) the date mutually agreed in writing by the Borrower and the Administrative Agent in connection with the approval of the Approved Business Plans in accordance with Section 6.11, (ii) the third anniversary of the Closing Date and (iii) the date on which the Commitments are terminated pursuant to Section 8.02.

“Term Loans” means, collectively, the Advance Loans and the Authorized Overage Loans.

“Term Note” means a promissory note of the Borrower payable to any Lender or its registered assigns in substantially the form of Exhibit C-1 hereto, evidencing the Term Loans made by such Lender.

“Transaction Documents” means the Loan Documents, the Purchase Money Note, the Purchase Money Note Guaranty, the Contribution Agreement, the LLC Interest Sale Agreement, the LLC Operating Agreement and the Servicing Agreement.

“Transactions” means, collectively, the transactions consummated pursuant to the terms of the Transaction Documents.

“Underlying Borrower” means, with respect to any Underlying Loan, collectively, the borrowers in respect of such Underlying Loan.

“Underlying Collateral” means any and all real or personal property, whether tangible or intangible, securing or pledged to secure an Underlying Loan, including any account, equipment, guarantee or contract right, equity, partnership or other interest that is the subject of any collateral agreement included in the Underlying Loan Documents and, as the context requires (including Acquired Collateral), any REO Property, whether or not expressly so specified.

“Underlying Collateral Documents” means any pledge agreement, security agreement, personal, corporate or other guaranty, deed of trust, deed, trust deed, mortgage, contract for the sale of real property, assignment, collateral agreement or other agreement or document of any kind, whether an original or a copy, whether similar to or different from those enumerated, (i) securing in any manner the performance or payment by any Underlying Borrower of its obligations or the obligations of any other Underlying Borrower under any of the Underlying Loans or (ii) evidencing ownership of any Acquired Collateral.

“Underlying Guarantor” means any guarantor of all or any portion of any Underlying Loan or all or any of any Underlying Borrower’s obligations set forth and described

in the Underlying Loan Documents and shall include the guarantor under any completion guaranty or similar document.

“Underlying Loan” means any loan, Loan Participation (as defined in the Contribution Agreement), stock or other ownership interests in an Ownership Entity (including any cash and cash equivalents held directly or indirectly by such Ownership Entities (excluding security deposits, deposits made by prospective purchasers of condominium or cooperative units or other portions of the interests in the Acquired Collateral and other cash and cash equivalents to the extent that such Ownership Entity has a corresponding liability to a third party)) and Acquired Collateral listed on Schedule 1.01, and any loan into which any listed loan or Loan Participation is refinanced or modified, and includes with respect to each such loan, Loan Participation, Ownership Entity, Acquired Collateral or other related asset or any Underlying Related Agreement: (i) any obligation evidenced by an Underlying Note; (ii) all rights, powers or Liens of the Borrower or any Ownership Entity in or under the Underlying Collateral and Underlying Collateral Documents and in and to Acquired Collateral (including all Ownership Entities and REO Property held by an Ownership Entity); (iii) all of the rights of the Borrower or any Ownership Entity under any lease and the related leased property; (iv) all rights to causes of action, lawsuits, judgments, claims and demands of any nature available to or being pursued by or for the benefit of the Borrower or any Ownership Entity with respect to the Underlying Loans, the Underlying Collateral or the ownership, use, function, value of or other rights pertaining thereto, whether arising by way of counterclaim or otherwise; (v) all guaranties, warranties, indemnities and similar rights in favor of the Borrower or any Ownership Entity with respect to any of the Underlying Loans and (vi) all rights of the Borrower or any Ownership Entity under the Underlying Related Agreements.

“Underlying Loan Documents” means all documents, agreements, certificates, instruments and other writings (including all Underlying Collateral Documents) now or hereafter executed by or delivered or caused to be delivered by any Underlying Borrower, Underlying Guarantor or any other obligor evidencing, creating, guaranteeing or securing, or otherwise executed or delivered in respect of, all or any part of an Underlying Loan or any Acquired Collateral or evidencing any transaction contemplated thereby (including, for this purpose, title insurance policies and endorsements thereto), and all Modifications thereto.

“Underlying Mortgage” has the meaning specified in the definition of “Assignment of Mortgage.”

“Underlying Related Agreement” means (i) any agreement, document or instrument (other than the Underlying Collateral Documents) relating to or evidencing any obligation to pay or securing any Underlying Loan (including any equipment lease, letter of credit, bankers’ acceptance, draft, system confirmation of transaction, loan history, affidavit, general collection information, and correspondence and comments relating to any obligation), (ii) any agreement relating to the construction, ownership, operation, management, sale or leasing of real property or rights in or to any real property (including leases, property or asset management agreements, brokerage agreements, service contracts, and concession agreements, license agreements or other agreements granting rights of occupancy or use) related specifically only to the Underlying Collateral or Acquired Collateral or any of them and (iii) any collection or contingency fee, and tax and other service agreements (including those referred to in Section 4.2 of the Contribution Agreement) that are specific only to the Underlying Loans (or any of them) and that are assignable.

“Unfunded Commitment” means (i) with respect to an Underlying Loan, the unfunded commitment in respect of such Underlying Loan as of the Closing Date, less the aggregate principal amount of Authorized Advances made by the Borrower to the Underlying Borrower on or after the Closing Date in respect of such unfunded commitment and (ii) with respect to any REO Property, the unfunded commitment in respect of the applicable Underlying Loan at the time such REO Property was acquired by the Borrower or any Subsidiary of the Borrower (excluding any portion thereof attributable to interest reserves), less the aggregate principal amount of Advance Loans made by the Lenders to the Borrower in respect of such REO Property (in the case of clauses (i) and (ii), to the extent that the proceeds of such Advance Loans are used for the purposes for which proceeds of such Underlying Loan could have been used).

“Uniform Commercial Code” means the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

“United States” and **“U.S.”** mean the United States of America.

“Unpaid Principal Balance” means, at any time, (a) when used in connection with multiple Underlying Loans, an amount equal to the aggregate then outstanding principal balance of such Underlying Loans, and (b) when used with respect to a single Underlying Loan, an amount equal to the then outstanding principal balance of such Underlying Loan; *provided, however, that:*

(i) with respect to any Loan Participation (and any related Acquired Collateral), the Unpaid Principal Balance of such Loan Participation shall include only the Initial Member’s allocable share thereof in accordance with the applicable Loan Participation Agreement;

(ii) with respect to any Acquired Collateral that is included among the Underlying Loans on the Closing Date, the Unpaid Principal Balance of such Acquired Collateral shall initially be the amount set forth on the Cut-Off Date Loan Schedule (as defined in the LLC Interest Sale Agreement), adjusted as of the Closing Date to its Adjusted Unpaid Principal Balance (as defined in the Contribution Agreement), and thereafter determined in the same manner as all other Acquired Collateral;

(iii) in the case of an Underlying Loan for which some or all of the related Underlying Collateral has been converted to Acquired Collateral (including REO Property), until such time as the Acquired Collateral (or any portion thereof) is liquidated, the unpaid principal balance of such Underlying Loan shall be deemed to equal the unpaid principal balance of such Underlying Loan (adjusted pro rata for debt forgiveness or retained indebtedness) at the time at which such Underlying Loan was converted to Acquired Collateral, less the net proceeds of any sales of any portion of the Acquired Collateral effective after such conversion; and

(iv) the Unpaid Principal Balance with respect to any Acquired Collateral will be increased by the amount of (A) any Term Loan applied with respect thereto in accordance with the terms hereof, (B) any Servicing Expenses capitalized thereto in accordance with applicable Law to the extent that capitalizing such Servicing Expenses would have been permitted under the applicable Underlying Loan Documents prior to the conversion of the Underlying Loan to Acquired Collateral and (C) Excess Working Capital Advances used for the purposes for which the proceeds of Term Loans may be used hereunder.

“Verification Contractor” means (i) any Person retained by the Administrative Agent to provide the administrative and verification functions described in this Agreement and (ii) any Person retained by the Person referred to in clause (i) to provide the administrative and verification functions described in this Agreement.

“Verification Contractor Amounts” means, collectively, the fees and expenses of the Verification Contractor payable to it pursuant to the agreement pursuant to which such Verification Contractor was retained by the Administrative Agent.

“wholly owned” means, with respect to a Subsidiary of a Person, a Subsidiary of such Person all of the outstanding Equity Interests of which are owned by such Person.

“Working Capital Availability Period” means the period commencing on the Closing Date and ending on the earliest to occur of (i) the fifth anniversary of the Closing Date and (iii) the date on which the Commitments are terminated pursuant to Section 8.02.

“Working Capital Expenses” means, collectively, the amount of any accrued and unpaid Asset Management Fee, Custodian Amounts, Verification Contractor Amounts, Servicing Expenses and Pre-Approved Charges as of any Distribution Date after application of any Proceeds available therefor pursuant to Section 5.1 of the Custodial and Paying Agency Agreement.

“Working Capital Loan” has the meaning specified in Section 2.01(c).

“Working Capital Loan Borrowing” means a borrowing consisting of simultaneous Working Capital Loans made on the same day.

“Working Capital Loan Borrowing Notice” means a notice of a Working Capital Loan Borrowing substantially in the form of Exhibit B.

“Working Capital Loan Commitment” means, as to each Lender, its obligation to make Working Capital Loans to the Borrower pursuant to Section 2.01(c) in an aggregate amount not to exceed the lesser of (i) the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Working Capital Loan Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto (but such amount may not be less than the Working Capital Loan Commitment of the transferring Lender), as applicable, as such amount may be adjusted from time to time, in accordance with this Agreement, and (ii) such Lender’s Pro Rata Percentage of \$150,000,000, as such amount may be adjusted from time to time with the prior written consent of the Administrative Agent.

“Working Capital Loan Exposure” means, as to each Lender at any time, the sum of the outstanding principal amount of such Lender’s Working Capital Loans (excluding any interest that is capitalized in accordance with Section 2.06(b)) at such time.

“Working Capital Note” means a promissory note of the Borrower payable to any Lender or its registered assigns in substantially the form of Exhibit C-2 hereto, evidencing the Working Capital Loans made by such Lender.

SECTION 1.02. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

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

(b) The term “or” is not exclusive.

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

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

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

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

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

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

SECTION 1.03. Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein.

SECTION 1.04. Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.05. Timing of Payment of Performance. When the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

ARTICLE II

THE COMMITMENTS AND LOANS

SECTION 2.01. The Loans.

(a) *The Advance Loan Borrowings.* Subject to the terms and conditions set forth herein, each Lender severally agrees to make term loans to the Borrower as elected by the Borrower pursuant to Section 2.02 (each such loan, an “**Advance Loan**”) from time to time, on any Business Day during the Term Availability Period in an aggregate principal amount (excluding any interest that is capitalized in accordance with Section 2.06(b)) not to exceed such Lender’s Advance Loan Commitment; *provided* that after giving effect to any Advance Loan Borrowing, the aggregate Advance Loan Exposure of the Lenders with respect to any Asset shall not exceed the Asset Advance Loan Sublimit with respect to such Asset. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed.

(b) *The Authorized Overage Loan Borrowings.* Subject to the terms and conditions set forth herein, each Lender severally agrees to make term loans to the Borrower as elected by the Borrower pursuant to Section 2.02 (each such loan, an “**Authorized Overage Loan**”) from time to time, on any Business Day during the Term Availability Period, in an aggregate principal amount (excluding any interest that is capitalized in accordance with Section 2.06(b)) not to exceed such Lender’s Authorized Overage Loan Commitment; *provided* that Authorized Overage Loans in respect of any Asset shall be available only after the Advance Loans in respect of such Asset have been fully drawn or if such Asset has not been allocated an Asset Advance Loan Sublimit; and, *provided, further*, that after giving effect to any Authorized Overage Loan Borrowing, the aggregate Authorized Overage Loan Exposure of the Lenders with respect to any Asset shall not exceed the Asset Authorized Overage Loan Sublimit with respect to such Asset. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed.

(c) *The Working Capital Loan Borrowings.* Subject to the terms and conditions set forth herein, each Lender severally agrees to make revolving loans to the Borrower as elected by the Borrower pursuant to Section 2.02 (each such loan, a “**Working Capital Loan**”) from time to time, on any Business Day during the Working Capital Availability Period, in an aggregate principal amount (excluding any interest that is capitalized in accordance with Section 2.06(b)) not to exceed at any time outstanding such Lender’s Working Capital Loan Commitment. Within the limits of each Lender’s Working Capital Loan Commitment in effect from time to time, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(c), repay or prepay under Section 2.03, and reborrow Working Capital Loans under this Section 2.01(c).

(d) *Use of Proceeds.* The proceeds of Advance Loans and Authorized Overage Loans issued in respect of an Asset shall be used by the Borrower only (i) to make Authorized Advances in respect of the Unfunded Commitments in respect of such Asset in accordance with the Approved Business Plan for such Asset, if any, (ii) from and after the approval of the Approved Business Plan for an Asset, to make Authorized Advances to the Underlying Borrower in excess of the Unfunded Commitments and (iii) in the case of an REO Property, to pay, in accordance with the Approved Business Plan for such REO Property, costs and expenses associated with the continued construction of such REO Property (including the payment of so-called “soft costs” payable during construction (such as real estate taxes, ground rents and insurance premiums) as are included in the Approved Business Plan for the applicable

REO Property (and are designated therein as payable out of the proceeds of the Term Loans) and as would typically be paid out of construction loan proceeds (as determined by the Administrative Agent). The proceeds of Working Capital Loans shall be used by the Borrower only (1) to pay Working Capital Expenses in accordance with the applicable Approved Business Plan or (2) if required by an Underlying Borrower, to replace an Outstanding Letter of Credit in accordance with Section 6.12.

