

CUSTODIAL AND PAYING AGENCY AGREEMENT

by and among

CRE VENTURE 2011-2, LLC,

**FEDERAL DEPOSIT INSURANCE CORPORATION
in its capacity as Receiver, as PMN Agent,**

**FEDERAL DEPOSIT INSURANCE CORPORATION
in its capacity as Receiver, as Initial Member,**

COLFIN 2011-2 CRE FUNDING, LLC, as Private Owner,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Bank

Dated as of December 13, 2011

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Schedule and Exhibits

<u>Exhibit A</u>	Asset Schedule
<u>Exhibit B-1</u>	Form of Certificated Note
<u>Exhibit B-2</u>	Form of Rule 144A Global Note
<u>Exhibit C-1</u>	Form of Qualified Institutional Buyer and Qualified Purchaser Certification
<u>Exhibit C-2</u>	Form of Certificate for the Acquisition of Regulation S Certificated Notes
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<u>Exhibit N</u>	Form of Account Control Agreement
<u>Exhibit O</u>	Form of Investor Certification for Website Access
<u>Exhibit P</u>	[Intentionally Omitted]
<u>Exhibit Q</u>	Form of Private Owner Pledged Account Control Agreement

CUSTODIAL AND PAYING AGENCY AGREEMENT

THIS CUSTODIAL AND PAYING AGENCY AGREEMENT (as the same shall be amended, modified or supplemented in accordance with the terms hereof, this "Agreement") is made and entered into as of December 13, 2011, by and among (i) CRE Venture 2011-2, LLC, a Delaware limited liability company (the "Company"), (ii) the Federal Deposit Insurance Corporation in its capacity as Receiver, as the PMN Agent under the Reimbursement, Security and Guaranty Agreement (in such capacity, or any successor PMN Agent under the Reimbursement, Security and Guaranty Agreement, the "PMN Agent"), (iii) the Federal Deposit Insurance Corporation in its capacity as Receiver, as the Initial Member with respect to the Company (in such capacity, the "Initial Member"), (iv) ColFin 2011-2 CRE Funding, LLC, a Delaware limited liability company (the "Private Owner"), and (v) Wells Fargo Bank, National Association, a national banking association (the "Bank").

RECITALS

WHEREAS, the Failed Banks previously owned the Assets as described on the Asset Schedule attached hereto as Exhibit A;

WHEREAS, the Transferor and the Company have entered into the Contribution Agreement pursuant to which the Transferor transferred all of its right, title and interest in and to the Assets to the Company partly as a capital contribution (the Transferor being the sole member of the Company at the time) and partly as a sale and, in consideration for the transfer of the Assets to the Company to the extent such transfer constituted a sale, the Company has issued to the Transferor, as Holder, the Purchase Money Notes in the aggregate principal face amount of \$70,998,462.00, inclusive of the Purchase Money Notes Issuance Fee;

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

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

WHEREAS, pursuant to the Reimbursement, Security and Guaranty Agreement, the Company has pledged the Secured Parties Collateral (including the Loans and underlying collateral therefor) to the PMN Agent for the benefit of the Secured Parties, and the Reimbursement, Security and Guaranty Agreement requires that the Company retain a document

custodian, meeting the requirements set forth in the Reimbursement, Security and Guaranty Agreement, to take possession of the Custodial Documents (as such term is defined below), in accordance with the terms and conditions hereof;

WHEREAS, the Initial Member and the Private Owner have entered into the LLC Operating Agreement;

WHEREAS, the Company wishes to open and maintain in its name at a branch of the Bank certain accounts into which amounts will be deposited and proceeds will be distributed as provided in this Agreement and to appoint the Bank as Custodian and Paying Agent to perform the services contemplated by this Agreement;

WHEREAS, the Private Owner wishes to open and maintain in its name at a branch of the Bank an account into which Qualifying Cash Collateral or proceeds of draw(s) under a Qualifying Letter of Credit may be deposited, which account will be subject to a security interest and pledge for the benefit of the Initial Member pursuant to the LLC Operating Agreement, and to appoint the Bank as Paying Agent to perform the services contemplated by this Agreement;

WHEREAS, the Bank wishes to accept its appointment as Custodian and as Paying Agent to perform the services contemplated by this Agreement; and

WHEREAS, the Company, the Initial Member, the PMN Agent, the Private Owner and the Bank wish to enter into this Agreement to, among other things, govern the allocation of the proceeds to be distributed from each account established pursuant to this Agreement and the performance of certain tasks by the Bank;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. For purposes of this Agreement, all terms used in this Agreement (including in the preamble and recitals hereto) that are defined in, or by reference in, that certain Agreement of Definitions - CRE Venture 2011-2 Structured Transaction dated as of the date hereof among the parties hereto and certain others (as the same may be amended from time to time in accordance with the terms set forth herein for the amendment of this Agreement) (the "Agreement of Definitions"), and are not otherwise defined herein, shall have the meanings and definitions given, or referred to, in the Agreement of Definitions.

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

ARTICLE II
PAYING AGENT AND PURCHASE MONEY NOTES

Section 2.1 Appointment of Paying Agent. Subject to the terms and conditions of this Agreement, the Company, the Initial Member and the Private Owner hereby appoint the Bank to perform the duties of the Paying Agent specifically set forth hereunder, and the Bank hereby accepts such appointment.

Section 2.2 Delivery of Documentation.

(a) Executed original counterparts of the Debt Agreements (other than those described in the following sentence) have been delivered to the Paying Agent and the Paying Agent acknowledges receipt thereof. The Company agrees to deliver to the Paying Agent each of the Debt Agreements that is executed and delivered by it, or executed by any Purchase Money Notes Guarantor or the PMN Agent and delivered to it, subsequent to the date of this Agreement promptly upon execution and delivery and to deliver each instrument amending or modifying any agreement previously delivered to the Paying Agent. Copies of the Contribution Agreement and the LLC Operating Agreement (or portions thereof) as are necessary for the Paying Agent to be familiar with in order to perform its obligations hereunder have been delivered to the Paying Agent by the Company, and the Paying Agent acknowledges receipt thereof. An executed original counterpart of the Private Owner Pledged Account Control Agreement has been delivered to the Paying Agent, and the Paying Agent acknowledges receipt thereof.

(b) The Paying Agent shall retain the Debt Agreements and the Private Owner Pledged Account Control Agreement in its possession and custody at all times during the term hereof unless any one of the following events has occurred:

(i) If the Paying Agent has resigned or has been removed in accordance with the provisions of Section 9.1, the Custodian shall deliver the Debt Agreements and the Private Owner Pledged Account Control Agreement to the successor Paying Agent in accordance with Section 9.1.

(ii) If the Paying Agent has received a Request for Release and Receipt of Debt Agreements and/or Private Owner Pledged Account Control Agreement in the form attached hereto as Exhibit I from an Authorized Representative of the PMN Agent (in the case of the Debt Agreements) or (in the case of the Private Owner Pledged Account Control Agreement) the Initial Member, the Paying Agent shall deliver the Debt Agreements to the PMN Agent, or the Private Owner Pledged Account Control Agreement to the Initial Member, as the case may be, in accordance with the instructions provided in such notice.

(c) The Paying Agent shall comply with the terms of each Purchase Money Notes Guaranty applicable to the Paying Agent.

Section 2.3 Duties. The Paying Agent shall have no duties other than those specifically set forth or provided for in this Agreement, each Debt Agreement to which it is a party and the Private Owner Pledged Account Control Agreement, and no implied covenants or

obligations of the Paying Agent shall be read into this Agreement, the Private Owner Pledged Account Control Agreement or any Debt Agreement to which the Paying Agent is a party, or into any related agreement to which the Paying Agent is a party. The Paying Agent shall have no obligation to inquire whether any request, instruction, certificate, direction, receipt, demand, consent, resolution, instrument, opinion, report, notice, document, communication, statement or calculation is in conformity with the terms of the agreement pursuant to which it is given, except those irregularities or errors manifestly apparent on the face of such document or actually known to the Paying Agent. If, however, any remittance or communication received by the Paying Agent appears manifestly erroneous or irregular, the Paying Agent shall endeavor to make prompt inquiry to the Person originating such remittance or communication in order to determine whether a clerical error or inadvertent mistake has occurred.

Section 2.4 Forms of Purchase Money Notes.

(a) Purchase Money Notes. In connection with the sale of the Assets to the Company, the Company as of the Closing Date has issued to the Transferor, as a Holder, a single Class of Purchase Money Notes with the designation of the Class A Purchase Money Notes in the principal face amount of \$70,998,462.00 (inclusive of the Purchase Money Notes Issuance Fee).

(b) Forms Generally. The form of the Purchase Money Notes shall be as set forth in the applicable portion of Exhibit B hereto. The Purchase Money Notes may have notations, legends or endorsements required by Law, stock exchange rule or usage. Any Purchase Money Note shall (in the case of any Purchase Money Note issued on the Closing Date) be initially sold to the Transferor and may initially be issued in the form of one or more (i) certificated notes in definitive, fully registered form without interest coupons attached substantially in the form of Exhibit B-1 hereto (each, a “**Certificated Note**”), and (ii) global notes in definitive, fully registered form without interest coupons attached substantially in the form of Exhibit B-2 hereto (each, a “**Rule 144A Global Note**”). The Certificated Notes shall be registered in the name of the owner or nominee thereof, duly executed by the Company as provided in this Agreement; and the Rule 144A Global Notes shall be (x) registered in the name of the Depository or its nominee, duly executed by the Company as provided in this Agreement, and (y) held by the Paying Agent as custodian for the Depository unless the Depository instructs otherwise.