SECTION 2.02. Borrowing of Loans.

(a) Each Advance Loan Borrowing, Authorized Overage Loan Borrowing and Working Capital Loan Borrowing shall be made upon the Borrower's delivery of an applicable Borrowing Notice, appropriately completed and signed by a Responsible Officer of the Managing Member, on behalf of the Borrower, to the Administrative Agent; *provided* that Borrowings may only be made on four (4) days in any calendar month and multiple Borrowings may be made on any such day. Each such notice must be received by the Administrative Agent not later than 12:00 p.m. ten (10) Business Days prior to the requested date of any Borrowing of Loans; *provided* that until April 16, 2011 and with respect to an aggregate principal amount equal to the Interim Term Loan Borrowing Limit from time to time, one or more Advance and/or Authorized Overage Loan Borrowing Notices may be received by the Administrative Agent not later than 12:00 pm two (2) Business Days prior to the requested date of any Borrowing of such Term Loan (an "**Interim Term Loan Borrowing**"). Each Borrowing Notice shall (i) specify (A) whether the Borrower is requesting an Advance Loan Borrowing, an Authorized Overage Loan Borrowing or a Working Capital Loan Borrowing, (B) the requested date of the Borrowing (which shall be a Business Day), (C) the principal amount of Loans to be borrowed and (D) the Assets to which such Borrowing is to be allocated and the principal amount of such Borrowing to be allocated to each such Asset and the purposes for which the proceeds of such Loans are to be used, (ii) set forth the costs and expenses to be paid out of such proceeds as well as the corresponding costs and expenses detailed in the applicable Approved Business Plan, if the same shall have been approved, which shall demonstrate that the incurrence of such costs and expenses is consistent with such Approved Business Plan and (iii) be accompanied by all other items the delivery of which is a condition to the making of such Loan pursuant to Section 2.11; *provided* that with respect to any Advance and/or Authorized Overage Loan Borrowing Notice delivered with respect to an Interim Term Loan Borrowing, such Advance and/or Authorized Overage Loan Borrowing Notice shall specify those matters set forth in clause (i) of this Section 2.02(a) and the aggregate amount of all previous Interim Term Loan Borrowings which remain outstanding (which, when combined with the amount of the requested Interim Term Loan Borrowing, shall in no event exceed the Interim Term Loan Borrowing Limit; *provided* that an Event of Default shall not be deemed to have occurred and the conditions to making any Loan not be deemed not to be satisfied if the aggregate amount of outstanding Interim Term Loan Borrowings exceeds the Interim Term Loan Borrowing Limit as a result of the decrease of the Interim Term Loan Borrowing Limit pursuant to the definition thereof) and need not be accompanied by the items required by Section 2.11, *provided further* that within ten (10) Business Days (the "**Interim Term Loan Borrowing Delivery Date**") following the requested date of Borrowing for such Interim Term Loan Borrowing, the Administrative Agent shall have received a duly executed certificate of a Responsible Officer of the Managing Member, on behalf of the Borrower, specifying the matters set forth in clause (ii) of this Section 2.02(a) and accompanied by the items required by Section 2.11 at which point, and upon confirmation by the Verification Contractor that such items have been delivered, the outstanding principal amount of such Term Loan shall not be included when calculating the aggregate amount of outstanding Interim Term Loan Borrowings (and the availability of Interim Term Loan Borrowings shall be increased, but not beyond the Interim Term Loan Borrowing Limit, by an amount equal to the outstanding principal

amount of such Interim Term Loan Borrowing). In the event the Administrative Agent shall have not received such duly executed certificate and the items required by Section 2.11, and the Verification Contractor shall not have confirmed delivery of such items, by the Interim Term Loan Borrowing Delivery Date, (A) the principal amount of such Interim Term Loan Borrowing shall bear interest at the Default Rate during the period (the “**Interim Period**”) from the Interim Term Loan Borrowing Delivery Date and ending on the date upon which the Administrative Agent has received such duly executed certificate and the items required by Section 2.11 and the delivery of such items have been confirmed by the Verification Contractor and (B) during the Interim Period, no additional Term Loans shall be available with respect to the Asset to which such Interim Term Loan Borrowing related. The Administrative Agent shall use commercially reasonable efforts to cause the Verification Contractor to actively assist the Borrower in reviewing, and determining the adequacy of, the items submitted by the Borrower pursuant to Section 2.11 and promptly (within two (2) Business Days, if practicable) to respond to any request from the Borrower with respect to such adequacy; *provided* that in the event the Verification Contractor fails to so promptly respond, the Interim Term Loan Borrowing Delivery Date shall be extended until such date that the Verification Contractor responds to the Borrower and, during the period of such extension, the Interim Loan Borrowing Limit shall be increased by the amount of the Interim Term Loan Borrowing with respect to which the Verification Contractor shall have failed to respond (provided that such increase shall be deemed revoked, if the Verification Contractor subsequently determines that the items required by Section 2.11 have not been delivered). In the event the Borrower and the Administrative Agent disagree whether the Borrower has submitted the items required by Section 2.11, the Administrative Agent will endeavor to render a final decision with respect thereto within ten (10) Business Days of written notice from the Borrower as to why such conditions have not been satisfied.

(b) Following receipt of a Borrowing Notice in accordance with Section 2.02(a), the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Percentage of the applicable Loans, and upon satisfaction of the applicable conditions set forth in Section 4.04 and (i) if such Borrowing is the initial Borrowing, Section 4.01, (ii) if such Borrowing is an Advance Loan Borrowing or an Authorized Overage Loan Borrowing, Section 4.02, and (iii) if such Borrowing is a Working Capital Loan Borrowing, Section 4.03, each Lender shall make the amount of its applicable Loans available to the Borrower in immediately available funds by wire transfer to the Borrower Account on the date requested in the applicable Borrowing Notice.

(c) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for the Loans upon determination of such interest rate. The determination of the applicable interest rate by the Administrative Agent shall be conclusive in the absence of manifest error.

SECTION 2.03. Prepayments and Repayments.

(a) *Optional.* The Borrower may, upon not less than one (1) Business Day’s prior written notice to each Lender, at any time or from time to time voluntarily prepay the Loans in whole or in part without premium or penalty, such prepayment to be applied in accordance with Section 5.1(b) of the Custodial and Paying Agency Agreement as if such amounts were Principal Proceeds (as defined in the Custodial and Paying Agency Agreement). At the Borrower’s election, in connection with any prepayment pursuant to this Section 2.03(a), such prepayment shall not be applied to any Loan of a Defaulting Lender.

(b) *Mandatory*. If (w) the Borrower or any Subsidiary consummates the sale of any Asset, (x) any Casualty Event occurs, (y) the Borrower receives any Loan Repayment or (z) any other Proceeds are received, in each case, which results on any Distribution Date in the availability of Proceeds pursuant to Section 5.1(b)(ii) or (iii) of the Custodial and Paying Agency Agreement, the Borrower shall cause such Proceeds shall be applied in accordance with Section 5.1(b) of the Custodial and Paying Agency Agreement as if such amounts were Principal Proceeds (as defined in the Custodial and Paying Agency Agreement). In connection with any prepayment pursuant to this Section 2.03(b), such prepayment shall not be applied to any Loan of a Defaulting Lender.

(c) *Maturity Date*. The Borrower shall repay all outstanding Loans in full on the Maturity Date.

SECTION 2.04. Termination or Reduction of Commitments.

The Advance Loan Commitments and the Authorized Overage Loan Commitments shall be automatically and permanently reduced on a pro rata basis by an amount equal to any undrawn Asset Advance Loan Sublimit or Asset Authorized Overage Loan Sublimit, respectively, in respect of any Asset (which sublimits shall be reduced to the aggregate principal amount of the applicable Loans then outstanding thereunder), upon (A) the repayment in whole or in part of the applicable Underlying Loan (but only if further advances are not required to be made to the Underlying Borrower thereunder) or (B) the consummation of a sale with respect to the applicable Asset, including in connection with the exercise of the Borrower's repurchase rights under Section 6.1 of the Contribution Agreement and excluding any foreclosure or other similar sale or transfer of such Asset to the Borrower or any Subsidiary.

SECTION 2.05. [Reserved].

SECTION 2.06. Interest.

(a) Subject to the provisions of Sections 2.06(b), 3.02 and 3.03, each Loan shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the LIBOR Rate in effect from time to time, plus the Applicable Margin.

(b) Interest on each Loan shall be due and payable in arrears on each Distribution Date and at such other times as may be specified herein; *provided*, that to the extent that any interest that is accrued as of any Distribution Date remains unpaid after the application of Proceeds in accordance with Section 5.1(a)(iv) of the Custodial and Paying Agent Agreement, such due and unpaid interest shall be added to the outstanding principal amount of the applicable Loan on such Distribution Date (and any such interest so added to the principal of a Loan shall bear interest from and after such Distribution Date as provided hereunder as if it had been part of the original principal of such Loan). Any accrued and unpaid interest on the Loans shall be payable in full in cash on the Maturity Date. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(c) Upon the occurrence and during the continuance of an Event of Default, (i) automatically if in respect of an Event of Default under Section 8.01(e) or (ii) otherwise, if the Required Lenders so elect, then the aggregate unpaid principal amount of the Loans, and (to the extent permitted by applicable Laws), any overdue interest, fees and other

amounts due under the Loan Documents shall bear interest at a rate per annum equal to the Default Rate until paid in full, which interest shall be due and payable upon demand.

SECTION 2.07. Computation of Interest and Fees. All computations of fees and interest shall be made on the basis of a 360 day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.08. Evidence of Indebtedness.

(a) The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Loans made to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. Upon the request of any Lender, the Borrower shall execute and deliver to such requesting Lender the applicable Notes payable to such Lender which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, amount and maturity of its Loans and payments made with respect thereto.

(b) Entries made in good faith by the Administrative Agent in the Register and by each Lender in its account or accounts pursuant to Section 2.08(a) shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

SECTION 2.09. Payments Generally.

(a) All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein or in Section 5.1 of the Custodial and Paying Agency Agreement, all payments by or on behalf of the Borrower hereunder shall be made to a Lender at its Lender's Account, in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. All payments received by a Lender after 2:00 p.m. shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(c) The obligations of the Lenders hereunder to make Loans are several and not joint. The failure of any Lender to make any Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan.

SECTION 2.10. Protective Advances.

If Borrower or any Subsidiary fails to perform its obligations under any Loan Document or in order to preserve, protect or maintain the Collateral, each of the Lenders shall have the right, but not the obligation, to perform such obligation or take such action in the name and on behalf of the Borrower or such Subsidiary in accordance with the Loan Documents. All sums advanced and expenses incurred at any time by any Agent or any Lender under this Section 2.10 shall be included in the Obligations and shall be secured by the Collateral.

SECTION 2.11. Authorized Advances.

(a) The Borrower shall not make an advance to an Underlying Borrower in respect of a Construction Loan unless each of the following conditions is satisfied:

(i) If such advance is required by the terms of the applicable Underlying Loan Documents,

(A) all the conditions to such advance set forth in such Underlying Loan Documents shall have been satisfied (except to the extent satisfaction of such conditions was disclosed to be waived pursuant to the terms of the applicable Approved Business Plan);

(B) all documentation submitted by the applicable Underlying Borrower in connection with its request for such advance shall have been submitted to the Administrative Agent and the Verification Contractor; and

(C) the Verification Contractor shall have verified, to its reasonable satisfaction, that all conditions to funding under the applicable Underlying Loan Documents and this Agreement have been satisfied or were waived pursuant to the terms of the applicable Approved Business Plan, if such a plan has been approved.

(ii) In all other cases, the Borrower may make such advance if:

(A) the conditions to funding set forth on Schedule 2.11 (in addition to the conditions to such advance set forth in the applicable Underlying Loan Documents, to the extent not waived in accordance with the terms of the applicable Approved Business Plan) shall have been satisfied;

(B) the Borrower shall have delivered to the Administrative Agent a certificate duly executed by a Responsible Officer stating that the Borrower reasonably determined that such advance is in the best interests of the Borrower and the Lenders in terms of maximizing the value of the Underlying Loan;

(C) such advance is consistent with the applicable Approved Business Plan, if such a plan has been approved;

(D) the conditions to the corresponding Advance Loan or Authorized Overage Loan hereunder have been satisfied or waived by the Required Lenders;

(E) the Borrower shall have used commercially reasonable efforts to cause any completion guarantor or the Underlying Borrower to fund any amounts which it is required to fund under the Underlying Loan Documents, except as otherwise provided in the applicable Approved Business Plan;

(F) the Borrower and the Underlying Borrower shall have entered into such modifications of the Underlying Loan Documents as are reasonably necessary or appropriate in connection with such advance; and

(G) all documentation submitted by the applicable Underlying Borrower in connection with its request for such advance and the documentation set forth on Schedule 2.11 shall have been submitted to the Administrative Agent and the Verification Contractor as required hereunder, and the Verification Contractor shall have verified, to its reasonable satisfaction, that the foregoing conditions have been satisfied.

(b) Supplementing the requirements set forth in Section 4.02 hereof, the Lenders shall make Term Loans to the Borrower in respect of any REO Property only if the following conditions are met or waived by the Required Lenders:

(i) the conditions to funding set forth on Schedule 2.11 (in addition to the conditions to such advance set forth in the applicable Underlying Loan Documents (considered as if the Lenders were the lender thereunder, and the Borrower were the borrower thereunder), except to the extent the same no longer apply because the Borrower or the applicable Ownership Entity, and not the Underlying Borrower, is the owner of such REO Property, and except to the extent inconsistent with the applicable Approved Business Plan) shall have been satisfied;

(ii) the Borrower shall have delivered to the Administrative Agent a certificate duly executed by a Responsible Officer stating that (x) the Borrower reasonably determined that such advance is in the best interests of the Lenders in terms of maximizing the value of the REO Property and (y) the Borrower shall contribute the proceeds of the Term Loans to the applicable Ownership Entity with respect to such REO Property;

(iii) such advance is consistent with the applicable Approved Business Plan; and

(iv) all documentation submitted by the Borrower in connection with its request for such advance as required by this Section 2.11(b) shall have been submitted to the Verification Contractor as required hereunder, and the Verification Contractor shall have verified, to its reasonable satisfaction, that the foregoing conditions have been satisfied.

The failure on the part of the Lenders to require strict compliance by the Borrower with this Section 2.11(b) or of an Underlying Borrower with the terms and conditions

of the applicable Underlying Loan Documents shall not constitute a waiver of the Lenders' right to demand such strict compliance.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Administrative Agent will agree to waive or defer technical compliance with one or more of the conditions set forth in Schedule 2.11 or Section 2.11(a)(ii)(E) and (F) (a "**Protective Advance Waiver**") in connection with the making of Protective Construction Advances but only if, in each case.

1. The Borrower shall have delivered to the Administrative Agent the certificate referred to in Section 2.11(a)(ii)(B) or 2.11(b)(ii), as applicable, with respect to the Protective Construction Advance in question, which certificate shall (A) identify with reasonable specificity the conditions as to which it is seeking a Protective Advance Waiver, (B) certify that the conditions set forth in this Section 2.11(c) have been satisfied with respect to such Protective Advance Waiver and (C) describe in reasonable detail why such waiver is permitted under this Section 2.11(c);

2. Such Protective Advance Waiver or and the actions, omissions or events which are the subject thereof, will not jeopardize the validity or first priority lien of the Underlying Loan Documents or the Loan Documents or otherwise adversely affect the Borrower or the Lenders, taking into account all of the relevant facts and circumstances, and will not impair the Underlying Borrower's or Borrower's ability to complete the applicable Project in accordance with all applicable Laws the applicable Approved Business Plan (if the same has been delivered) and the Transaction Documents or the Underlying Loan Documents, as applicable; and

3. Such Protective Advance Waiver is commercially reasonable and is consistent with standards customarily applied by institutional lenders making advances under construction loans.

ARTICLE III

TAXES, INCREASED COSTS PROTECTION AND ILLEGALITY

SECTION 3.01. Taxes.

(a) Except as provided in this Section 3.01, any and all payments by the Borrower to or for the account of any Lender or any Agent under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities (including additions to tax, penalties and interest) with respect thereto, excluding, in the case of each Agent and each Lender, (A) taxes imposed on or measured by its net income or overall gross income (including branch profits), and franchise (and similar) taxes imposed on it in lieu of net income taxes, by the jurisdiction (or any political subdivision thereof) under the Laws of which such Agent or such Lender, as the case may be, is organized or maintains a lending office, and all liabilities (including additions to tax, penalties and interest) with respect thereto; (B) any taxes that are solely attributable to such Lender's failure to comply with the requirements of Section 3.01(d); and (C) any withholding taxes imposed on amounts payable to a Lender at the time such Lender becomes a party to this Agreement, except to the extent that such Lender's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from the Borrower with respect to such non-excluded taxes pursuant to this Section 3.01(a). All non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar

charges, and liabilities described in the immediately preceding sentence are hereinafter referred to as "Taxes." If the Borrower shall be required by any Laws to deduct any Taxes or Other Taxes (as defined below) from or in respect of any sum payable under any Loan Document to any Agent or any Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.01), each of such Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions, (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment (or, if receipts or evidence are not available within thirty (30) days, as soon as possible thereafter), the Borrower shall furnish to such Agent or such Lender (as the case may be) the original or a certified copy of a receipt evidencing payment thereof to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Agent or such Lender (as the case may be). If the Borrower fails to pay any Taxes or Other Taxes when due to the appropriate taxing authority or fails to remit to any Agent or any Lender the required receipts or other required documentary evidence, the Borrower shall indemnify such Agent and such Lender for any incremental taxes, interest or penalties that may become payable by such Agent or such Lender arising out of such failure to the extent that such amounts were previously not paid to such Agent or such Lender.

(b) In addition, the Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise, property, intangible or mortgage recording taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (hereinafter referred to as "Other Taxes").

(c) The Borrower agrees to indemnify each Agent and each Lender for (i) the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 3.01) paid by such Agent and such Lender and (ii) any liability (including additions to tax, penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; *provided* that such Agent or such Lender, as the case may be, provides the Borrower with a written statement thereof setting forth in reasonable detail the basis and calculation of such amounts. Payment under this Section 3.01(c) shall be made within thirty (30) days after the date such Lender or such Agent makes a demand therefor.

(d) If a Lender (or any transferee of a Lender) is not a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States (or any jurisdiction thereof), or any estate or trust that is subject to federal income taxation regardless of the source of its income (a "Non-U.S. Lender") shall deliver to the Borrower and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of either U.S. Internal Revenue Service Form W-8BEN or Form W-8ECI, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code of 1986, as amended, with respect to payments of "portfolio interest" a statement substantially in the form of Exhibit D and a Form W-8BEN or, in either case, any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender. Such forms shall be delivered by such Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation). In addition, a Non-U.S. Lender shall deliver such

forms promptly upon the obsolescence, expiration, or invalidity of any form previously delivered by such Non-U.S. Lender. A Non-U.S. Lender shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the United States taxing authorities for such purpose). Notwithstanding any other provision of this Section 3.01(d), a Non-U.S. Lender shall not be required to deliver any form pursuant to this Section 3.01(d) that such Non-U.S. Lender is not legally able to deliver.

SECTION 3.02. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable lending office to make, maintain or fund Loans bearing interest based on the LIBOR Rate, or to determine or charge interest rates based upon the LIBOR Rate, then, on notice thereof by such Lender to the Borrower and the Administrative Agent, any obligation of such Lender to make Loans bearing interest based on the LIBOR Rate shall be suspended until such Lender notifies the Borrower and the Administrative Agent that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, all Loans of such shall automatically be converted to Base Rate Loans.

SECTION 3.03. Inability to Determine Rates. If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the LIBOR Rate, or that the LIBOR Rate does not adequately and fairly reflect the cost to such Lenders of funding or maintaining Loans, or that Dollar deposits are not being offered to banks in the London interbank Eurodollar market, the Administrative Agent will promptly so notify the Borrower. Thereafter, the obligation of a Lender to make or maintain Loans bearing interest based on the LIBOR Rate shall be suspended until the Administrative Agent (upon the direction of Required Lenders) revokes such notice. Upon receipt of such notice, all Loans shall automatically be converted to Base Rate Loans.

SECTION 3.04. Increased Cost and Reduced Return; Capital Adequacy; Reserves on LIBOR Rate Loans.

(a) If any Lender determines that as a result of the introduction of or any change in or in the interpretation of any Law, in each case after the date hereof, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining LIBOR Rate Loans, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this Section 3.04(a) any such increased costs or reduction in amount resulting from (i) Taxes or Other Taxes (as to which Section 3.01 shall govern), (ii) changes in the basis of taxation of overall net income or overall gross income (including branch profits), and franchise (and similar) taxes imposed in lieu of net income taxes, by the United States or any foreign jurisdiction or any political subdivision of either thereof under the Laws of which such Lender is organized or maintains a lending office and (iii) reserve requirements contemplated by Section 3.04(c), then from time to time within thirty (30) days after demand by such Lender setting forth in reasonable detail such increased costs, the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof, in each case after the date hereof, or compliance by such Lender (or its lending office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its

policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return, the Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction within thirty (30) days after receipt of such demand.

(c) The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, additional interest on the unpaid principal amount of each LIBOR Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive in the absence of manifest error), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the LIBOR Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error) which in each case shall be due and payable on each date on which interest is payable on such Loan.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate such Lender pursuant to Section 3.04(a), Section 3.04(b) or Section 3.04(c) for any such increased cost or reduction incurred more than one hundred eighty (180) days prior to the date that such Lender demands, or notifies the Borrower of its intention to demand, compensation therefor, and *provided further* that, if the circumstance giving rise to such increased cost or reduction is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 3.05. Matters Applicable to All Requests for Compensation.

(a) Any Agent or any Lender claiming compensation under this Article III shall deliver a certificate to the Borrower setting forth the additional amount or amounts to be paid to it hereunder which shall be conclusive in the absence of manifest error. In determining such amount, such Agent or such Lender may use any reasonable averaging and attribution methods.

(b) With respect to any Lender's claim for compensation under Section 3.01, 3.02, 3.03 or 3.04, the Borrower shall not be required to compensate such Lender for any amount incurred more than one hundred eighty (180) days prior to the date that such Lender notifies the Borrower of the event that gives rise to such claim; *provided* that, if the circumstance giving rise to such claim is retroactive, then such 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 3.06. Survival. All of the Borrower's obligations under this Article III shall survive termination of the Commitments and repayment of all other Obligations hereunder.

ARTICLE IV

CONDITIONS TO LOANS

SECTION 4.01. Conditions to Initial Loan. The obligation of each Lender to make its initial Loans hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or facsimile or PDF copies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the Managing Member on behalf of the Borrower, each in form and substance reasonably satisfactory to the Administrative Agent and its legal counsel:

(i) executed counterparts of this Agreement, the Reimbursement, Security and Guaranty Agreement duly executed by the Note Guarantor, each Note requested by a Lender, the Custodial and Paying Agency Agreement duly executed by the Custodian/Paying Agent and the Note Guarantor, and the Account Control Agreements duly executed by the Custodian/Paying Agent and the Collateral Agent, together with evidence satisfactory to the Administrative Agent that, upon the filing and recording of instruments delivered on the Closing Date (including Uniform Commercial Code financing statements), the Collateral Agent (for the benefit of the Secured Parties) shall have a valid and perfected security interest in the Collateral;

(ii) such certificates of resolutions or other action of the Managing Member, the Borrower and the Servicer, and incumbency certificates and/or other certificates of Responsible Officers the Managing Member (on its own behalf and/or on behalf of the Borrower) and the Servicer as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Transaction Documents;

(iii) copies of the Organization Documents of the Managing Member and the Servicer, in each case certified by the Secretary or an Assistant Secretary of such Person as of the Closing Date that such documents are in full force and effect as of such date;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Managing Member and the Servicer is duly organized or formed, is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification;

(v) legal opinions from (x) counsel to the Managing Member and counsel to the Servicer in form and substance reasonably satisfactory to the Administrative Agent, and (y) such other firms as may be reasonably requested by the Administrative Agent, each addressed to the Lenders, the Administrative Agent and the Collateral Agent and in form and substance reasonably satisfactory to the Administrative Agent;

(vi) a certificate signed by a Responsible Officer certifying as to the matters described in Sections 4.04(a) and 4.04(b), and attaching true and correct copies of the Servicing Agreement, the Contribution Agreement, the LLC Interest Sale Agreement, the Purchase Money Note and the Purchase Money Note Guaranty;

(vii) evidence that all insurance required to be maintained by Borrower pursuant to the Loan Documents has been obtained and is in effect and that the Collateral Agent has been named as loss payee or additional insured under each insurance policy with respect to such insurance; and

(viii) copies of Uniform Commercial Code, tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches, each of a recent date in each jurisdiction relevant to the Managing Member, the Servicer and the Borrower as reasonably requested by the Administrative Agent.

(b) All fees and expenses required to be paid hereunder and invoiced before the Closing Date shall have been paid in full in cash.

(c) There shall be no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower or Managing Member, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority with respect to the transaction contemplated by the Transactions or the definitive documentation in respect of the Transactions. There shall not exist any judgment, order, injunction or other restraint prohibiting the consummation of the Transactions.