(c) Rule 144A Global Notes and Rule 144A Certificated Notes. Any Purchase Money Note, if sold to a Person whom the seller reasonably believes (i) is a Qualified Institutional Buyer purchasing for its own account or for the account of a Qualified Institutional Buyer in compliance with Rule 144A under the Securities Act and (ii) is a Qualified Purchaser purchasing for its own account or for the account of a Qualified Purchaser, will be issued in the form of (x) a beneficial interest in a Rule 144A Global Note, and such purchaser shall receive beneficial interests in one or more Rule 144A Global Notes, or (y) a Certificated Note (each, a “**Rule 144A Certificated Note**”).

(d) Regulation S Certificated Notes. Any Purchase Money Note, if sold or transferred to a Person that (i) is not a U.S. Person and is acquiring the Purchase Money Notes in

an Offshore Transaction (as defined in Regulation S) in compliance with Rule 903 or Rule 904 of Regulation S and (ii) is a Qualified Purchaser purchasing for its own account or for the account of a Qualified Purchaser, will only be issued in the form of a Certificated Note (each, a "**Regulation S Certificated Note**"). The Paying Agent shall require, prior to any sale or transfer of any Regulation S Certificated Note, that the prospective purchaser execute and deliver to the Paying Agent and the Company a certificate in the form of Exhibit C-2 hereto or such other form as may be acceptable to the Paying Agent and counsel to the Company.

(e) OID Legend. To the extent required by Sections 1272, 1273 and 1275 of the Code, and any regulations issued regarding such elections, each Purchase Money Note treated as issued at a discount to its stated redemption price at maturity for federal income tax purposes shall bear a legend in substantially the following form:

FOR THE PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS PURCHASE MONEY NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. YOU MAY CONTACT THE ISSUER AT 2450 BROADWAY, 6TH FLOOR, SANTA MONICA, CA 90404, ATTENTION: PAUL FUHRMAN, AND THE ISSUER WILL PROVIDE YOU WITH THE ISSUE PRICE AND THE YIELD TO MATURITY OF THIS PURCHASE MONEY NOTE.

Section 2.5 Authorized Amount; Denominations; Prepayment.

(a) Except for Purchase Money Notes executed and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Purchase Money Notes pursuant to Section 2.7, 2.8, or 2.9 of this Agreement or pursuant to Section 8.4 of the Contribution Agreement, the aggregate face amount of the Purchase Money Notes that may be executed and delivered pursuant to this Agreement is limited to U.S.\$70,998,462.00.

(b) The Purchase Money Notes shall be issuable in minimum denominations of U.S.\$250,000 and integral multiples of U.S.\$10,000 in excess thereof (each such denomination, an "**Authorized Denomination**"), provided that, anything in this Agreement to the contrary notwithstanding, (i) the sole Purchase Money Note issued on the date hereof (or, if more than one Purchase Money Note is issued on the date hereof, one of such Purchase Money Notes) may be issued in a denomination that is in excess of U.S.\$250,000 but is not an Authorized Denomination, (ii) the sole Purchase Money Note of any Class issued pursuant to Section 2.8 hereof, or pursuant to Section 8.4(b) or 8.4(c) of the Contribution Agreement, on the original date of issuance thereof (or, if more than one such Purchase Money Note of such Class is issued on such date of original issuance, one of such Purchase Money Notes) may be issued in a denomination that is in excess of U.S.\$250,000 but is not an Authorized Denomination and (iii) one Purchase Money Note issued upon any transfer, exchange or replacement of another Purchase Money Note issued in a denomination that is in excess of U.S.\$250,000 but is not an Authorized Denomination (including upon any division of a Purchase Money Note (issued in a denomination that is in excess of U.S.\$250,000 but is not an Authorized Denomination) into two

or more Purchase Money Notes) also may be issued in a denomination that is in excess of U.S.\$250,000 but is not an Authorized Denomination. For all purposes hereof (but without limitation of the first sentence of Section 2.6(d)), references to the “denomination” of a Purchase Money Note (including references to “Authorized Denomination”) shall refer to the Original Face Amount of a Purchase Money Note.

(c) The Company may not, and shall not, voluntarily prepay all or any portion of any Purchase Money Note without the prior written consent of the Required PMN Consenting Parties (but the Purchase Money Notes shall be subject to mandatory prepayment pursuant to Section 5.1 hereof and to the extent required as a result of the acceleration of all or a portion of such Purchase Money Notes following the occurrence of an Event of Default).

Section 2.6 Execution, Delivery and Dating.

(a) The Purchase Money Notes shall be executed on behalf of the Company by one of the Authorized Representatives of the Company, it being understood that the Purchase Money Notes originally issued on the Closing Date as described in Section 2.4(a) were executed and delivered on behalf of the Company by the Receiver as the sole member and manager of the Company at that time (and such execution and delivery, and such Purchase Money Notes, are hereby confirmed, approved and ratified in all respects by the Company and the Private Owner (and, without limitation of the foregoing, such Purchase Money Notes shall be deemed to have been executed and delivered by Authorized Representatives of the Company for all purposes of this Agreement)). The signature of such Authorized Representative on the Purchase Money Notes may be manual or facsimile.

(b) Purchase Money Notes bearing the manual or facsimile signatures of individuals who were at any time the Authorized Representative of the Company shall bind the Company, notwithstanding the fact that such individuals or any of them have ceased to hold such offices prior to the execution and delivery of such Purchase Money Notes or did not hold such offices at the date of issuance of such Purchase Money Notes.

(c) Each Purchase Money Note executed and delivered by the Company (on the Closing Date or otherwise) shall be dated as of the Closing Date (or, in the case of any Purchase Money Note of any Class first issued pursuant to Section 2.8 hereof, or pursuant to Section 8.4(b) or 8.4(c) of the Contribution Agreement, as of the date of original issuance thereof).

(d) Purchase Money Notes issued upon transfer, exchange or replacement of other Purchase Money Notes (or portions thereof) shall be issued in Authorized Denominations (subject to the proviso to the first sentence of Section 2.5(b)) reflecting (except as otherwise provided in Section 2.8 hereof or Section 8.4(b) or 8.4(c) of the Contribution Agreement) the Original Face Amount of the Purchase Money Notes (or portions thereof) so transferred, exchanged or replaced, but shall represent only the actual current outstanding principal amount of the Purchase Money Notes (or portions thereof) so transferred, exchanged or replaced. In the event that any Purchase Money Note is divided into more than one Purchase Money Note in accordance with this Article II, the Original Face Amount of such Purchase Money Note shall be

proportionately divided among the Purchase Money Notes delivered in exchange therefor and (subject to the preceding sentence) shall be deemed to be the aggregate Original Face Amount of such subsequently issued Purchase Money Notes. If any Purchase Money Note is in the custody of the Paying Agent, the Paying Agent shall, upon any payment in respect of the principal amount thereof, endorse such Purchase Money Note on Schedule A thereto to reflect such payment. In any event, the Paying Agent shall complete Schedule A of each Purchase Money Note issued upon transfer, exchange or replacement of any other Purchase Money Note(s) (including any Rule 144A Global Note issued pursuant to Section 2.19 and any Certificated Note issued pursuant to Section 2.7(l)) to set forth the amount and dates of all payments previously made with respect to the Original Face Amount of such other Purchase Money Note(s) (or portions thereof) so transferred, exchanged or replaced.

Section 2.7 Registration, Registration of Transfer and Exchange.

(a) The Company shall cause to be kept a register (the “**Purchase Money Notes Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration, and the registration of transfers, of Purchase Money Notes. The Paying Agent is hereby initially appointed the “**Purchase Money Notes Registrar**” for the purpose of registering the Purchase Money Notes and transfers of such Purchase Money Notes as herein provided. Upon any resignation or removal of the Purchase Money Notes Registrar, the Company shall promptly appoint a successor.

(b) If a Person other than the Paying Agent is appointed by the Company as Purchase Money Notes Registrar, the Company will give the Paying Agent prompt notice of the appointment of a Purchase Money Notes Registrar and of the location, and any change in the location, of the Purchase Money Notes Registrar, and the Paying Agent shall have the right to inspect the Purchase Money Notes Register at all reasonable times and to obtain copies thereof and the Paying Agent shall have the right to rely upon a certificate executed on behalf of the Purchase Money Notes Registrar by an officer thereof as to the names and addresses of the Holders of the Purchase Money Notes and the principal or face amounts and numbers of such Purchase Money Notes. Upon written request at any time, the Purchase Money Notes Registrar promptly shall provide to the Company or the PMN Agent a current list of Holders as reflected in the Purchase Money Notes Register.

(c) Subject to this Section 2.7, upon surrender to the Purchase Money Notes Registrar for registration of transfer of any Purchase Money Note, the Purchase Money Notes Registrar shall prepare and the Company shall execute and deliver, in the name of the designated transferee or transferees, one or more new Purchase Money Notes of any Authorized Denomination (subject to the proviso to the first sentence of Section 2.5(b)) and of like terms (including of the same Class) and (except as otherwise provided in Section 2.8 hereof or Section 8.4(b) or 8.4(c) of the Contribution Agreement) a like aggregate Original Face Amount. The Company shall furnish a copy of the executed Purchase Money Note(s) to the Purchase Money Notes Registrar.

(d) At the option of a Holder, a Purchase Money Note may be exchanged for Purchase Money Notes of like terms (including of the same Class), in any Authorized

Denominations (subject to the proviso to the first sentence of Section 2.5(b)) and of like aggregate Original Face Amount upon surrender of the Purchase Money Note to be exchanged at such office or agency. Whenever any Purchase Money Note is surrendered to the Purchase Money Notes Registrar for exchange, the Purchase Money Notes Registrar shall prepare, and the Company shall execute and deliver, the Purchase Money Note(s) that the Holder making the exchange is entitled to receive, and shall deliver a copy of such executed Purchase Money Note(s) to the Purchase Money Notes Registrar.

(e) All Purchase Money Notes issued upon any registration of transfer or exchange of such Purchase Money Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits pursuant to this Agreement, as the Purchase Money Notes surrendered upon such registration of transfer or exchange.

(f) Every Purchase Money Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Purchase Money Notes Registrar duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(g) No service charge shall be made to a Holder for any registration of transfer or exchange of Purchase Money Notes, but the Company or the Paying Agent may require payment of a sum sufficient to cover any Tax or other governmental charge payable in connection therewith.

(h) No Purchase Money Note may be sold or transferred (including, without limitation, by pledge or hypothecation) unless such sale or transfer is exempt from the registration requirements of the Securities Act, would not require the registration of the Company under the Investment Company Act, would not cause the Company to become a "publicly traded partnership" (as such term is defined in Section 7704 of the Code) and is exempt under applicable state or foreign securities Laws.

(i) The Purchase Money Notes may only be sold or resold, as the case may be: (i) to a transferee that is a person whom the seller reasonably believes is a Qualified Institutional Buyer purchasing for its own account or for the account of a Qualified Institutional Buyer in compliance with Rule 144A under the Securities Act or (ii) to a transferee that is not a U.S. Person and is acquiring the Purchase Money Notes in an Offshore Transaction (as defined in Regulation S) in compliance with Rule 903 or Rule 904 of Regulation S and, in the case of both clauses (i) and (ii) of this Section 2.7(i), to a transferee that is a Qualified Purchaser purchasing for its own account or for the account of a Qualified Purchaser.

(j) The Paying Agent shall require, prior to any sale or other transfer of a Purchase Money Note, that the prospective purchaser or transferee execute and deliver to the Paying Agent and the Company a certificate relating to such transfer in the form of the applicable portion of Exhibit C attached hereto or such other form as may be acceptable to the Paying Agent and counsel to the Company (each, a "**Transferee Certificate**"). The Paying Agent shall be entitled to rely conclusively on any Transferee Certificate and shall be entitled to

presume conclusively the continuing accuracy thereof from time to time, in each case without further inquiry or investigation.

(k) At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act or is exempt from reporting requirements pursuant to Rule 12g3-2(b) thereunder, upon the request of any Note Owner, the Paying Agent, on behalf of the Company, promptly shall furnish to such Note Owner or to a prospective purchaser of any Purchase Money Note designated by such Note Owner the information required to be delivered to Note Owners pursuant to Rule 144A(d)(4) under the Securities Act (“**Rule 144A Information**”) (as determined by the Company in its sole discretion) in order to permit compliance by such Note Owner with Rule 144A in connection with the resale of such Purchase Money Note by such Note Owner. Upon request by the Company, the Paying Agent shall cooperate with the Company in mailing or otherwise distributing (at the Company’s expense) to such Note Owners or prospective purchasers, at and pursuant to the Company’s written direction, the foregoing materials prepared and provided by the Company; provided, however, that the Paying Agent shall be entitled to affix thereto or enclose therewith such disclaimers as the Paying Agent shall deem reasonably appropriate, at its discretion (such as, for example, a disclaimer that such Rule 144A Information was assembled by the Company and not by the Paying Agent, that the Paying Agent has not reviewed or verified the accuracy thereof and that it makes no representation as to the sufficiency of such information under Rule 144A or for any other purpose).

(l) Transfers and exchanges of Rule 144A Global Notes, in whole or in part, shall only be made in accordance with this Section 2.7(l). If a Note Owner of a Rule 144A Global Note wishes at any time to transfer its interest in such Rule 144A Global Note to a Person who wishes to take delivery thereof in the form of a Certificated Note (of the same Class), or to exchange its interest in such Rule 144A Global Note for an interest in a Certificated Note (of the same Class), such Note Owner may, subject to the rules and procedures of the Depository, transfer or exchange, or cause the transfer or exchange of, such interest for an equivalent principal amount of one or more such Certificated Notes as described below. Upon receipt by the Purchase Money Notes Registrar of (A) instructions given in accordance with the Depository’s procedures from an Agent Member directing the Paying Agent to deliver one or more such Certificated Notes, designating the applicable registered name or names, address, payment instructions and the Original Face Amounts of the Certificated Notes to be executed and delivered (the aggregate Original Face Amounts of such Certificated Notes being equal to the beneficial interest in the Rule 144A Global Note to be transferred (denominated for this purpose in terms of the Original Face Amount of such Rule 144A Global Note)), in Authorized Denominations, and (B) a certificate in the form of Exhibit C-2 hereto, in the case of Regulation S Certificated Notes, and Exhibit C-3 hereto, in the case of Rule 144A Certificated Notes, executed and delivered by the transferee of such beneficial interest, then the Purchase Money Notes Registrar shall instruct the Depository to reduce, or cause to be reduced, the Original Face Amount of the applicable Rule 144A Global Note by the aggregate principal amount of the beneficial interest in such Rule 144A Global Note to be transferred or exchanged (denominated for this purpose in terms of the Original Face Amount of such Rule 144A Global Note) and the Purchase Money Notes Registrar shall record the transfer or exchange in the Purchase Money Notes Register in accordance with Section 2.7(a) and authenticate and deliver one or more Certificated Notes registered in the names and amounts specified in clause (A) above.

(m) Transfers and exchanges of Certificated Notes, in whole or in part, shall only be made in accordance with this Section 2.7(m).

(i) Certificated Note to Rule 144A Global Note. If a Holder of a Certificated Note wishes to transfer such Certificated Note to a Person who wishes to take delivery thereof in the form of an interest in a Rule 144A Global Note or to exchange such Certificated Note for an interest in a Rule 144A Global Note, such Holder may transfer or exchange, or cause the transfer or exchange of, such Certificated Note for an equivalent beneficial interest in a Rule 144A Global Note, provided that such proposed transferee or the Person requesting such exchange, as applicable, is a Qualified Institutional Buyer and a Qualified Purchaser. Upon receipt by the Purchase Money Notes Registrar of (A) such Certificated Note properly endorsed for such transfer and written instructions from such Holder directing the Purchase Money Notes Registrar to cause to be credited a beneficial interest in the Rule 144A Global Note (denominated for this purpose in terms of the Original Face Amount of such Rule 144A Global Note) in an amount equal to the Original Face Amount of such Certificated Note, such instructions to contain information regarding the participant account with the Depository to be credited with such increase, (B) a certificate in the form of Exhibit C-4 hereto executed and delivered by the Holder of such Certificated Note and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and also is a Qualified Purchaser or, in the case of a transfer, such Holder reasonably believes that the Person acquiring such interest in the applicable Rule 144A Global Note is a Qualified Institutional Buyer, is obtaining such beneficial interest in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities Laws of any state of the United States or any other jurisdiction and is also a Qualified Purchaser and (C) in the case of a transfer, a certificate in the form of Exhibit C-1 hereto executed and delivered by the proposed transferee stating that it is both a Qualified Institutional Buyer and a Qualified Purchaser, then the Purchase Money Notes Registrar shall cancel such Certificated Note in accordance with Section 2.16, record the transfer or exchange in the Purchase Money Notes Register in accordance with Section 2.7(a) and instruct the Depository to credit or cause to be credited to the securities account of the Person specified in such instructions a beneficial interest in the Rule 144A Global Note (denominated for this purpose in terms of the Original Face Amount of such Rule 144A Global Note) equal to the Original Face Amount specified in the instructions received pursuant to clause (A) above.

(ii) Certificated Note to Certificated Note. If a Holder of a Certificated Note wishes at any time to transfer such Certificated Note to another Person, such Holder may transfer, or cause the transfer of, such Certificated Note as provided below. Upon receipt by the Purchase Money Notes Registrar of (A) such Holder's Certificated Note properly endorsed for assignment to the transferee and (B) a certificate in the form of Exhibit C-2 hereto, in the case of transfer of Regulation S Certificated Notes, and Exhibit C-3 hereto, in the case of transfer of Rule 144A Certificated Notes, executed and delivered by the proposed transferee, then the Purchase Money Notes Registrar shall cancel such Certificated Note in accordance with Section 2.16, record the transfer in the Purchase Money Notes Register in accordance with Section 2.7(a) and, upon execution by the Company, deliver one or more Certificated Notes endorsed for transfer, registered in the names specified in the assignment described in clause (A) above, in Original Face Amounts designated by the transferee (the aggregate of such Original Face

Amounts being equal to the aggregate Original Face Amount of the Certificated Notes surrendered by the transferor), and in Authorized Denominations.