SECTION 4.02. Conditions to Advance Loans and Authorized Overage Loans. Notwithstanding anything to the contrary set forth in this Article IV, the obligation of each Lender to honor any Advance and/or Authorized Overage Loan Borrowing Notice is subject to the following additional conditions precedent:

(a) The Closing Date shall have occurred;

(b) The Administrative Agent and the Verification Contractor shall have received an Advance Loan and/or Authorized Overage Borrowing Notice;

(c) With respect to each Authorized Advance to be funded out of the proceeds of the applicable Borrowing (if any) (each, an “**Applicable Authorized Advance**”), the Administrative Agent and the Verification Contractor shall have received the Required Documentation relating to such Advance Loan; *provided* that with respect to any Interim Term Loan Borrowing, the Administrative Agent and the Verification Contractor shall have received the Required Documentation relating to such Advance Loan within ten (10) Business Days of the requested date of such Borrowing; and

(d) With respect to any Loans in respect of Underlying Loans, all conditions to the funding of the Applicable Authorized Advance set forth in Section 2.11 shall have been satisfied, and (i) the Borrower shall have delivered to the Administrative Agent a certificate to such effect and (ii) the Verification Contractor shall have satisfied itself that such conditions have been met; *provided* that with respect to any Interim Term Loan Borrowing, such conditions relating to such Advance Loan shall be satisfied within ten (10) Business Days of the requested date of such Borrowing.

SECTION 4.03. Conditions to Working Capital Loans. Notwithstanding anything to the contrary set forth in this Article IV, the obligation of each Lender to honor any Working Capital Loan Borrowing Notice is subject to the following additional conditions precedent:

- (a) The Closing Date shall have occurred;
- (b) The Administrative Agent shall have received a Working Capital Loan Borrowing Notice duly executed by a Responsible Officer of the Borrower;
- (c) In the event a Working Capital Loan Borrowing Notice is prepared with respect to a Working Capital Expense which is not specified in an Approved Business Plan, the Borrower shall attach to such Working Capital Loan Borrowing Notice a certificate duly executed by a Responsible Officer of the Borrower specifying the use of funds for such Working Capital Loan; and
- (d) The Borrower shall have delivered to the Administrative Agent a certificate duly executed by a Responsible Officer stating that the Borrower reasonably determined that such advance is in the best interests of the Borrower and the Lenders in terms of maximizing the value of the Underlying Loan.

SECTION 4.04. Conditions to All Loans. Notwithstanding anything to the contrary set forth in this Article IV, the obligation of each Lender to honor any Borrowing Notice (including all Working Capital Loans) is subject to the following conditions precedent:

- (a) no Default or Event of Default shall exist, or would result from such proposed Loan or from the application of the proceeds therefrom; and
- (b) the representations and warranties of the Borrower contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Loan; *provided* that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided, further* that, any representation and warranty that is qualified as to "materiality," "Material Adverse Change" or similar language shall be true and correct in all respects on such respective dates subject to any such qualification.

Each Borrowing Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in this Section 4.04(a) have been satisfied on and as of the date of the applicable Loan.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to each Lender that:

SECTION 5.01. Existence, Qualification and Power; Compliance with Laws. The Managing Member, the Borrower and each of its Subsidiaries (a) is a Person validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority to own or lease its assets and carry on its business, (c) is duly qualified and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (d) is in compliance with all Laws, orders, writs, injunctions and orders and (e) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted; except (x) in the case of clauses (a) and (c) as to the Borrower and each Subsidiary existing on the Closing Date during the sixty (60) day period following the Closing Date and (y)

in the case of clause (b), (c) or (d), to the extent that failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.02. Authorization; No Contravention. The Managing Member, the Borrower and each other Loan Party has all requisite power and authority to execute, deliver and perform its obligations under the Transaction Documents to which it is a party. The execution, delivery and performance by the Managing Member, the Borrower and each other Loan Party of each Transaction Document to which such Person is a party, and the consummation of the Transactions, are within such Person's corporate or other powers, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents, (b) violate any material Law, (c) conflict with or result in any breach or contravention of, or the creation of any Lien under (other than as permitted by Section 7.02), or require any payment to be made under, any Contractual Obligation entered into after the Closing Date to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (d) violate any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject of which the Borrower or the Managing Member is aware.

SECTION 5.03. Governmental Authorization; Other Consents. To the knowledge of the Managing Member and the Borrower, no material approval, consent, exemption, authorization, or other action by, or notice to, or filing or recordation with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, the Managing Member, the Borrower or any of the other Loan Parties of this Agreement or any other Transaction Document, or for the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by any Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) filings and recordations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of Collateral Agent for the benefit of the Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect and (iii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.04. Binding Effect. This Agreement and each other Transaction Document has been duly executed and delivered by the Managing Member, the Borrower and each other Loan Party that is party thereto. This Agreement and each other Transaction Document constitutes, the legal, valid and binding obligation of such Person, enforceable against each such Person that is party thereto in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity.

SECTION 5.05. Financial Reporting.

(a) The audited financial statements delivered pursuant to Section 8.14(c)(i) of the Reimbursement, Security and Guaranty Agreement fairly present the consolidated financial condition of the Borrower and its Subsidiaries and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout such period, except as otherwise noted therein.

(b) The unaudited financial statements delivered pursuant to Section 8.14(c)(ii) of the Reimbursement, Security and Guaranty Agreement present the consolidated financial condition of the Borrower and its Subsidiaries and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout such period, except as otherwise noted therein (subject to normal year-end audit adjustments and the absence of footnotes).

SECTION 5.06. Litigation. To the knowledge of the Managing Member and the Borrower, there are no actions, suits, proceedings, claims or disputes pending or threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Managing Member, the Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement, any Loan Document or any other Transaction Document, (b) are reasonably likely to enjoin or result in a material judgment in respect of any of the Transactions or (b) either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 5.07. No Default.

(a) From and after the date that is sixty (60) days after the Closing Date, to the knowledge of the Managing Member and the Borrower with respect to Contractual Obligations entered into prior to the Closing Date, neither the Borrower nor any Subsidiary is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) With respect to Contractual Obligations entered into on or after the Closing Date, neither the Borrower nor any Subsidiary is in default under or with respect to, or a party to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

SECTION 5.08. Taxes. The Borrower and its Subsidiaries have filed all Federal and state and other tax returns and reports required to be filed (and, with respect to Federal and state and other tax returns and reports required to be filed on or before the Closing Date, such returns and reports shall be filed within thirty (30) days of the Closing Date), and have paid all Federal and state and other material taxes, assessments, fees and other governmental charges levied or imposed after the Closing Date upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP.

SECTION 5.09. Subsidiaries; Equity Interests. All of the outstanding Equity Interests in Subsidiaries created or acquired after the Closing Date have been validly issued, are fully paid and nonassessable and all Equity Interests in such Subsidiaries are owned by the Borrower free and clear of all Liens except for Liens in favor of the Collateral Agent created under the Collateral Documents. Each Subsidiary created or acquired after the Closing Date is a wholly owned direct Subsidiary of the Borrower and a Single Purpose Entity.

SECTION 5.10. Margin Regulations; Investment Company Act.

(a) The Borrower is not engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or

carrying margin stock, and no proceeds of any Loan will be used for any purpose that violates Regulation U.

(b) None of the Borrower, any Person Controlling the Borrower, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

SECTION 5.11. Disclosure. No report, financial statement, certificate or other written information furnished (i) by or on behalf of the Managing Member or (ii) after the Closing Date by or on behalf of the Borrower or any Subsidiary to any Agent or any Lender, in each case, in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or any other Loan Document when taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; *provided* that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time of preparation; it being understood that such projections may vary from actual results.

SECTION 5.12. Anti-Terrorism Law. No Loan Party and, to the knowledge of the Loan Parties, none of their Affiliates is in violation of any applicable law relating to terrorism or money laundering (“**Anti-Terrorism Laws**”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “**Executive Order**”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

No Loan Party and to the knowledge of the Loan Parties, no Affiliate or broker or other agent of any Loan Party acting in any capacity in connection with, or receiving funds as a result of, the Loans is any of the following:

- (i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (ii) a Person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;
- (iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;
- (iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or
- (v) a Person that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (“**OFAC**”) at its official website or any replacement website or other replacement official publication of such list.

No Loan Party and, to the knowledge of the Loan Parties, no broker or other agent of any Loan Party acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or

services to or for the benefit of any Person described in the immediately preceding paragraph, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, or any Loan or other Obligation shall remain unpaid or unsatisfied, the Borrower shall, and shall cause each Subsidiary to:

SECTION 6.01. Certificates; Other Information. Deliver to:

(a) the Administrative Agent promptly upon any Person becoming a Subsidiary of the Borrower, a written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of the Borrower and (ii) the assets owned by such Subsidiary;

(b) the Administrative Agent, promptly upon its request, a certificate duly executed by a Responsible Officer stating that the proceeds of all Loans were used by the Borrower and its Subsidiaries, as applicable, in accordance with the applicable Approved Business Plan and in accordance with the terms hereof; and

(c) any Agent or any Lender promptly such additional information regarding the Underlying Loans, the Collateral, the REO Property, the Managing Member and the Servicer as such Agent or such Lender may from time to time reasonably request.

SECTION 6.02. Notices. Promptly after obtaining knowledge thereof, notify the Administrative Agent for further distribution to each Lender:

(a) of the occurrence of any Default or Event of Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including arising out of or resulting from (i) breach or non-performance of, or any default or event of default under, a Contractual Obligation of the Borrower or any Subsidiary, (ii) any dispute, litigation, investigation, proceeding or suspension between the Borrower or any Subsidiary and any Governmental Authority or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws or the assertion or occurrence of any noncompliance by the Borrower or as any of its Subsidiaries with, or liability under, any Environmental Law or Environmental Permit;

(c) of any matter in respect of which the Borrower has received notice under Section 5.5 or 5.6 of the Servicing Agreement; and

(d) of any information or matter notice of which is delivered to the Initial Member pursuant to Section 7.4(a) of the LLC Operating Agreement.

Each notice pursuant to this Section 6.02 shall be accompanied by a written statement of a Responsible Officer of the Managing Member on behalf of the Borrower (x) that such notice is being delivered pursuant to Section 6.02(a), 6.02(b), 6.02(c) or 6.02(d) (as applicable) and (y) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto.

SECTION 6.03. Payment of Obligations. Pay, discharge or otherwise satisfy as the same shall become due and payable, all their obligations and liabilities, including (a) all taxes levied upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or any of its Subsidiaries; and (b) all lawful claims which, if unpaid, would by law become a Lien upon its property.

SECTION 6.04. Preservation of Existence. Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization.

SECTION 6.05. Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted, and (b) make all necessary renewals, replacements, modifications, improvements, upgrades, extensions and additions thereof or thereto in accordance with customary prudent industry practice.

SECTION 6.06. Inspection Rights. Permit representatives and independent contractors of each Agent and each Lender to visit and inspect any of its properties and to discuss its affairs, finances and accounts and Approved Business Plans with its directors, officers, and independent public accountants, the Managing Member and the Servicer at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower.

SECTION 6.07. Compliance with Environmental Laws. Comply, and take all reasonable actions to cause all lessees and other Persons operating or occupying its properties to comply, in all material respects with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and, in each case to the extent required by Environmental Laws, conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws.

SECTION 6.08. [Reserved].

SECTION 6.09. Further Assurances. Promptly upon reasonable request by any Agent (a) correct any defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as any Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Collateral Documents.

SECTION 6.10. Use of Proceeds. The Borrower will use the proceeds of the Loans in accordance with Section 2.01(d).

SECTION 6.11. Proposals for Approved Business Plans.

(a) The Borrower shall deliver to the Administrative Agent and the Verification Contractor written proposals for Approved Business Plans for each Underlying Loan and REO Property on a staggered basis within the 60 day period following the Closing Date; *provided*, that proposals for Approved Business Plans for no more than fifteen (15) of the Assets may be delivered within the last five (5) Business Days of such period.

(b) (i) If the Administrative Agent has received twenty-five (25) or fewer proposals for an Approval Business Plan within any successive two (2) week period commencing on the Closing Date, then within ten (10) Business Days after its receipt of a proposal for any such Approved Business Plan, the Administrative Agent shall either (x) approve the submitted proposal or (y) provide the Borrower with a description of the modifications to the submitted proposal that are required to obtain such approval. In the case of clause (y) above, the Borrower shall provide the Administrative Agent with a revised proposal for the applicable Approved Business Plan within five (5) Business Days after receipt of the Administrative Agent's proposed modifications that addresses all changes required by the Administrative Agent, and within five (5) Business Days thereafter the Administrative Agent and the Borrower shall agree on the applicable Approved Business Plan; and

(ii) If the Administrative Agent has received twenty-six (26) or more proposals for an Approved Business Plan within any successive two (2) week period commencing on the Closing Date, then within fifteen (15) Business Days after its receipt of a proposal for any such Approved Business Plan, the Administrative Agent shall either (x) approve the submitted proposal or (y) provide the Borrower with a description of the modifications to the submitted proposal that are required to obtain such approval. In the case of clause (y) above, the Borrower shall provide the Administrative Agent with a revised proposal for the applicable Approved Business Plan within ten (10) Business Days after receipt of the Administrative Agent's proposed modifications that addresses all changes required by the Administrative Agent, and within ten (10) Business Days thereafter the Administrative Agent and the Borrower shall agree on the applicable Approved Business Plan.

(c) The Borrower shall not make any supplements, amendments, modifications, variances, or waivers to any Approved Business Plans without the prior written consent of the Administrative Agent, *provided*, that, if a Responsible Officer delivers a duly signed certificate to the Administrative Agent stating that the sales prices identified in an Approved Business Plan with respect to condominium or cooperative units in a Project are required to be amended to account for a decline in market prices (that was not anticipated in the Approved Business Plan) where such Project is located, and the revised sales prices reflected in the proposed amendment are not in the aggregate more than 10% less than the aggregate expected sales price for the condominium or cooperative units in such Project in the then current Approved Business Plan, then the Administrative Agent's prior written consent with respect thereto shall not be required, *provided, further*, that in no event will the Borrower be entitled to supplement, amend, modify, vary or waive the same Approved Business Plan more than once in reliance upon the immediately preceding proviso in this Section 6.11(c). In the event the Borrower proposes a supplement, amendment, modification, variance or waiver to an Approved Business Plan and the Borrower is not entitled to rely upon the first proviso in this Section 6.11(c), within fifteen (15) Business Days after its receipt of such proposal, the Administrative Agent shall either (i) approve the submitted proposal or (ii) provide the Borrower with a description of the modifications to the submitted proposal that are required to obtain such approval. In the case of clause (ii) above, the Borrower shall provide the Administrative Agent with a revised proposal for the applicable

Approved Business Plan within ten (10) Business Days after receipt of the Administrative Agent's proposed modifications that addresses all changes required by the Administrative Agent, and within ten (10) Business Days the Administrative Agent and the Borrower shall agree on the applicable supplement, amendment, modification, variance or waiver to the Approved Business Plan.

SECTION 6.12. Outstanding Letters of Credit. Within ninety (90) days of the Closing Date (or such later date as consented to in writing by the Administrative Agent), the Borrower shall cause the Outstanding Letters of Credit to be terminated (including the termination of all liabilities of the Failed Bank with respect thereto) and, if required by the applicable Underlying Borrowers, replaced with new letters of credit or other similar arrangements in form and substance acceptable to the Administrative Agent.

ARTICLE VII

NEGATIVE COVENANTS

So long as any Lender has any Commitment hereunder or any Loan or other Obligation shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any of the Subsidiaries to, directly or indirectly:

SECTION 7.01. Indebtedness. Create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(a) the Borrower may become and remain liable with respect to the Obligations, including with respect to the capitalization of interest on the Loans;

(b) the Borrower may become and remain liable with respect to the Purchase Money Notes and the Reimbursement, Security and Guaranty Agreement;

(c) the Borrower may become and remain liable with respect to Excess Working Capital Advances in accordance with Section 5.1 of the LLC Operating Agreement;

(d) any Subsidiary may become and remain liable with respect to Indebtedness to the Borrower; and

(e) the Borrower may become and remain liable with respect to Indebtedness incurred as a result of the replacement of Outstanding Letters of Credit in accordance with Section 6.12.

SECTION 7.02. Liens and Related Matters.

(a) Prohibition on Liens. Create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind of the Borrower and the Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the Uniform Commercial Code of any State or under any similar recording or notice statute, except for (i) Permitted Encumbrances (*provided*, that, with respect to clause (f) of the definition of "Permitted Encumbrances," the Borrower shall, and shall cause its Subsidiaries to, extend

commercially reasonable efforts to have such Liens released as soon as practicable after the Closing Date); and (ii) Liens on assets of the Loan Parties created pursuant to the Collateral Documents in favor of Collateral Agent for the benefit of Secured Parties securing the Obligations and the Reimbursement Obligations.

(b) No Further Negative Pledges. Except with respect to property to be sold pursuant to an executed agreement with respect to a permitted Disposition of REO Property, neither the Borrower nor any Subsidiary shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired.

SECTION 7.03. Investments. Make or own any Investment in any Person, except:

(a) the Borrower may (i) hold the Underlying Loans and (ii) make Authorized Advances to Underlying Borrowers;

(b) the Borrower may make Investments in Permitted Investments (as defined in the Custodial and Paying Agency Agreement) in accordance with the Custodial and Paying Agency Agreement;

(c) the Borrower may make Investments in Subsidiaries in the form of contributions to the equity of such Subsidiaries of any Environmental Hazard Property and any REO Property and use the proceeds of Loans to make Investments in such Subsidiaries to be used by such Subsidiaries in accordance with the Approved Business Plan for the applicable Asset;

(d) the Subsidiaries may make Capital Expenditures permitted by Section 7.08;

(e) the Borrower and the Subsidiaries may acquire and own Investments (including debt obligations) received in connection with the bankruptcy or reorganization of Underlying Borrowers and in settlement of delinquent obligations of, and other disputes with, suppliers and other trade creditors arising in the ordinary course of business; and

(f) the Subsidiaries may make and own Investments consisting of deposits made in the ordinary course of business to secure the performance of obligations in respect of REO Property.

SECTION 7.04. Contingent Obligations. Create or become liable with respect to any Contingent Obligation, except:

(a) the Borrower may become and remain liable with respect to Contingent Obligations in respect of the Reimbursement, Security and Guaranty Agreement;

(b) the Subsidiaries may become and remain liable with respect to Contingent Obligations in respect of the Guaranty;

(c) the Borrower and the Subsidiaries may become and remain liable with respect to Contingent Obligations in respect of (i) customary purchase price adjustment obligations incurred in connection with Dispositions or other sales of assets permitted under this Agreement, (ii) endorsements of instruments for deposit or collection in the ordinary course of

business and (iii) reasonable and customary contractual indemnities entered into in the ordinary course of business but only to the extent otherwise permitted under the terms of the LLC Operating Agreement; and

(d) the Borrower may become and remain liable with respect to Contingent Obligations incurred as a result of the replacement of Outstanding Letters of Credit in accordance with Section 6.12.

SECTION 7.05. Asset Dispositions. Dispose of any of its assets, whether now owned or hereafter acquired, except:

(a) Dispositions of assets in accordance with any Approved Business Plan and in a manner consistent with the standards set forth in the Servicing Agreement;

(b) Disposition of Permitted Investments in accordance with the Custodial and Paying Agency Agreement; and

(c) Contribution of Environmental Hazard Property and REO Property by the Borrower to a Subsidiary.

SECTION 7.06. Restricted Payments. Declare, order, pay, make or set apart any sum for any Restricted Payment; *provided* that:

(a) any Subsidiary of the Borrower may pay dividends or make other distributions to the Borrower;

(b) the Borrower may make distributions to its members to the extent provided under Section 5.1(b)(viii) of the Custodial and Paying Agent Agreement; and

(c) the Borrower may make payments in respect of the Purchase Money Note to the extent provided under Section 3.3 of the Custodial and Paying Agent Agreement.

SECTION 7.07. Restriction on Fundamental Changes; Dispositions and Recapitalizations. Issue any capital stock or other Equity Interests or enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), except any Subsidiary of the Borrower may issue capital stock or other Equity Interests to the Borrower.

SECTION 7.08. Capital Expenditures. Make or incur Capital Expenditures, except that a Subsidiary may make Capital Expenditures with respect to an REO Property to the extent contemplated by and in compliance with the Approved Business Plan for the applicable REO Property.

SECTION 7.09. Creation of Subsidiaries. Create any Subsidiaries, except the Borrower may create and own one or more wholly owned Domestic Subsidiaries that are Ownership Entities as contemplated by Sections 3.3(b) and (c) of the Reimbursement, Security and Guaranty Agreement.

SECTION 7.10. Conduct of Business. Engage in any business other than (i) in the case of the Borrower, the Business (as defined in the LLC Operating Agreement) and

(ii) in the case of each Subsidiary, the ownership, construction, development and Disposition of the applicable REO Property or Environmental Hazard Property.

SECTION 7.11. Amendments or Waivers of Certain Agreements; Other Actions. Amend, modify or change, or waive any provision of, the Purchase Money Note, the LLC Interest Sale Agreement, the LLC Operating Agreement, the Contribution Agreement or the Servicing Agreement without the prior written consent of the Required Lenders.'

SECTION 7.12. Fiscal Year. Make any change in its Fiscal Year.

SECTION 7.13. Use of Proceeds. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that violates Regulation U issued by the FRB.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.01. Events of Default. Each of the following shall constitute an "Event of Default":

(a) *Failure to Make Payments When Due.* Failure by Borrower to pay any principal of any Loan when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or failure by Borrower to pay any interest on any Loan or any fee or any other amount due under this Agreement within three (3) days after the date due; or

(b) *Breach of Certain Covenants.* Failure of any Loan Party to perform or comply with any term or condition contained in (i) Section 2.03(b), 6.01(b), 6.02(a), 6.07, 6.10, 6.11 or Article VII of this Agreement, or (ii) Articles II and VII of the Reimbursement, Security and Guaranty Agreement; or

(c) *Breach of Warranty.* Any representation, warranty, certification or other statement made by the Managing Member or any Loan Party in any Loan Document or in any statement or certificate at any time given by the Managing Member or any Loan Party in writing pursuant hereto or thereto or in connection herewith or therewith shall be false or incorrect in any material respect on the date as of which made; or

(d) *Other Defaults Under Loan Documents.* Any Loan Party shall default in the performance of or compliance with any term contained in this Agreement or any of the other Loan Documents, other than any such term referred to in any other paragraph of this Section 8.01, and such default shall not have been remedied or waived within 30 days after the earlier of (i) a Responsible Officer of the Managing Member becoming aware of such default or (ii) receipt by the Borrower and/or such Loan Party of notice from the Administrative Agent or any Lender of such default; or

(e) *Insolvency Event.* The occurrence of any Insolvency Event (without any cure period other than as may be provided for in the definition of "Insolvency Event") with respect to (i) any Loan Party, (ii) the Managing Member or (iii) the Servicer; or

(f) *Judgments and Attachments.* Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of \$100,000 or (ii) in the aggregate at any time an amount in excess of \$1,000,000 (in either case not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage without any material reservations of right) shall be entered or filed against the Borrower or any of the Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 60 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(g) *Dissolution.* Any order, judgment or decree shall be entered against the Borrower or any other Loan Party (other than with respect to any order, judgment or decree with respect to a Loan Party (other than the Borrower) that shall have existed on the Closing Date) decreeing the dissolution or split up of the Borrower or such Loan Party and such order shall remain undischarged or unstayed for a period in excess of 30 days); or

(h) *Failure of Security; Repudiation of Obligations.* At any time after the execution and delivery thereof, (i) any Collateral Document shall cease to be in full force and effect (other than by reason of a release of Collateral thereunder in accordance with the terms hereof or thereof, the satisfaction in full of the Obligations (other than inchoate indemnification obligations with respect to claims, losses or liabilities which have not yet arisen and are not yet due and payable) or any other termination of such Collateral Document in accordance with the terms hereof or thereof) or shall be declared null and void, or the Collateral Agent shall not have or shall cease to have a valid and perfected first priority Lien in any Collateral purported to be covered thereby in which the security interest granted to the Collateral Agent is at that time required to be perfected by the Collateral Documents, or (ii) any Loan Party shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by the Lenders, under any Loan Document to which it is a party; or

(i) *Event of Default under Reimbursement, Security and Guaranty Agreement.* Any of the events described in Section 4.1 of the Reimbursement, Security and Guaranty Agreement shall occur; or

(j) *Event of Default under Purchase Money Note.* Any "Event of Default" under and as defined in the Purchase Money Note shall occur; or

(k) *Material Adverse Effect.* Any event or development that has a Material Adverse Effect shall occur.

SECTION 8.02. Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent may and, at the request of the Required Lenders, shall take any or all of the following actions:

(a) declare the Commitment to be terminated, whereupon such Commitments shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) exercise, or cause the Collateral Agent to exercise, on behalf of itself and the Lenders, all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided that upon the occurrence of an event with respect to the Borrower described in Section 8.01(e), the Commitments shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower, in each case without further act of the Administrative Agent, any Lender or any other Person.

ARTICLE IX

ADMINISTRATIVE AGENT AND OTHER AGENTS

SECTION 9.01. Appointment and Authorization of Agents.

(a) Each Lender hereby irrevocably appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document, the Administrative Agent shall have no duties or responsibilities, except those expressly set forth herein, nor shall the Administrative Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against the Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or on trust for) such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX (including, Section 9.07, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 9.02. Delegation of Duties. The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document (including for

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

SECTION 9.03. Liability of Agents. No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained herein or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Collateral Documents, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

SECTION 9.04. Reliance by Agents. Each Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by such Agent. Each Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Each Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

SECTION 9.05. Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, unless the Administrative Agent shall have received written notice from a Lender or any Loan Party referring to this Agreement, describing such Default and stating that such notice is a "notice of default." The Administrative Agent will notify the Lenders of its receipt of any such notice. The Administrative Agent shall take such action with respect to any Event of Default as may be

directed by the Required Lenders in accordance with Article VIII; *provided* that unless and until the Administrative Agent has received any such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Lenders.

SECTION 9.06. Credit Decision; Disclosure of Information by Agents. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by any Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to each Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower and the other Loan Parties hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Borrower and the other Loan Parties. Except for notices, reports and other documents expressly required to be furnished to the Lenders by any Agent herein, such Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

SECTION 9.07. Indemnification of Agents. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating, defending, asserting or preparing the defense or assertion of any of the foregoing), deficiencies, claims, interest, awards, judgments, penalties and fines (collectively, "**Indemnified Liabilities**") incurred by it; *provided* that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting from such Agent-Related Person's own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction; and *provided further* that no action taken in accordance with the directions of the Required Lenders (or such other number or percentage of the Lenders as shall be required by the Loan Documents) shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.07. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.07 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement

(whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section 9.07 shall survive termination of the Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

SECTION 9.08. Agents in their Individual Capacities. With respect to its Loans, the Agents shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not the an Agent, and the terms "Lender" and "Lenders" include the Receiver in its individual capacity.