If a Holder of one or more Rule 144A Certificated Notes wishes at any time to exchange such Rule 144A Certificated Notes for one or more Rule 144A Certificated Notes of different Original Face Amounts, or if a Holder of one or more Regulation S Certificated Notes wishes at any time to exchange such Regulation S Certificated Notes for one or more Regulation S Certificated Notes of different Original Face Amounts, such Holder may exchange or cause the exchange of such Certificated Notes for Certificated Notes endorsed for exchange as provided below. Upon receipt by the Purchase Money Notes Registrar of (A) such Holder's Certificated Notes properly endorsed for such exchange and (B) written instructions from such Holder designating the number and Original Face Amounts of the Certificated Notes to be issued (the aggregate Original Face Amounts being equal to the Original Face Amount of the Certificated Notes surrendered for exchange), then the Purchase Money Notes Registrar shall cancel such Certificated Notes in accordance with Section 2.16, record the exchange in the Purchase Money Notes Register in accordance with Section 2.7(a) and, upon execution by the Company, deliver one or more Certificated Notes endorsed for exchange, registered in the same name as the Certificated Notes surrendered by such Holder, in different Original Face Amounts designated by such Holder and in Authorized Denominations.

If a Holder of one or more Rule 144A Certificated Notes wishes at any time to exchange such Rule 144A Certificated Notes for one or more Regulation S Certificated Notes, or if a Holder of one or more Regulation S Certificated Notes wishes at any time to exchange such Regulation S Certificated Notes for one or more Rule 144A Certificated Notes, such Holder may exchange or cause the exchange of such Certificated Notes for Certificated Notes endorsed for exchange as provided below. Upon receipt by the Purchase Money Notes Registrar of (A) such Holder's Certificated Notes properly endorsed for such exchange, (B) written instructions from such Holder designating the number and Original Face Amounts of the Certificated Notes to be issued (the aggregate Original Face Amounts being equal to the Original Face Amount of the Certificated Notes surrendered for exchange), and (C) a certificate in the form of Exhibit C-2 hereto, in the case of Regulation S Certificated Notes, and Exhibit C-3 hereto, in the case of Rule 144A Certificated Notes, executed and delivered by the proposed transferee, then the Purchase Money Notes Registrar shall cancel such Certificated Notes in accordance with Section 2.16, record the exchange in the Purchase Money Notes Register in accordance with Section 2.7(a) and, upon execution by the Company, deliver one or more Certificated Notes endorsed for exchange, registered in the same name as the Certificated Notes surrendered by such Holder, in different Original Face Amounts designated by such Holder and in Authorized Denominations.

(n) If Purchase Money Notes are issued upon the transfer, exchange or replacement of Purchase Money Notes bearing the applicable legends set forth in the Exhibits attached hereto and if a request is made to remove such applicable legend on such Purchase Money Notes, the Purchase Money Notes so issued shall bear such applicable legend, or such applicable legend shall not be removed, as the case may be, unless there is delivered to the Paying Agent and the Company such satisfactory evidence, which may include an opinion of counsel acceptable to them, as may be reasonably required by the Company (and which shall by its terms permit reliance by the Paying Agent), to the effect that neither such applicable legend

nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of the Securities Act, the Investment Company Act, ERISA or the Code or any other applicable Law. Upon provision of such satisfactory evidence, the Paying Agent, at the written direction of the Company and after due execution by the Company, shall deliver Purchase Money Notes that do not bear such applicable legend.

(o) Each Note Owner of Rule 144A Global Notes will be deemed to have represented and agreed, and each Holder of Certificated Notes will be required to represent and agree, as follows:

(i) In the case of Purchase Money Notes issued in reliance on Rule 144A: it is aware that the sale of the Purchase Money Notes to it is being made in reliance on the exemption from registration provided by Rule 144A; and it is a Qualified Institutional Buyer and a Qualified Purchaser.

(ii) In the case of Purchase Money Notes issued in reliance on Regulation S: it is aware that the sale of the Purchase Money Notes to it is being made in reliance on the exemption from registration provided by Regulation S; it is not, and will not be, a U.S. Person; it is a Qualified Purchaser; it is aware that in connection with a transfer of any Purchase Money Notes acquired in accordance with Regulation S, such Purchase Money Notes must be exchanged for a Rule 144A Certificated Note or beneficial interest in a Rule 144A Global Note; and its purchase of the Purchase Money Notes will comply with all applicable Laws in any jurisdiction in which it resides or is located.

(iii) It understands that the Purchase Money Notes will bear a legend set forth in the applicable exhibit attached hereto.

(iv) It (A) was not formed for the purpose of investing in the Company (except when each beneficial owner of the purchaser is a Qualified Purchaser), (B) has received the necessary consent from its beneficial owners if the purchaser is a private investment company formed before April 30, 1996, (C) is not a broker-dealer that owns and invests on a discretionary basis less than \$25,000,000 in securities of unaffiliated issuers, (D) is not a pension, profit sharing or other retirement trust fund or plan in which the partners, beneficiaries or participants, as applicable, may designate the particular investments to be made, and in a transaction that may be effected without loss of any applicable Investment Company Act exemption, (E) will provide notice to any subsequent transferee of the transfer restrictions provided in the legend, (F) will hold and transfer Purchase Money Notes in an amount of not less than \$250,000 for it or for each account for which it is acting, (G) will provide the Company and Paying Agent from time to time such information as they may reasonably request in order to ascertain compliance with this paragraph and (H) understands that the Company may receive a list of participants holding positions in its securities from one or more book-entry depositories.

(v) It understands that such Purchase Money Notes are being offered only in a transaction not involving any public offering in the United States within the meaning of the Securities Act, such Purchase Money Notes have not been and will not be registered under the Securities Act and, if in the future it decides to offer, resell, pledge or otherwise transfer such

Purchase Money Notes, such Purchase Money Notes may be offered, resold, pledged or otherwise transferred only in accordance with the provisions of this Agreement and the legend on such Purchase Money Notes. It acknowledges that no representation has been made as to the availability of any exemption under the Securities Act or any state securities Laws for resale of the Purchase Money Notes.

(vi) On each day from the date on which it acquires the Purchase Money Notes or interest therein through and including the date on which it disposes of its interests in such Purchase Money Notes, either that (A) it is not, and is not acting on behalf of, or using the assets of, any employee benefit plan subject to Title I of ERISA or any plan, individual retirement account, Keogh plan or other arrangement subject to Section 4975 of the Code, or any entity whose underlying assets are considered to include “plan assets” of any such plan, account or arrangement or a governmental or other plan which is subject to any provisions under any Similar Law or (B) its acquisition and holding and disposition of such Purchase Money Notes (or any interest therein) will not constitute or result in a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code (or, in the case of a governmental or other plan, a violation of Similar Law).

(vii) It understands that this Agreement permits the Company to demand that (A) any Note Owner of Rule 144A Global Notes (or Holder of Rule 144A Certificated Notes) who is determined not to be both a Qualified Institutional Buyer and a Qualified Purchaser at the time of acquisition of such Purchase Money Notes or (B) any Holder of Regulation S Certificated Notes who is determined not to be both a non-U.S. Person and a Qualified Purchaser at the time of acquisition of such Purchase Money Notes, in either such case sell the Purchase Money Notes (X) to a Person who is a Qualified Institutional Buyer in a transaction meeting the requirements of Rule 144A or another applicable exemption from the registration requirements of the Securities Act or (Y) to a Person who will take delivery in the form of a Regulation S Certificated Note and who is not a U.S. Person in a transaction meeting the requirements of Regulation S and, in the case of both clauses (X) and (Y), to a Person that is a Qualified Purchaser, and if it does not comply with any such demand under clause (A) or (B) within thirty days thereof, the Company may sell the Note Owner’s or Holder’s Purchase Money Note or interest therein in accordance with and pursuant to the terms of this Agreement.

(viii) It acknowledges that it is its intent and that it understands it is the intent of the Company that, for purposes of U.S. Federal income, state and local income and any other income taxes, the Company will be treated as a partnership and the Purchase Money Notes will be treated as indebtedness of the Company; it agrees to such treatment and agrees to take no action inconsistent with such treatment.

(ix) If it is not a United States Person, it is not acquiring any Purchase Money Notes as part of a plan to reduce, avoid or evade U.S. Federal income Taxes owed, owing or potentially owed or owing.

(x) It is aware that, except with respect to Certificated Notes, the Purchase Money Notes will be represented by one or more Rule 144A Global Notes and that the

beneficial interests therein may be held only through the Depository or one of its nominees, as applicable.

(xi) It agrees that it will not offer or sell, transfer, assign or otherwise dispose of any Purchase Money Notes or any interest therein except (A) pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and any applicable state securities Laws or the applicable Laws of any other jurisdiction and (B) in accordance with the provisions of this Agreement, to which provisions it agrees it is subject.

(xii) It understands that the Company, the Paying Agent and the Transferor, their respective Affiliates and their counsel will rely upon the accuracy and truth of the foregoing representations, and it consents to such reliance.

(xiii) It will provide notice to each Person to whom it proposes to transfer any interest in the Purchase Money Notes of the transfer restrictions and representations set forth in this Section 2.7, including the Exhibits referenced herein.