SECTION 9.09. Successor Agents. The Administrative Agent may resign as the Administrative Agent upon thirty (30) days' notice to the Lenders and the Borrower, *provided* that the prior written consent of the Lenders and the Borrower will be required prior to the effectiveness of any such resignation. If the Administrative Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor agent for the Lenders. If no successor agent is appointed during such thirty (30) day period, the Administrative Agent may appoint, but only with prior written consent of the Lenders and the Borrower, a successor agent. The Administrative Agent shall not be relieved of its obligation hereunder until a successor Administrative Agent has been appointed with the prior written consent of the Lenders and the Borrower. Upon the acceptance of its appointment as successor agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Administrative Agent and the term "Administrative Agent," shall mean such successor administrative agent and/or supplemental administrative agent, as the case may be, and the retiring Administrative Agent's appointment, powers and duties as the Administrative Agent shall be terminated. After the retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Article IX and Sections 10.04 and 10.05 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent under this Agreement. Upon the acceptance of any appointment as the Administrative Agent hereunder by a successor and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, the Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After the retiring Administrative Agent's resignation hereunder as the Administrative Agent, the provisions of this Article IX shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent.

SECTION 9.10. Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 10.04) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Section 10.04.

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

ARTICLE X

MISCELLANEOUS

SECTION 10.01. Amendments, Etc. Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of each Lender directly affected thereby (it being understood that a waiver of any condition precedent set forth in Article IV or the waiver of any Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce or forgive the amount of, any payment of principal or interest under Section 2.03 or 2.06 without the written consent of each Lender directly affected thereby, it being understood that the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans shall not constitute a postponement of any date scheduled for the payment of principal or interest;

(c) reduce or forgive the principal of, or the rate of interest specified herein on, any Loan, without the written consent of each Lender directly affected thereby; *provided* that, only the consent of the Required Lenders shall be necessary to amend the

definition of "Default Rate" or to waive any obligation of the Borrower to pay interest at the Default Rate; or

(d) change any provision of this Section 10.01, the definition of "Required Lenders" or "Pro Rata Percentage" or Section 2.09(a) without the written consent of each Lender affected thereby,

and *provided further* that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, modification, supplement, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders).

SECTION 10.02. Notices and Other Communications.

(a) *General.* Unless otherwise expressly provided herein, 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, or delivered by hand or by nationally recognized air courier service, or delivered by electronic mail, directed to the applicable address or electronic mail address of the Borrower, the Administrative Agent and the Receiver as Lender specified for such Person on Schedule 10.02 or to such other address as shall be designated by such party in a notice to the other parties, or if to any other Lender, to the address or electronic mail address as shall be designated by such party in a written notice to the other parties. Any such notice or communication shall become effective when received (or 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.

(b) *Reliance by Agents and Lenders.* The Agents and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower in the absence of gross negligence or willful misconduct.

SECTION 10.03. No Waiver; Cumulative Remedies. No failure by any Lender or any Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

SECTION 10.04. Attorney Costs, Expenses and Taxes. Each party shall bear its own costs and expenses incurred in connection with the preparation and negotiation of this Agreement and the other Transaction Documents. The Borrower agrees (a) to pay or reimburse the Agents and the Lenders for all reasonable costs and expenses (including Attorney Costs) incurred in connection with the preparation, negotiation and execution of any amendment, waiver, consent or other modification of the provisions hereof and the other Transaction Documents (whether or not the transactions contemplated thereby are consummated), and (b) to pay or reimburse each Agent and the Lenders for all costs and expenses incurred in connection with any workout proceeding relating to the Obligations or the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of counsel to the Agents and the Lenders). The foregoing costs and expenses shall include all reasonable search, filing, recording and title insurance charges and fees and taxes related thereto, and other expenses incurred by the applicable party. The agreements in this Section 10.04 shall survive the termination of the Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be payable on demand.

SECTION 10.05. Indemnification by the Borrower.

(a) The Borrower shall indemnify and hold harmless each Agent and each Lender and each of their respective Affiliates, and their respective officers, directors, employees, partners, principals, agents and contractors (the “**Indemnified Parties**”) from and against any losses, damages, liabilities, costs and expenses (including reasonable attorneys’ fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating, defending, asserting or preparing the defense or assertion of any of the foregoing), deficiencies, claims, interest, awards, judgments, penalties and fines (collectively, “**Losses**”) arising out of or resulting from (i) any breach by any Loan Party or any of its Affiliates or any of their respective officers, directors, employees, partners, principals, agents or contractors (including the Servicer) (collectively, “**Related Parties**”) of any of their respective obligations under or covenants or agreements contained in this Agreement or the other Loan Documents (including any claim asserted by an Agent or a Lender against the Borrower to enforce its rights pursuant to Section 8.02), or any third-party allegation or claim based upon facts alleged that, if true, would constitute such a breach, or (ii) any gross negligence, bad faith or willful misconduct of any of the Related Parties (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law). Such indemnity shall survive the termination of this Agreement. In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a Loss or a claim or demand made by any Person against the Indemnified Party (a “**Third Party Claim**”), such Indemnified Party shall deliver notice thereof to Borrower promptly after receipt by such Indemnified Party of written notice of the Third Party Claim, describing in reasonable detail the facts giving rise to any claim for indemnification hereunder, the amount of such claim (if known) and such other information with respect thereto as is available to the Indemnified Party and as the Borrower may reasonably request. The failure or delay to provide such notice, however, shall not release the Borrower from any of its obligations under this Section 10.05 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 Borrower 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 Borrower (including the Servicer), on the other hand in connection with a breach of the Borrower's obligations under this Agreement.

(c) If the Borrower confirms in writing to the Indemnified Party within fifteen (15) days after receipt of a Third Party Claim the Borrower's responsibility to indemnify and hold harmless the Indemnified Party therefor, the Borrower may elect to assume control over the compromise or defense of such Third Party Claim at the Borrower's own expense and by the Borrower's own counsel, 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 Borrower shall keep the Indemnified Party advised of all material events with respect to any Third Party Claim; (iii) the Borrower shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any Third Party Claim or entering into any settlement, adjustment or compromise of such Third Party Claim involving injunctive or similar equitable relief being imposed upon any Indemnified Party or any of its Affiliates; and (iv) the Borrower will not, without the prior written consent of each Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened action in respect of which indemnification may be sought hereunder (whether or not any such Indemnified Party is a party to such action), unless such settlement, compromise or consent by its terms obligates the Borrower to satisfy the full amount of the liability in connection with such Third Party Claim and includes an unconditional release of the Indemnified Party from all liability arising out of such Third Party Claim.

(d) Notwithstanding anything contained herein to the contrary, the Borrower 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 Borrower 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 Borrower (or any Affiliate) and the Indemnified Party are named as parties and either the Borrower (or such Affiliate) or the Indemnified Party determines with advice of counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the other party or that a conflict of interest between such parties may exist in respect of such action; and (iii) any matter that raises or implicates any issue relating to any power, right or obligation of the FDIC under any Law. If the Borrower elects not to assume the compromise or defense against the asserted liability, fails to timely and properly notify the Indemnified Party of its election as herein provided, or, at any time after assuming such defense, fails to diligently defend against such Third Party Claim in good faith, the Indemnified Party may pay, compromise or defend against such asserted liability (but the Borrower shall nevertheless be required to pay all Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise). In connection with any defense of a Third Party Claim (whether by the Borrower 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. No Indemnified Party shall have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Borrower, its directors, stockholders or

creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. The agreements in this Section 10.05 shall survive the termination of the Commitments and the repayment, satisfaction or discharge of all the Loans and other Obligations.

SECTION 10.06. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to any Lender, or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred.

SECTION 10.07. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Required Lender (and any attempt to effect such assignment or transfer without such consent shall be null and void). Any Non-Defaulting Lender may assign or otherwise transfer any of its rights or obligations hereunder (i) to any Person; *provided* that the Receiver shall retain at all times a Pro Rata Percentage of more than 50% unless the Borrower shall otherwise consent, (ii) by way of participation in accordance with the provisions of Section 10.7(d) and (iii) by way of pledge or assignment of a security interest; *provided* that any such assignment under clause (i) for less than all of the Commitments and Loans shall be for a uniform pro rata portion of the assigning Lender's Advance Loan Commitments, outstanding Advance Loans, Authorized Overage Loan Commitments, outstanding Authorized Overage Loans and Working Capital Loan Commitments. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) In connection with any assignment by a Lender, the parties to such assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption. Subject to the acceptance and recording thereof by the Administrative Agent, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such assigning Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender.

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans and amounts due under Section 2.03, owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) A Lender may at any time, without the consent of, or notice to, the Borrower or any other Person, sell participations to any Person (other than a natural person) (each, a “**Participant**”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (owing to it); *provided* that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower and the Agents shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or the other Loan Documents; *provided*, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that directly affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05, to the same extent as if it were a Lender and had acquired its interest by assignment; *provided* that any such Participant shall have complied with the requirements of Section 3.01, including, without limitation, Section 3.01(d); and *provided, further*, that no Participant shall be entitled to recover greater amounts under such Sections than the selling Lender would be entitled to recover. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender.

SECTION 10.08. Confidentiality. The Borrower shall keep confidential and shall not divulge to any party, without the prior written consent of the Administrative Agent, any information pertaining to this Agreement, the Underlying Loans or any Underlying Borrower or the Underlying Collateral thereunder, except as required pursuant to this Agreement and except to the extent that it is necessary and appropriate for the Borrower or the Managing Member to do so in working with Underlying Borrowers, the representatives of Underlying Borrowers, the agents of Underlying Borrowers, any prospective purchaser of an Underlying Loan or the Underlying Collateral thereunder (it being understood that the prospective purchasers to whom such disclosure is made will be informed of the confidential nature of such information and the Borrower shall enter into a confidentiality agreement with any such prospective purchasers with respect to such Underlying Loan or Underlying Collateral), any guarantor of an Underlying Loan, legal counsel, auditors, taxing authorities, regulatory authorities or any other Governmental Authority; *provided*, that, to the extent that disclosure should be required by law, rule, regulation (including any securities listing requirements or the requirements of any self-regulatory organization), subpoena, or in connection with any legal or regulatory proceeding (including in connection with or pursuant to any action, suit, subpoena, arbitration or other dispute resolution process or other legal proceedings, whether civil or criminal, and including before any court or administrative or legislative body), the Borrower will use all reasonable efforts to maintain

confidentiality and will (unless otherwise prohibited by law) notify the Administrative Agent within one (1) Business Day after its knowledge of such legally required disclosure so that Administrative Agent may seek an appropriate protective order. Notice shall be by telephone, by email and in writing. In the absence of a protective order or waiver, the Borrower may make such required disclosure if, in the written opinion of its outside counsel (which opinion shall be provided to the Administrative Agent prior to disclosure pursuant to this Section 10.08), failure to make such disclosure would subject the Borrower to liability for contempt, censure or other legal penalty or liability.

SECTION 10.09. Setoff. In addition to any rights and remedies of the Lenders provided by Law, upon the occurrence and during the continuance of any Event of Default, each Lender and its Affiliates is authorized at any time and from time to time, without prior notice to the Borrower or any other Loan Party, any such notice being waived by the Borrower (on its own behalf and on behalf of each Loan Party and the Subsidiaries) to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other Indebtedness at any time owing by, such Lender and its Affiliates to or for the credit or the account of the respective Loan Parties and their Subsidiaries against any and all Obligations owing to such Lender and its Affiliates hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not such Lender or Affiliate shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or Indebtedness. The rights of each Lender under this Section 10.09 are in addition to other rights and remedies (including other rights of setoff) that such Lender may have.

SECTION 10.10. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "**Maximum Rate**"). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or Lender exceeds the Maximum Rate, such Agent or Lender may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.11. Counterparts. This Agreement and each other Loan Document may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Agreement and each other Loan Document and any amendments hereto or thereto, 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 or any other Loan Document 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 10.12. Integration. This Agreement, together with the other Loan Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and thereof and supersedes all prior agreements, written or oral, on such subject matter; *provided* that, the Confidentiality Agreement, dated August 27, 2009, between the FDIC and the Affiliates of the Private Owner named therein (including by way of joinder) shall remain in full force and effect to the extent provided therein, except that the Borrower's rights under Article VI of the Contribution Agreement shall not be deemed a repurchase option for purposes of Section 2 of such Confidentiality Agreement. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided* that the inclusion of supplemental rights or remedies in favor of any Lender or Agent in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

SECTION 10.13. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on its behalf and notwithstanding that such Agent or such Lender may have had notice or knowledge of any Default at the time of any Borrowing, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

SECTION 10.14. Severability. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement or such Loan Document. 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 or any other Loan Document 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 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 (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 10.14 is intended to, or shall, limit (1) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 10.15.

SECTION 10.15. GOVERNING LAW.

(a) THIS AGREEMENT 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 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 AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. NOTHING IN THIS AGREEMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY HERETO.

(b) The Borrower, for itself and its Affiliates, hereby irrevocably and unconditionally:

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

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

(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 any party arising out of, relating to, or in connection with this Agreement, any other Loan Document or any other Transaction Document (other than the LLC Operating Agreement), and waives any right to:

(A) remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Administrative Agent);

(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 the Managing Member, the Borrower or its Affiliate against any Lender or Agent arising out of, relating to, or in connection with this Agreement or any Loan 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 Administrative Agent, 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 Administrative Agent; 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 10.15(b)(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 Administrative Agent.

(c) The Borrower, 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 10.15(b) may be enforced in any court of competent jurisdiction.

(d) Subject to the provisions of Section 10.15(e), the Borrower, on behalf of itself and its Affiliates, and the Initial Member hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 10.15(b) or Section 10.15(c) 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 10.02 (with copies to such other Persons as specified therein); *provided, however*, that nothing contained in this Section 10.15(d) shall affect the right of any party to serve process in any other manner permitted by Law.

(e) Nothing in this Section 10.15 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Section 10.15(b)(iii) and Section 10.15(b)(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 10.16. Waiver of Right to Trial by Jury. EACH OF THE BORROWER, FOR ITSELF AND ITS AFFILIATES, AND THE ADMINISTRATIVE AGENT AND EACH OF THE LENDERS 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 10.17. Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower, the Administrative Agent and each Lender and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent and each Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the Required Lenders.

SECTION 10.18. Lender Action. Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party or any other obligor under any of the Loan Documents (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.18 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

SECTION 10.19. USA PATRIOT Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

SECTION 10.20. Replacement of Lenders under Certain Circumstances.

(a) The Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 3.04, (b) is affected in the manner described in Section 3.02 and as a result thereof any of the actions described in such Section is required to be taken or (c) becomes a Defaulting Lender, with a replacement bank or other financial institution; *provided* that (i) such replacement does not conflict with any applicable Law, (ii) no Event of Default under Section 8.01(a) or 8.01(e) shall have occurred and be continuing at the time of such replacement, (iii) the Borrower shall repay (or the replacement bank shall purchase) at par all Loans and other amounts (other than any disputed amounts) pursuant to Section 3.04, owing to such replaced Lender prior to the date of replacement, (iv) the replacement bank or financial institution, if not already a Lender, and the terms and conditions of such replacement, shall be reasonably satisfactory to the Administrative Agent, (v) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 10.07 and (vi) any such replacement shall not be deemed to be a waiver of any rights that the Borrower, any Agent or any Lender shall have against the replaced Lender.

(b) If any Lender (such Lender, a "Non-Consenting Lender") has failed to consent to a proposed amendment, modification, supplement, waiver, discharge or termination that pursuant to the terms of Section 10.01 requires the consent of all of the Lenders or all Lenders affected and with respect to which the Required Lenders shall have granted their consent, then provided no Event of Default then exists, the Borrower shall have the right (unless such Non-Consenting Lender grants such consent) to replace such Non-Consenting Lender by requiring such Non-Consenting Lender to assign its Loans and its Commitments hereunder to one or more assignees reasonably acceptable to the Administrative Agent, *provided* that: (a) all Obligations of the Borrower owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment and (b) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof *plus* accrued and unpaid interest thereon. In connection with any such assignment, the Borrower, Administrative Agent, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 10.07.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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

CORUS CONSTRUCTION VENTURE, LLC

By: CCV Managing Member, LLC, its Managing Member

By: _____
Name: *Marcos Alvarado*
Title: *Interim Co-President*

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Corus Bank, N.A., as Lender

By: _____
Name: Timothy A. Kruse
Title: Senior Capital Markets Analyst

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Corus Bank, N.A., as Administrative Agent

By: _____
Name: Timothy A. Kruse
Title: Senior Capital Markets Analyst

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

CORUS CONSTRUCTION VENTURE, LLC

By: CCV Managing Member, LLC, its Managing Member

By: _____
Name:
Title:

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Corus Bank, N.A., as Lender

By:  _____
Name: Timothy A. Kruse
Title: Senior Capital Markets Analyst

FEDERAL DEPOSIT INSURANCE CORPORATION, as Receiver for Corus Bank, N.A., as Administrative Agent

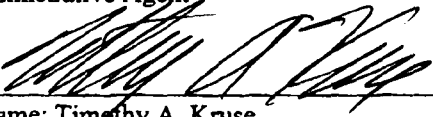
By:  _____
Name: Timothy A. Kruse
Title: Senior Capital Markets Analyst

EXHIBIT A

Schedule 1.01

UNDERLYING LOANS, PROJECTS AND CLOSING DATE REO

[To be inserted]

Schedule 2.01

COMMITMENTS

<u>Lender</u>	<u>Advance Loan Commitment</u>
Federal Deposit Insurance Corporation	\$750,000,000

<u>Lender</u>	<u>Authorized Overage Loan Commitment</u>
Federal Deposit Insurance Corporation	\$250,000,000

<u>Lender</u>	<u>Working Capital Loan Commitment</u>
Federal Deposit Insurance Corporation	\$150,000,000

Schedule 2.11**ADDITIONAL CONDITIONS TO DRAWING**

(a) The Borrower or the Administrative Agent (or Verification Contractor), as applicable, shall have received from the Underlying Borrower or the Borrower, as applicable, a funding request pursuant to the provisions of the applicable Underlying Loan Documents, accompanied by, in addition to any other items required as a condition to a loan advance under the applicable Underlying Loan Documents:

(i) a detailed breakdown of the anticipated use of the proceeds of the requested draw, together with copies of invoices and bills for all sums requested, together with a certification from the Underlying Borrower or the Borrower, as applicable, that the proceeds of such advance will only be used for the purposes identified in the funding request;

(ii) a statement that all costs for the payment of which the Underlying Borrower or the Borrower, as applicable, has previously advanced funds have in fact been paid;

(iii) from each "Major Contractor" (as defined in the applicable Approved Business Plan), a completed and itemized Application and Certificate for Payment in the form of AIA Document No. G702 (including AIA Form G703 as an attachment thereto), or similar form reasonably acceptable to the Administrative Agent, containing the required certification of such Major Contractor and the Underlying Borrower's or the Borrower's, as applicable architect, accompanied by a cost breakdown showing the cost of work on, and the cost of materials incorporated into, the applicable construction project to the date of the requisition and the percentage of completion of each budget line item;

(iv) to the extent not theretofore provided, a current list of contractors and subcontractors, by name and trade, the total amount of each contract and/or subcontract, the amount theretofore paid to each contractor and/or subcontractor as of the date of such application, and the amount to be paid from the proceeds of the subject advance to each contractor and/or subcontractor;

(v) certifications from the Underlying Borrower's or the Borrower's, as applicable, architect and general contractor that the work covered by the funding request is in accordance with the approved plans and specifications and is consistent with the then-applicable construction budget and construction schedule for such construction project;

(vi) absolute, unconditional waivers of lien with respect to the then last preceding advance from all Persons who were paid from the proceeds of such advance, in form and substance reasonably acceptable to the Administrative Agent covering all work done and all sums received through the date of the then last preceding advance and noting that the only amounts then due and owing (other than any retainage) are the amounts to be paid to such Persons out of the advance being requested, each of which shall be certified as true and complete by the Underlying Borrower or the Borrower, as applicable;

(vii) an endorsement to the title policy insuring the applicable Construction Loan or the Collateral Agent's Mortgage (if any) on the applicable REO Property, as applicable, is obtained that (x) brings down the effective date of the title policy to the date on which the applicable draw is made, (y) increases the liability limit of the title policy by an amount

at least equal to the principal amount of such draw, and (z) contains no new exceptions to title that have not been authorized or consented to by the Administrative Agent prior to the time the request for such advance is made;

(viii) to the extent not theretofore provided, certified copies of any material contracts, change orders and leases then in effect;

(ix) to the extent such advance request concerns materials not being yet delivered to or incorporated into the applicable construction project, reasonably detailed evidence that such materials are (or upon payment with the advanced funds will be) owned lien-free (other than with respect to the Borrower's or the Collateral Agent's, as applicable, lien under the applicable loan documents) by the Underlying Borrower or the Borrower, as applicable, and that they are adequately insured and will be properly stored until incorporation into the construction;

(x) certification from the Underlying Borrower or the Borrower, as applicable, that all soft costs being requested in the applicable advance request have been properly incurred and are due and payable and are within budgeted amounts; and

(xi) such other information, documents and certificates as reasonably requested by the Administrative Agent or the Verification Contractor.

(b) The Administrative Agent shall have received evidence of the remaining cost of construction and other budgeted costs, and such evidence shows that (a) no line item in the applicable Approved Budget is insufficient to cover the remaining cost of the work or other expenses described in such line item and/or (b) the Approved Budget is "in balance" (*i.e.*, the Underlying Borrower or the Borrower, as applicable, shall have delivered satisfactory evidence that the balance of the applicable Asset Advance Loan Sublimit and Asset Authorized Overage Loan Sublimit will be sufficient to cover all costs reasonably anticipated to complete construction and all other budgeted costs).

(c) There shall exist no facts or circumstances rendering it reasonably unlikely that the applicable Approved Business Plan will be effectuated.

(d) The Borrower or the Administrative Agent (or Verification Contractor), as applicable, shall have received reasonably satisfactory evidence that the construction to date has been completed in accordance with the approved plans and specifications and that completion or construction is reasonably estimated to occur in conformance with all applicable milestones set forth in the applicable Approved Construction Schedule.

(e) The applicable Underlying Collateral or REO Property, as applicable, shall not have been injured or damaged by fire, explosion, accident, flood or other casualty, or been subject to any condemnation, governmental taking or eminent domain proceeding unless the Administrative Agent or the Borrower shall have received (or shall have received evidence reasonably satisfactory to the Administrative Agent that the Borrower or the Administrative Agent will receive in a timely manner) insurance proceeds or condemnation awards or compensation sufficient in the reasonable judgment of the Administrative Agent to effect the satisfactory restoration or repair of the Underlying Collateral or REO Property, as applicable, in conformance with all applicable milestones set forth in the applicable Approved Construction Schedule.

(f) In addition to the conditions set forth in clauses (a) through (e) above, the Borrower shall make the final advance with respect to any Construction Loan, and the Lenders shall be obligated to make the final advance of any Term Loan proceeds relating to an REO Property, only if the Borrower or Administrative Agent (and the Verification Contractor), as applicable, shall have received from the Underlying Borrower or Borrower, as applicable, the following additional items:

(i) evidence reasonably satisfactory to the Administrative Agent that final completion of construction has occurred in accordance with the approved plans and specifications and any applicable requirements of Governmental Authorities, free and clear of any and all liens and claims of any Persons furnishing labor, goods, material and/or services;

(ii) evidence reasonably satisfactory to the Administrative Agent that all costs (including, without limitation fees and other governmental charges) to achieve final completion of the construction of the applicable Underlying Collateral or REO Property have been paid in full (or will be paid for out of the funds requested to be advanced) and that no Person has a right to claim any statutory or common lien arising out of the construction of such Underlying Collateral or REO Property, as applicable, or the supplying of labor, goods, materials and/or services in connection therewith (including the delivery of final, unconditional lien waivers from all parties reasonably required by the Administrative Agent);

(iii) a final survey reasonably satisfactory to the Administrative Agent showing the "as-built" location of the applicable Underlying Collateral or REO Property, as applicable, and a final set of "as-built" plans and specifications certified by the architect; and

(iv) a certificate of occupancy and all other required governmental licenses, permits, sign-offs, and approvals.

(f) The Underlying Borrower or the Borrower, as applicable, shall have satisfied such additional condition precedent to the funding of the advance as reasonably required by the Administrative Agent or the Borrower in light of the particular characteristics of the applicable Underlying Collateral or REO Property.

Schedule 10.02

ADDRESSES FOR NOTICES

Administrative Agent

Timothy A. Kruse
Senior Capital Markets Specialist
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Room F-7026
Washington, D.C. 20429
Tkruse@fdic.gov

with copies to:

George C. Alexander
Manager, Capital Markets & Resolutions
Federal Deposit Insurance Corporation
Room F-7008
550 17th Street, N.W.
Washington, D.C. 20429
Attention: George C. Alexander
Galexander@fdic.gov

Robert W. McComis
Senior Capital Markets Specialist
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Room F-7036
Washington, D.C. 20429
Rmccomis@fdic.gov

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

with a copy by email to:

Thomas Raburn
Traburn@fdic.gov

Lender

Timothy A. Kruse
Senior Capital Markets Specialist
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Room F-7026
Washington, D.C. 20429
Tkruse@fdic.gov

with copies to:

George C. Alexander
Manager, Capital Markets & Resolutions
Federal Deposit Insurance Corporation
Room F-7008
550 17th Street, N.W.
Washington, D.C. 20429
Attention: George C. Alexander
Galexander@fdic.gov

Robert W. McComis
Senior Capital Markets Specialist
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Room F-7036
Washington, D.C. 20429
Rmccomis@fdic.gov

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

with a copy by email to:

Thomas Raburn
Traburn@fdic.gov

Borrower

Corus Construction Venture, LLC
591 West Putnam Avenue
Greenwich, CT 06830
Attention: John McCarthy

with a copy to:

Rinaldi, Finkelstein & Franklin, LLC
591 West Putnam Avenue
Greenwich, CT 06830
Attention: Ellis Rinaldi
Rinaldi@Starwood.com

Exhibit A

**FORM OF
ADVANCE AND/OR AUTHORIZED OVERAGE LOAN BORROWING NOTICE**

To: Federal Deposit Insurance Corporation, as Administrative Agent
Robert W. McComis
Senior Capital Markets Specialist
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Room F-7036
Washington, D.C. 20429
Rmccomis@fdic.gov

Thomas Raburn
Traburn@fdic.gov

[Date]

Ladies and Gentlemen:

Reference is made to the Advance Facility Agreement dated as of October 16, 2009 (as amended, supplemented or otherwise modified from time to time, the "Advance Facility Agreement"), among Corus Construction Venture, LLC, the Federal Deposit Insurance Corporation, as Administrative Agent, and the lenders from time to time party thereto. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Advance Facility Agreement.