(p) Agent Members shall have no rights pursuant to this Agreement with respect to any Rule 144A Global Note held on their behalf by the Paying Agent, as custodian for the Depository, and the Depository may be treated by the Company, the Paying Agent and any agent of the Company or the Paying Agent as the absolute owner of such Rule 144A Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing in this Agreement shall prevent the Company, the Paying Agent or any agent of the Company or the Paying Agent from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a beneficial interest in any Rule 144A Global Note.

(q) Notwithstanding any provision to the contrary in this Agreement, so long as a Purchase Money Note remains outstanding, transfers and exchanges of a Purchase Money Note, in whole or in part, shall only be made in accordance with this Section 2.7.

(r) Any purported transfer or exchange of a Purchase Money Note not in accordance with this Section 2.7 shall be null and void *ab initio* and shall not be given effect for any purpose hereunder.

(s) Nothing in this Section 2.7 shall be construed to limit any contractual restrictions on transfers of Purchase Money Notes or interests therein that may apply to any Person.

(t) Notwithstanding anything contained in this Agreement to the contrary, neither the Paying Agent nor the Purchase Money Notes Registrar shall be responsible for ascertaining whether any transfer complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities Laws or the applicable Laws of any other jurisdiction, ERISA, the Code or the Investment Company Act of 1940, as amended; provided,

however, that if a certificate is specifically required by the express terms of this Agreement to be delivered to the Paying Agent by a holder or transferee of a Purchase Money Note, the Paying Agent shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Agreement and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

(u) Notwithstanding the foregoing, with the advice of counsel to the Company, the Company may adopt one or more other forms of transfer certificate with respect to the transfer of the Purchase Money Notes after the Closing Date. The Purchase Money Notes Registrar shall be notified of such action and, upon receipt of such notice and copies of such other forms of transfer certificate from the Company, shall be deemed to be directed by the Company to also adopt such alternate forms of transfer certificate.

Section 2.8 Reissuance of Purchase Money Notes. Upon the maturity of any Class of Guaranteed Purchase Money Notes (the "**Maturing Purchase Money Notes**"), the Company, at the direction of (and in the sole discretion of) the relevant Purchase Money Notes Guarantor, shall reissue such Maturing Purchase Money Notes (such reissued Maturing Purchase Money Notes, the "**Reissued Purchase Money Notes**") to such Purchase Money Notes Guarantor (or its designee(s)) with terms and conditions as are directed by such Purchase Money Notes Guarantor and substantially similar to the terms and conditions of the related Maturing Purchase Money Notes (including not accruing interest) and a new maturity date satisfactory to such Purchase Money Notes Guarantor; provided, however, that (i)(x) the maturity date of such Reissued Purchase Money Notes shall not be later than the seventh anniversary of the Closing Date and (y) the aggregate outstanding principal amount of such Reissued Purchase Money Notes at the time of their original issuance shall be equal to (A) the outstanding principal amount of the related Maturing Purchase Money Notes *minus* (B) the amounts on deposit in the Defeasance Account to pay such Maturing Purchase Money Notes (including the amount, if any, of any payments made to pay such Maturing Purchase Money Notes pursuant to the applicable Purchase Money Notes Guaranty) *plus* (C) the applicable Guaranteed Purchase Money Notes Reissuance Fee with respect to such Reissued Purchase Money Notes, and (ii) no modification contained in such Reissued Purchase Money Notes (other than the balance increase described in Section 2.8(i)(y)(C) above) shall affect adversely (x) the amount or timing of distributions to the Initial Member or the Private Owner pursuant to the Priority of Payments or (y) any other rights or obligations of the Paying Agent, the Private Owner or the Initial Member pursuant to this Agreement or any Transaction Document (other than the Purchase Money Notes) in each case unless such adversely affected Paying Agent, Private Owner or Initial Member, as applicable, shall have consented to the applicable provisions resulting in such adverse effect. Upon the issuance of the Reissued Purchase Money Notes to the relevant Purchase Money Notes Guarantor (or its designee(s)), such Purchase Money Notes Guarantor shall, as payment therefor, deposit (or cause to be deposited) an amount equal to the aggregate original principal amount thereof (less the amount of the Guaranteed Purchase Money Notes Reissuance Fee) into the Defeasance Account to repay the Holders of the related Maturing Purchase Money Notes; provided, however, that for purposes of clause (i)(y)(B) of this Section 2.8, proceeds from Reissued Purchase Money Notes deposited into the Defeasance Account shall not be included as amounts on deposit to pay such Maturing Purchase Money Notes. Simultaneously with the issuance of any Reissued Purchase Money Note, the Company shall pay the Guaranteed

Purchase Money Notes Reissuance Fee to the Purchase Money Notes Guarantor with respect to the Maturing Purchase Money Notes in accordance with Section 8.19 of the Reimbursement, Security and Guaranty Agreement. Any Reissued Purchase Money Notes in respect of any particular Class of Maturing Purchase Money Notes shall be deemed to be a "Class" of Purchase Money Notes for all purposes of the Transaction Documents and, as such, shall be subject to all of the terms and conditions of this Agreement. Any terms of this Agreement or any other Transaction Document to the contrary notwithstanding, the Purchase Money Notes Guarantor in respect of the Maturing Purchase Money Notes may, in its discretion, execute and deliver a guaranty with respect to the Reissued Purchase Money Notes, substantially in the form of Attachment M to the Contribution Agreement (or substantially in such form except for such changes thereto as do not materially adversely affect the Company). If requested by such Purchase Money Notes Guarantor, the Company forthwith shall execute and deliver the acknowledgement in respect of such Purchase Money Notes Guaranty in respect of the Reissued Purchase Money Notes contemplated by the form of guaranty set forth in Attachment M to the Contribution Agreement. The issuance of any Reissued Purchase Money Notes as described in this Section 2.8 shall be at the cost and expense of the Company (without limitation of the term "Reimbursable Company Administrative Expenses"). In the event of, and to the extent of, any inconsistency between the terms of this Section 2.8 and the other terms of this Agreement, the terms of this Section 2.8 shall prevail.

Section 2.9 Mutilated, Defaced, Destroyed, Lost or Stolen Purchase Money Notes.

(a) If (i) any mutilated or defaced Purchase Money Note is surrendered to the Paying Agent, or if there shall be delivered to the Company and the Paying Agent evidence to their reasonable satisfaction of the destruction, loss or theft of any Purchase Money Note, and (ii) there is delivered to the Company and the Paying Agent such security or indemnity as may be required by them to save each of them and any agent of any of them harmless, then, in the absence of notice to the Company or such Paying Agent that such Purchase Money Note has been acquired by a bona fide purchaser, the Company shall execute and deliver, in lieu of any such mutilated, defaced, destroyed, lost or stolen Purchase Money Note, a new Purchase Money Note, of like tenor (including being of the same Class and having the same date) and equal Original Face Amount registered in the same manner and bearing a number not contemporaneously outstanding.

(b) If, after delivery of such new Purchase Money Note, a bona fide purchaser of the predecessor Purchase Money Note presents for payment, transfer or exchange such predecessor Purchase Money Note, the Company, the Purchase Money Notes Registrar and the Paying Agent shall be entitled to recover such new Purchase Money Note from the Person to whom it was delivered or any Person taking therefrom and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by the Company and the Paying Agent in connection therewith.

(c) In case any such mutilated, defaced, destroyed, lost or stolen Purchase Money Note has become due and payable, the Company may in its discretion, instead of issuing a new Purchase Money Note, pay such Purchase Money Note without requiring surrender thereof except that any mutilated Purchase Money Note shall be surrendered.

(d) Upon the issuance of any new Purchase Money Note pursuant to this Section 2.9, the Company may require the payment by the Holder thereof of a sum sufficient to cover any Tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent) connected therewith.

(e) Every new Purchase Money Note issued pursuant to this Section 2.9 in lieu of any mutilated, defaced, destroyed, lost or stolen Purchase Money Note shall constitute an original additional contractual obligation of the Company, and such new Purchase Money Note shall be entitled, subject to Section 2.9(b), to all the benefits of this Agreement equally and proportionately with any and all other Purchase Money Notes duly issued pursuant to this Agreement.

The provisions of this Section 2.9 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, defaced, destroyed, lost or stolen Purchase Money Notes.

Section 2.10 Payments with Respect to the Purchase Money Notes.

(a) All reductions in the principal amount of a Purchase Money Note (or one or more predecessor Purchase Money Notes) effected by payments of principal thereon, shall be binding upon all future Note Owners of such Purchase Money Note and of any Purchase Money Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, whether or not such payment is noted on such Purchase Money Note. Subject to the foregoing, each Purchase Money Note delivered under this Agreement and upon registration of transfer of or in exchange for or in lieu of any other Purchase Money Note shall carry the rights of unpaid principal that were carried by such other Purchase Money Note.

(b) Payments in respect of principal of any Purchase Money Note shall be made by or on behalf of the Company, in U.S. dollars to the applicable Clearing Agency or its nominee with respect to a Rule 144A Global Note and to the Holder or its designee with respect to a Certificated Note, by wire transfer, as directed by such Clearing Agency or Holder, as applicable, in immediately available funds to a U.S. dollar account maintained by such Clearing Agency or its nominee with respect to a Rule 144A Global Note, and to the Holder or its designee with respect to a Certificated Note; provided, however, that (i) in the case of a Certificated Note, the Holder thereof shall have provided written wiring instructions to the Paying Agent on or before the related Record Date; and (ii) if appropriate instructions for any such wire transfer are not received at least fifteen Business Days prior to the relevant Distribution Date, then such payment shall be made by check drawn on a U.S. bank mailed to the address of the Holder specified in the Purchase Money Notes Register. Upon final payment due on the maturity of a Purchase Money Note, the Holder thereof shall present and surrender such Purchase Money Note at the office of the Paying Agent on or prior to such maturity; provided, however, that if the Paying Agent and the Company shall have been furnished such security or indemnity as may be required by them to save each of them harmless and an undertaking thereafter to surrender such Purchase Money Note, then, in the absence of notice to the Company or the Paying Agent that the applicable Purchase Money Note has been acquired by a bona fide or protected purchaser, and upon written direction from the Company, such final payment shall

be distributed by the Paying Agent without presentation or surrender; and provided further, however, that the foregoing provisos shall not apply to any Class of Purchase Money Notes so long as such Class of Purchase Money Notes remains in book-entry form, in which case all payments shall be made through the applicable Clearing Agency. All notices and communications to be given to the Note Owners and all payments to be made to Note Owners in respect of the Purchase Money Notes shall be given or made only to or upon the order of the registered Holders. Neither the Company nor the Paying Agent shall have any responsibility or liability for any aspects of the records maintained by the Depository or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Rule 144A Global Note.

(c) From time to time, upon the written request of any Holder or the PMN Agent, the Paying Agent shall provide such Holder or the PMN Agent, as applicable, with a statement of the aggregate amount of principal payments that have been made with respect to the Purchase Money Notes of any Class (in absolute terms and per \$1,000 Original Face Amount of such Class).

Section 2.11 Mandatory Exchange.

(a) A Rule 144A Global Note deposited with the Depository shall be exchanged for one or more Certificated Notes issued to the beneficial owners thereof (i) if either (x) the Depository notifies the Company that it is unwilling or unable to continue as depository for such Rule 144A Global Note or (y) at any time the Depository ceases to be a Clearing Agency registered under the Exchange Act and, in each case, (A) a successor depository is not appointed by the Company within ninety days after such notice, and (B) such exchange complies with Section 2.7, or (ii) upon a request to such effect by the PMN Agent while an Event of Default is continuing.

(b) Any Rule 144A Global Note that is exchanged for a Certificated Note pursuant to this Section 2.11 shall be surrendered by the Depository to the Paying Agent to be so transferred, in whole or from time to time in part, without charge, and the Company shall execute, and the Paying Agent shall deliver, upon such transfer of each portion of such Rule 144A Global Note, an equal aggregate Original Face Amount of Certificated Notes in Authorized Denominations (subject to the proviso to the first sentence of Section 2.5(b)). Any Certificated Note delivered in exchange for an interest in a Rule 144A Global Note shall, except as otherwise provided by Section 2.7(n), bear the legends set forth in the applicable Exhibit hereto and shall be subject to the transfer restrictions referred to in such legends.

(c) Subject to the provisions of subsection (b) of this Section 2.11, the Holder of a Rule 144A Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take pursuant to this Agreement or the Purchase Money Notes.

(d) In the event of the occurrence of the event specified in subsection (a) of this Section 2.11, the Company promptly shall make available to the Paying Agent a reasonable supply of Certificated Notes in definitive, fully registered form without interest coupons attached.

The Certificated Notes shall be in substantially the same form as the Exhibits hereto with such changes therein as the Company and Paying Agent shall agree and the Company shall execute, and the Paying Agent shall deliver, in exchange for the Rule 144A Global Note or Rule 144A Global Notes, as the case may be, the same Original Face Amount of Certificated Notes of Authorized Denominations (subject to the proviso to the first sentence of Section 2.5(b)).

Section 2.12 Notes Beneficially Owned by Persons Not Qualified Institutional Buyers or Qualified Purchasers.

(a) Notwithstanding anything to the contrary elsewhere in this Agreement, any transfer of (i) a Rule 144A Global Note or a Rule 144A Certificated Note to a Person that is not both a Qualified Institutional Buyer and a Qualified Purchaser or (ii) a Rule 144A Global Note to any Person that is not a U.S. Person (in each case other than any such transfers to the Receiver), shall be null and void *ab initio* and any such purported transfer of which the Company or the Paying Agent shall have notice may be disregarded by the Company and the Paying Agent for all purposes.

(b) If (i) any Person that is not a Qualified Institutional Buyer and a Qualified Purchaser shall become a Note Owner of any Rule 144A Global Note or a Holder of a Rule 144A Certificated Note or (ii)(A) any U.S. Person or (B) any non-U.S. Person that is not a Qualified Purchaser, shall become a Holder of a Regulation S Certificated Note (any such Person, a “**Non-Permitted Holder**”), the Company, or the Paying Agent acting on behalf of the Company and promptly after discovery that such Person is a Non-Permitted Holder by the Company or the Paying Agent (and notice by the Paying Agent to the Company), shall send notice to such Non-Permitted Holder demanding that such Non-Permitted Holder transfer its interest to a Person that is not a Non-Permitted Holder within thirty days of the date of such notice. If such Non-Permitted Holder fails to so transfer its interest, the Company shall have the right, without further notice to the Non-Permitted Holder, to sell such interest to a purchaser selected by the Company that is not a Non-Permitted Holder on such terms as the Company may choose. The Company, with the assistance of an independent investment bank of national reputation engaged at the expense of the Company, shall select the purchaser by soliciting one or more bids from one or more brokers or other market professionals that regularly deal in securities similar to the Purchase Money Notes and selling such interest to the highest such bidder. The Company however, may select a purchaser by any other means determined by it in its sole discretion. The Holder of each Purchase Money Note, the Non-Permitted Holder and each other Person in the chain of title from the Holder to the Non-Permitted Holder, by their acceptance of an interest in the Purchase Money Notes, agree to cooperate with the Company and the Paying Agent to effect such transfers. The proceeds of such sale, net of any commissions, expenses and Taxes due in connection with such sale, shall be remitted to the Non-Permitted Holder. The terms and conditions of any sale pursuant to this subsection shall be determined in the sole discretion of the Company, and the Company shall not be liable to any Person having an interest in the Purchase Money Notes sold as a result of any such sale or the exercise of such discretion.

Section 2.13 Withholding. If any withholding Tax is imposed on any payment made by the Company to any Note Owner, such Tax shall reduce the amount otherwise payable to such

Note Owner. The Company is hereby authorized to withhold from amounts otherwise payable to any Note Owner sufficient funds for the payment of any Tax that is legally owed in connection therewith (but such authorization shall not prevent the Company from contesting any such Tax in appropriate proceedings and withholding payment of such Tax, if permitted by Law, pending the outcome of such proceedings). The amount of any withholding Tax imposed with respect to any Note Owner shall be treated as cash paid to such Note Owner at the time it is withheld. If there is a possibility that withholding Tax is payable with respect to a payment, the Company may, in its sole discretion, withhold such amounts in accordance with this Section 2.13. The Company shall not be obligated to pay any additional amounts to any Holder or Note Owner of Purchase Money Notes as a result of any withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges imposed on payments in respect of the Purchase Money Notes.

Section 2.14 Persons Deemed Owners. The Company, the Paying Agent and any agent of the Company or the Paying Agent shall treat the Person in whose name any Purchase Money Note is registered as the owner of such Purchase Money Note on the Purchase Money Notes Register on the applicable Record Date for the purpose of receiving payments of principal or other distributions with respect to such Purchase Money Note and on any other date for all other purposes whatsoever (whether or not such payments are overdue), and neither the Company, the Paying Agent nor any agent of the Company or the Paying Agent shall be affected by notice to the contrary.

Section 2.15 [Intentionally Omitted.]

Section 2.16 Cancellation. All Purchase Money Notes surrendered for payment, registration or transfer, exchange or redemption, or deemed lost or stolen, shall, if surrendered to any Person other than the Paying Agent, be delivered to the Paying Agent, shall be promptly canceled by it and may not be reissued or resold. No Purchase Money Notes shall be issued in lieu of or in exchange for any Purchase Money Notes canceled as provided in this Section 2.16, except as expressly permitted by this Agreement. All cancelled Purchase Money Notes held by the Paying Agent shall be destroyed or held by the Paying Agent in accordance with its standard retention policy unless the Company shall direct that they be returned to it.

Section 2.17 Section 3(c) Procedures.

(a) Depository Actions. The Company shall direct the Depository to take the following steps in connection with the Rule 144A Global Notes:

(i) The Company shall direct the Depository to include the “3c7” marker in the Depository twenty-character security descriptor and the forty eight-character additional descriptor for the Rule 144A Global Notes in order to indicate that sales are limited to Persons that are both Qualified Institutional Buyers and Qualified Purchasers.

(ii) The Company (x) shall direct the Depository to cause each physical Depository to clearly mark any deliver order ticket delivered by such physical Depository to purchasers to contain the Depository twenty-character security descriptor and (y)

shall direct the Depository to cause each Depository deliver order ticket delivered by the Depository to purchasers in electronic form to contain the “3c7” indicator and a related user manual for participants, which shall contain a description of the relevant restrictions.

(iii) The Company shall instruct the Depository to send a notice substantially in the form attached as Exhibit D hereto to all Depository participants in connection with the offering of the Rule 144A Global Notes.

(iv) The Company shall advise the Depository that it is a Section 3(c)(7) issuer and shall request the Depository to include the Rule 144A Global Notes in the Depository’s “Reference Directory” of Section 3(c)(7) offerings.