The undersigned Borrower hereby requests:

- An Advance Loan Borrowing
- An Authorized Overage Loan Borrowing

to be made on the terms set forth below:

- (A) Date of Borrowing _____
- (B) Principal amount of Advance Loan Borrowing¹ _____
- (C) Principal amount of Authorized Overage Loan Borrowing _____

¹ Note to Draft: With respect to any Interim Term Loan Borrowings, clause (B) will also include the aggregate amount of previously funded Interim Term Loan Borrowings to which the Borrower has not satisfied the provisions of Section 2.02(a) of the Advance Facility Agreement, if any (which, when combined with the amount of the requested Interim Term Loan Borrowing, shall in no event exceed \$50,000,000).

Schedule A hereto sets forth (i) the Assets to which the requested Borrowing is to be allocated and the principal amount of such Borrowing to be allocated to each such Asset and the purposes for which the proceeds of the Loans are to be used, (ii) a comparison of the costs and expenses to be paid out of such proceeds with the corresponding portions of the applicable Approved Business Plan(s), if the same shall have been approved, which comparison shall demonstrate that the incurrence of such costs and expenses is consistent with such Approved Business Plan(s) and (iii) all other items the delivery of which is a condition to the making of such Loan(s) pursuant to Section 2.11 of the Advance Facility Agreement.

CORUS CONSTRUCTION VENTURE, LLC

**By: CCV Managing Member, LLC, its Managing
Member**

By: _____

Name:

Title:

SCHEDULE A

Exhibit B

**FORM OF
WORKING CAPITAL LOAN BORROWING NOTICE**

To: Federal Deposit Insurance Corporation, as Administrative Agent
Robert W. McComis
Senior Capital Markets Specialist
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Room F-7036
Washington, D.C. 20429
Rmccomis@fdic.gov

Thomas Raburn
Traburn@fdic.gov

[Date]

Ladies and Gentlemen:

Reference is made to the Advance Facility Agreement dated as of October 16, 2009 (as amended, supplemented or otherwise modified from time to time, the "Advance Facility Agreement"), among Corus Construction Venture, LLC, the Federal Deposit Insurance Corporation, as Administrative Agent, and the lenders from time to time party thereto. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Advance Facility Agreement.

The undersigned Borrower hereby requests a Working Capital Loan to be made on the terms set forth below:

- (A) Date of Borrowing _____
- (B) Principal amount _____
- (C) Principal amount allocable to:
 - Asset Management Fee _____
 - Custodian Amounts _____
 - Verification Contractor Amounts _____
 - Servicing Expenses _____
 - Pre-Approved Charges _____

CORUS CONSTRUCTION VENTURE, LLC

By: CCV Managing Member, LLC, its Managing
Member

By: _____

Name:

Title:

Exhibit C-1

LENDER:
PRINCIPAL AMOUNT: \$

**FORM OF
TERM NOTE**

New York, New York
[Date]

FOR VALUE RECEIVED, the undersigned, CORUS CONSTRUCTION VENTURE, LLC, a Delaware limited liability company (the "Borrower"), hereby promises to pay, or cause to be paid, to the Lender set forth above (the "Lender") or its registered assigns, in lawful money of the United States of America in immediately available funds to the Lender's Account (such term, and each other capitalized term used but not defined herein, having the meaning assigned to it in the Advance Facility Agreement dated as of October 16, 2009 (as the same may be amended, supplemented or otherwise modified from time to time, the "Advance Facility Agreement"), among the Borrower, the Federal Deposit Insurance Corporation, as Administrative Agent, and the lenders from time to time party thereto (the "Lenders") (i) on the dates set forth in the Advance Facility Agreement, the lesser of (A) the principal amount set forth above plus any amount in respect of the capitalization of interest and (B) the aggregate principal amount of all Term Loans made by the Lender to the Borrower pursuant to the Advance Facility Agreement (including any amount in respect of the capitalization of interest) and (ii) on each Distribution Date, interest at the rate or rates per annum as provided in the Advance Facility Agreement on the unpaid principal amount of all Term Loans made by the Lender to the Borrower pursuant to the Advance Facility Agreement.

The Borrower promises to pay interest, on demand, on any overdue principal and, to the extent permitted by law, overdue interest from their due dates at the rate or rates provided in the Advance Facility Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The nonexercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All borrowings evidenced by this note and all payments and prepayments of the principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedule attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in its internal records; *provided, however*, that the failure of the holder hereof to make such a notation or any error in such notation shall not affect the obligations of the Borrower under this note.

This note is one of the Term Notes referred to in the Advance Facility Agreement that, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional and mandatory prepayment of the principal hereof prior to the maturity hereof and for the amendment or waiver of certain provisions of the Advance Facility Agreement, all upon the terms and conditions therein specified.

THIS NOTE 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 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 NOTE TO THE LAW OF ANOTHER JURISDICTION.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, we have hereto caused this Term Note to be duly executed as of the date first above written.

CORUS CONSTRUCTION VENTURE, LLC

By: CCV Managing Member, LLC, its Managing Member

By: _____

Name:

Title:

LOANS AND PAYMENTS

Date	Amount of Loan	Maturity Date	Payments of Principal/Interest	Principal Balance of Note	Name of Person Making the Notation
------	----------------	------------------	-----------------------------------	---------------------------------	---

Exhibit C-2

LENDER:

PRINCIPAL AMOUNT: \$

**FORM OF
WORKING CAPITAL NOTE**

New York, New York
[Date]

FOR VALUE RECEIVED, the undersigned, CORUS CONSTRUCTION VENTURE, LLC, a Delaware limited liability company (the "Borrower"), hereby promises to pay, or cause to be paid, to the Lender set forth above (the "Lender") or its registered assigns, in lawful money of the United States of America in immediately available funds to the Lender's Account (such term, and each other capitalized term used but not defined herein, having the meaning assigned to it in the Advance Facility Agreement dated as of October 16, 2009 (as the same may be amended, supplemented or otherwise modified from time to time, the "Advance Facility Agreement"), among the Borrower, the Federal Deposit Insurance Corporation, as Administrative Agent, and the lenders from time to time party thereto (the "Lenders") (i) on the dates set forth in the Advance Facility Agreement, the lesser of (A) the principal amount set forth above plus any amount in respect of the capitalization of interest and (B) the aggregate unpaid principal amount of all Working Capital Loans made by the Lender to the Borrower pursuant to the Advance Facility Agreement (including any amount in respect of the capitalization of interest), and (ii) interest from the date hereof on the principal amount from time to time outstanding on each such Working Capital Loan at the rate or rates per annum and payable on such dates as provided in the Advance Facility Agreement.

The Borrower promises to pay interest, on demand, on any overdue principal and, to the extent permitted by law, overdue interest from their due dates at a rate or rates provided in the Advance Facility Agreement.

The Borrower hereby waives diligence, presentment, demand, protest and notice of any kind whatsoever. The nonexercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in that or any subsequent instance.

All borrowings evidenced by this note and all payments and prepayments of the principal hereof and interest hereon and the respective dates thereof shall be endorsed by the holder hereof on the schedule attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof, or otherwise recorded by such holder in its internal records; *provided, however*, that the failure of the holder hereof to make such a notation or any error in such notation shall not affect the obligations of the Borrower under this note.

This note is one of the Working Capital Notes referred to in the Advance Facility Agreement that, among other things, contains provisions for the acceleration of the maturity hereof upon the happening of certain events, for optional and mandatory prepayment of the principal hereof prior to the maturity hereof and for the amendment or waiver of certain provisions of the Advance Facility Agreement, all upon the terms and conditions therein specified.

THIS NOTE 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 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 NOTE TO THE LAW OF ANOTHER JURISDICTION.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, we have hereto caused this Working Capital Note to be duly executed as of the date first above written.

CORUS CONSTRUCTION VENTURE, LLC

By: CCV Managing Member, LLC, its Managing Member

By: _____
Name:
Title:

LOANS AND PAYMENTS

Date	Amount of Loan	Maturity Date	Payments of Principal/Interest	Principal Balance of Note	Name of Person Making the Notation
------	----------------	------------------	-----------------------------------	---------------------------------	---

Exhibit D

**FORM OF
U.S. TAX COMPLIANCE CERTIFICATE**

Reference is made to the Advance Facility Agreement (as amended, amended and restated, supplemented and otherwise modified from time to time, the “**Agreement**”), dated as of _____, 2009, among CORUS CONSTRUCTION VENTURE, L.L.C (the “**Borrower**”), the Lenders party thereto from time to time and Federal Deposit Insurance Corporation, as receiver for Corus Bank, N.A., as Administrative Agent (in such capacity, together with its successors and assigns (the “**Agent**”).

Under penalties of perjury, the undersigned hereby certifies to the Lenders and to the Borrower that:

1. The undersigned is the sole record and beneficial owner of the loans or the obligations in respect of the Agreement in respect of which it is providing this certificate.
2. The undersigned is not a bank (as such term is used in Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the “**Code**”). In this regard, the undersigned further represents and warrants that:
 - (a) *the undersigned is not subject to regulatory or other legal requirements as a bank in any jurisdiction; and*(b) *the undersigned has not been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;*3. The undersigned is not a “10-percent shareholder” of the Borrower (as such term is used in Section 881(c)(3)(B) of the Code);
4. The undersigned is not a controlled foreign corporation related to the Borrower within the meaning of Section 864(d)(4) of the Code;

We have furnished you with a certificate of our non-U.S. person status on Internal Revenue Service Form W-8BEN. By executing this U.S. Tax Compliance Certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall so inform the Borrower in writing within thirty days of such change and (b) the undersigned shall furnish the Borrower a properly completed and currently effective certificate in either the calendar year in which payment is to be made by the Borrower to the undersigned, or in either of the three calendar years preceding such payment.

[NAME]

By: _____
Name:
Title:

Exhibit E

**FORM OF
ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between the Assignor (as defined below) and the Assignee (as defined below). Capitalized terms used in this Assignment and Assumption and not otherwise defined herein have the meanings specified in the Advance Facility Agreement dated as of October 16, 2009 (as amended, supplemented or otherwise modified from time to time, the "Advance Facility Agreement"), among Corus Construction Venture, LLC (hereinafter referred to as the "Borrower"), the lenders from time to time party thereto (the "Lenders"), and the Federal Deposit Insurance Corporation, as Administrative Agent (the "Administrative Agent"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Advance Facility Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Advance Facility Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the facility identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Advance Facility Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

- (g) Assignor (the "Assignor):
- (h) Assignee (the "Assignee):
- (i) Borrower: Corus Construction Venture, LLC
- (j) Administrative Agent: Federal Deposit Insurance Corporation
- (k) Assigned Interest:

<u>Facility</u>	<u>Aggregate Amount of Commitment/Loans of all Lenders</u>	<u>Amount of Commitment/Loans Assigned</u>	<u>Percentage Assigned of Commitment/ Loans²</u>
Advance Facility Agreement	\$	\$	%

Effective Date:

² Set forth, to at least 8 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

IN WITNESS WHEREOF, the terms set forth in this Assignment and Assumption are hereby agreed to:

[NAME OF ASSIGNOR],
as Assignor

By: _____
Name:
Title:

[NAME OF ASSIGNEE],
as Assignee

By: _____
Name:
Title:

Accepted:

FEDERAL DEPOSIT INSURANCE CORPORATION,
as Administrative Agent,

By: _____

Name:

Title:

ADVANCE FACILITY AGREEMENT³

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Advance Facility Agreement, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Advance Facility Agreement, (iii) the financial condition of the Borrower or any of its Subsidiaries or Affiliates or any other Person obligated in respect of the Advance Facility Agreement or (iv) the performance or observance by the Borrower or any of its Subsidiaries or Affiliates or any other Person of any of its obligations under the Advance Facility Agreement.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Advance Facility Agreement, (ii) it satisfies the requirements, if any, specified in the Advance Facility Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Advance Facility Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder and (iv) it has received a copy of the Advance Facility Agreement, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender; and (b) agrees that (i) it will, independently and without reliance on the Assignor, the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Advance Facility Agreement, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Advance Facility Agreement are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make, or shall cause to be made, all payments in respect of the Assigned Interest (including

³ Capitalized terms used in this Assignment and Assumption and not otherwise defined herein have the meanings specified in the Advance Facility Agreement dated as of October 16, 2009 (as amended, supplemented or otherwise modified from time to time, the "Advance Facility Agreement"), among Corus Construction Venture, LLC (hereinafter referred to as the "Borrower"), the lenders from time to time party thereto (the "Lenders"), and the Federal Deposit Insurance Corporation, as Administrative Agent (the "Administrative Agent").

payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by facsimile or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be construed in accordance with and governed by the law of the State of New York.