(v) The Company from time to time shall (upon the request of the Paying Agent or the Purchase Money Notes Registrar) request the Depository to deliver to the Company a list of all Depository participants holding an interest in the Rule 144A Global Notes.

(b) Bloomberg Screens, Etc. The Company from time to time shall request all third-party vendors to include on screens maintained by such vendors appropriate legends regarding Rule 144A and Section 3(c)(7) restrictions on the Rule 144A Global Notes. Without limiting the foregoing, the Company shall request Bloomberg, L.P. to include the following on each Bloomberg screen containing information about the Rule 144A Global Notes:

(i) “Security Description” page 1 describing the security states: “144A/3c7 “ok”; Reg S/3c7 “ok”; 144A/DTC Book Entry; Reg S/Certificated”;

(ii) “Security Description” page 1 states: “See Page 3 for Comments”;

(iii) “Security Description” page 3 states: “RESTRICTIONS: These securities are being offered under the Securities Act only (a) in book-entry and certificated form to “qualified institutional buyers” under Rule 144A and (b) in certificated form to non-U.S. Persons in offshore transactions under Regulation S, where (a) and (b) are also “qualified purchasers” within the meaning of Section 3(c)(7) of the U.S. Investment Company Act.”

Notwithstanding the foregoing, in the event that Bloomberg is not able to include the language contained in subsections (b)(i) and (b)(ii) above, the purchaser will ensure as of the Closing Date that “Security Description” page 3 states: “144A/3c7 “ok”; Reg S/3c7 “ok”; 144A/DTC Book Entry; Reg S/Certificated” in addition to the language in subsection (b)(iii) above.

(c) CUSIP. The Company shall cause each “CUSIP” number obtained for the Rule 144A Global Notes to have an attached “fixed field” that contains “3c7” and “144A” indicators.

Section 2.18 Issuance/Modification of Notes Pursuant to the Contribution Agreement. In the event of, and to the extent of, any inconsistency between the terms of Section 8.4(b) or 8.4(c) of the Contribution Agreement and the terms of this Agreement, the terms of Section 8.4(b) or 8.4(c), as the case may be, of the Contribution Agreement shall prevail. Without limitation of the preceding sentence, the Paying Agent shall abide by, and take such action as is

necessary to implement the provisions of, or any exercise by the FDIC of its rights under, Section 8.4(b) or 8.4(c) of the Contribution Agreement.

Section 2.19 DTC Eligibility. It is understood that the Purchase Money Notes may not be DTC Eligible on the Closing Date. However, the FDIC may, pursuant to Section 8.4 of the Contribution Agreement, at any time or from time to time, require that the Purchase Money Notes, or one or more Classes of the Purchase Money Notes, be made DTC Eligible, and, in such event, anything in this Agreement to the contrary notwithstanding, the parties hereto shall cooperate (at the expense of the Company, which expense shall be a Pre-Approved Charge) in all respects (i) to make the Purchase Money Notes, or the specified Class or Classes of Purchase Money Notes, DTC Eligible and (ii) to have one or more Rule 144A Global Notes issued to the Depository (in an aggregate “Initial Original Face Amount” equal to the aggregate Original Face Amount of Certificated Notes exchanged therefor). Anything in this Agreement to the contrary notwithstanding, no Rule 144A Global Note of any Class may be issued unless and until the Purchase Money Notes of such Class have been made DTC Eligible. If any Class of Purchase Money Notes are, or become, DTC Eligible, the Company will use all commercially reasonable best efforts to maintain the Purchase Money Notes as DTC Eligible unless otherwise agreed by the PMN Agent.

ARTICLE III ACCOUNTS

Section 3.1 Collection Account.

(a) On the date of this Agreement, the Company shall establish the “Collection Account” with the Paying Agent (the “**Collection Account**”). The Transferor shall cause all Asset Proceeds received during any particular Due Period during the Interim Servicing Period (and remaining after reimbursement or payment of Interim Servicing Expenses and Pre-Approved Charges) to be remitted to the Collection Account as set forth in the Contribution Agreement. For all Asset Proceeds with respect to any Group of Assets received after the Interim Servicing Period with respect to such Group of Assets, the Company shall transfer, or cause the Servicer or Subservicer to transfer, such Asset Proceeds within two Business Days of receipt of such funds to the Paying Agent for deposit into the Collection Account. No funds from any other source (other than Asset Proceeds, interest or earnings on the Asset Proceeds, funds transferred from the Defeasance Account pursuant to Section 3.3(h), funds transferred from the Working Capital Reserve Account pursuant to the LLC Operating Agreement and Section 3.6, funds advanced by the Manager as Excess Working Capital Advances pursuant to the LLC Operating Agreement and Section 3.7, funds advanced by the Manager as Discretionary Funding Advances pursuant to the LLC Operating Agreement and Section 3.8 and funds deposited into the Collection Account pursuant to Section 8.1 hereof) shall be commingled in the Collection Account.

(b) Without limitation of Sections 3.1(c), 3.1(f) and 3.2(a) hereof, amounts on deposit in the Collection Account (including interest and earnings thereon) on any particular day shall be applied: (i) other than with respect to funds transferred to the Collection Account as described in clause (ii), (iii) or (iv), in the following order of priority: (x) first, to the repayment

of any Discretionary Funding Advance that the Manager has made with respect to any Asset together with accrued and unpaid interest on such Discretionary Funding Advances, but only to the extent of Asset Proceeds from the Asset with respect to which the Discretionary Funding Advance was made, (y) second, to the payment of the then-outstanding amount of Interim Servicing Expenses, Servicing Expenses and Pre-Approved Charges, either then due and payable or subject to reimbursement; and (z) third, to fund any Required Funding Draws; (ii) to the extent of any transfers of funds from the Working Capital Reserve Account to the Collection Account pursuant to Section 12.11(c) of the LLC Operating Agreement and Section 3.6(a), to pay Working Capital Expenses; (iii) to the extent of any deposits of Excess Working Capital Advances into the Collection Account pursuant to Section 5.5 of the LLC Operating Agreement and Section 3.7 for such purpose, to pay Working Capital Expenses; and (iv) to the extent of any deposits of Discretionary Funding Advances into the Collection Account pursuant to Section 5.4 of the LLC Operating Agreement and Section 3.8, to pay Permitted Discretionary Funding Expenses; provided, however, that the proceeds of any Discretionary Funding Advances may be used to fund Permitted Discretionary Funding Expenses only with respect to the Asset to which such Discretionary Funding Advances relate.

(c) At any time during the Interim Servicing Period, each Existing Servicer is authorized to request the withdrawal of funds from the Collection Account to pay Interim Servicing Expenses and Pre-Approved Charges. The Manager is authorized to request the withdrawal of funds from the Collection Account at any time as set forth in Section 3.1(b). If the Transferor, the Company, the Servicer or any Subservicer at any time erroneously deposits any amount into the Collection Account, the Manager is authorized to request the withdrawal of such amount and instruct the Paying Agent to pay such amount to the Transferor, the Company, the Servicer or any Subservicer, as applicable. The Manager shall provide such requests to the Paying Agent in accordance with Section 18.1.

(d) The Paying Agent shall invest the amounts on deposit in the Collection Account in Permitted Investments in accordance with investment directions from the Company, but with a maturity that allows for their allocation and transfer to the Distribution Account in accordance with Section 3.2.

(e) Upon instruction, the Paying Agent shall be authorized and directed to withdraw funds from the Collection Account only to repay Discretionary Funding Advances, to pay Interim Servicing Expenses, Servicing Expenses and Pre-Approved Charges, to fund any Required Funding Draws, and to pay Working Capital Expenses and Permitted Discretionary Funding Expenses (in each case, as set forth above in this Section 3.1) and to transfer funds to the Distribution Account pursuant to Section 3.2 and as otherwise set forth in this Agreement and not for any other purpose.

(f) The Paying Agent shall transfer a portion of any Repurchase Price payment deposited into the Collection Account, equal to the sum of the Adjusted Equity Asset Value plus the Purchase Money Notes Asset Value of the relevant Asset (such amounts to be specified to the Paying Agent by the Transferor pursuant to Section 6.3 of the Contribution Agreement), from the Collection Account to the Distribution Account, to thereafter be held and applied as set forth in Section 5.1(c).

Section 3.2 Distribution Account.

(a) On the date hereof, the Company shall establish the “Distribution Account” with the Paying Agent (the “**Distribution Account**”). The Paying Agent shall transfer from the Collection Account to the Distribution Account, for application pursuant to Section 5.1, not later than 12:00 noon New York City time on the Business Day immediately preceding each Distribution Date (and not earlier than on such immediately preceding Business Day), the amount specified in the Distribution Date instructions delivered pursuant to Section 11.4 for such Distribution Date.

(b) No funds from any other source shall be commingled in the Distribution Account (other than (i) interest or earnings on the funds held in the Distribution Account, (ii) funding from the Collection Account as described in this Section 3.2, and (iii) amounts held in the Distribution Account as described in Section 5.1(c) hereof). Amounts on deposit in (or that are required to have been deposited into) the Distribution Account (including interest and earnings thereon) shall be allocated and may be withdrawn and disbursed only in accordance with the provisions of Section 5.1.

(c) The Paying Agent shall be authorized and directed to withdraw funds from the Distribution Account only to make disbursements in accordance with this Agreement and not for any other purpose.

Section 3.3 Defeasance Account.

(a) On the date hereof, the Company shall establish the “Defeasance Account” with the Paying Agent (the “**Defeasance Account**”). The Paying Agent shall transfer funds to the Defeasance Account pursuant to the Priority of Payments.

(b) Any Purchase Money Notes Guarantor will be required to make deposits into the Defeasance Account in respect of the Guaranteed Obligations (as such term is defined in the applicable Purchase Money Notes Guaranty), in accordance with Section 16(a) of the applicable Purchase Money Notes Guaranty. In addition, the Company may deposit any Company Principal Prepayment Amount in the Defeasance Account, provided that such amount is deposited in the Defeasance Account at least one Business Day prior to the related Distribution Date, to be applied by the Paying Agent as a principal prepayment (or a portion thereof) on such Distribution Date in accordance with the related Cash Flow and Distribution Report or the Maturity Date Report. Any overdue principal on the Guaranteed Purchase Money Notes may be paid to the Holders on any Business Day without regard to whether such day is a Distribution Date. If, on any Distribution Date on which an acceleration payment with respect to any Class of Guaranteed Purchase Money Notes is due and payable or on the Purchase Money Notes Maturity Date with respect to any Class of Guaranteed Purchase Money Notes, a payment is due from a Purchase Money Notes Guarantor but not timely received, then at such time as the Paying Agent does receive such payment together with any interest thereon as provided in Section 16(b) of the applicable Purchase Money Notes Guaranty, the Paying Agent shall deposit such amounts into the Defeasance Account for further distribution by the Paying Agent to the applicable Holders. To the extent the Paying Agent otherwise receives amounts from any Purchase Money Notes

Guarantor paid pursuant to Section 16(b) of any Purchase Money Notes Guaranty, the Paying Agent shall deposit such amounts into the Defeasance Account for further distribution by the Paying Agent to the applicable Holders. Any amounts deposited into the Defeasance Account pursuant to any Purchase Money Notes Guaranty (i) prior to 12:00 noon New York City time on any particular Business Day shall be distributed by the Paying Agent to the relevant Holders not later than 11:00 a.m. New York City time on the immediately following Business Day or (ii) after 12:00 noon New York City time on any particular Business Day shall be distributed by the Paying Agent to the relevant Holders as soon as reasonably practicable under the circumstances but in any event not later than 11:00 a.m. New York City time on the second following Business Day, in the case of each of (i) and (ii), unless directed by the relevant Purchase Money Notes Guarantor to make such distribution on a later date (in which case the Paying Agent shall make such distribution on such later date). Any amounts deposited into the Defeasance Account pursuant to any Purchase Money Notes Guaranty shall not be included when calculating the balance in the Defeasance Account.

(c) No funds from any other source (other than interest or earnings on amounts described in Section 3.3(d), any amounts deposited pursuant to this Section 3.3 or deposits made by the Purchase Money Notes Guarantor pursuant to any Purchase Money Notes Guaranty) shall be commingled in the Defeasance Account.

(d) The Paying Agent shall invest the amounts on deposit in the Defeasance Account in Permitted Investments in accordance with investment directions from the PMN Agent. Net Gain on Investments will be available to be applied with other amounts in accordance with Sections 3.3(f) and (h).

(e) In accordance with Section 24 of any Purchase Money Notes Guaranty, the Purchase Money Notes Guarantors will be required, if on the Purchase Money Notes Maturity Date of any Class of Guaranteed Purchase Money Notes (or any Distribution Date on which an acceleration payment or prepayment of principal is due and payable on such Class of Guaranteed Purchase Money Notes), there exists a Net Loss on Investments and (except in the case of the Class of Guaranteed Purchase Money Notes having the latest Purchase Money Notes Maturity Date of all of the Classes of Guaranteed Purchase Money Notes) the amount in the Defeasance Account is less than the amount required to pay all amounts owing to the Holders of such Class of Guaranteed Purchase Money Notes on such Maturity Date or Distribution Date, to deposit into the Defeasance Account the lesser of (i) the amount of such Net Loss on Investments and (ii) the portion of such Net Loss on Investments that is required to increase the amount in the Defeasance Account to the amount owing to the Holders of such Class of Guaranteed Purchase Money Notes on such Maturity Date or Distribution Date (provided that in the case of the Class of Guaranteed Purchase Money Notes having the latest Purchase Money Notes Maturity Date of all of the Classes of Guaranteed Purchase Money Notes, only clause (i) shall be considered). In accordance with Section 2.10(c) of the Contribution Agreement, the Transferor will be required, if, on the Purchase Money Notes Maturity Date of any Class of Non-Guaranteed Purchase Money Notes (or any Distribution Date on which an acceleration payment or prepayment of principal is due and payable on such Class of Non-Guaranteed Purchase Money Notes), there exists a Net Loss on Investments and (except in the case of the Class of Non-Guaranteed Purchase Money Notes having the latest Purchase Money Notes Maturity Date of all of the

Classes of Non-Guaranteed Purchase Money Notes) the amount in the Defeasance Account is less than the amount required to pay all amounts owing to the Holders of such Class of Non-Guaranteed Purchase Money Notes on such Maturity Date or Distribution Date, to deposit into the Defeasance Account the lesser of (x) the amount of such Net Loss on Investments and (y) the portion of such Net Loss on Investments that is required to increase the amount in the Defeasance Account to the amount owing to the Holders of such Class of Non-Guaranteed Purchase Money Notes on such Maturity Date or Distribution Date (provided that in the case of the Class of Non-Guaranteed Purchase Money Notes having the latest Purchase Money Notes Maturity Date of all of the Classes of Non-Guaranteed Purchase Money Notes, only clause (x) shall be considered). From time to time upon request of the PMN Agent, the Transferor or the Company, the Paying Agent shall calculate and inform the PMN Agent, the Transferor or the Company, as the case may be, of the amount of Net Gain/Loss on Investments.

(f) On any Purchase Money Notes Maturity Date, and on any Distribution Date on which an acceleration payment or prepayment of principal with respect to any Class of Purchase Money Notes is due and payable, the Paying Agent shall, after making all disbursements required pursuant to Section 5.1, liquidate all or a portion of the Defeasance Account sufficient to pay all amounts owing to the Holders of such Class of Purchase Money Notes on such Purchase Money Notes Maturity Date or such Distribution Date, as applicable, and shall pay such amount to the Holders of such Class of Purchase Money Notes in accordance with their Holder Percentages. For the avoidance of doubt, except as provided in the immediately following sentence, any amounts distributed, or required to be distributed, from the Defeasance Account pursuant to this Section 3.3 on any particular date will be distributed to all Holders of all applicable Classes of Purchase Money Notes on a *pro rata* (and *pari passu*) basis based on the respective amounts to which each such Holder is entitled on account of the Purchase Money Notes. Notwithstanding any provisions in any Transaction Documents to the contrary, upon the acceleration of the Purchase Money Notes, any amounts distributed from the Defeasance Account pursuant to this Section 3.3 will be distributed in the following order of priority to the extent there are insufficient funds in the Defeasance Account to pay each Purchase Money Notes Guarantor and the Holders the full amounts to which they are entitled: (i) first, to the Purchase Money Notes Guarantors as set forth in Section 5.1(b)(vi), (ii) second, to the Holders of the Guaranteed Purchase Money Notes on a *pro rata* (and *pari passu*) basis based on the respective amounts to which each such Holder is entitled on account of the Guaranteed Purchase Money Notes, and (iii) third, to the Holders of the Non-Guaranteed Purchase Money Notes on a *pro rata* (and *pari passu*) basis based on the respective amounts to which each such Holder is entitled on account of the Non-Guaranteed Purchase Money Notes.

(g) If, pursuant to Section 2.8, Reissued Purchase Money Notes are issued upon the maturity of the related Maturing Purchase Money Notes, the proceeds from such Reissued Purchase Money Notes shall be deposited in the Defeasance Account to pay, and shall be used by the Paying Agent to pay, the related Maturing Purchase Money Notes. This Section 3.3 shall apply to such Reissued Purchase Money Notes following the full or partial liquidation of the Defeasance Account and payment of the Holders of the related Maturing Purchase Money Notes and the issuance of such Reissued Purchase Money Notes. Any amounts deposited into the Defeasance Account pursuant to Section 2.8 shall not be included when calculating the balance in the account.

(h) If, on any Distribution Date, the balance of the Defeasance Account (plus any Net Loss on Investments, and disregarding for purposes of such calculation any amounts deposited into the Defeasance Account pursuant to Section 2.8 of the Custodial and Paying Agency Agreement or pursuant to any Purchase Money Notes Guaranty (and any related disbursement from the Defeasance Account in respect of any such deposit)) exceeds the then-outstanding principal balance of the Purchase Money Notes, then on such Distribution Date an amount equal to such excess shall be transferred from the Defeasance Account to the Collection Account. Following the last Purchase Money Notes Maturity Date and the payment in full of all of the Purchase Money Notes (including in respect of any Reissued Purchase Money Notes), the Paying Agent shall liquidate the Defeasance Account and transfer the balance (if any) of the Defeasance Account after effecting such liquidation from the Defeasance Account into the Collection Account.

(i) The Paying Agent shall be authorized and directed to withdraw funds from the Defeasance Account only to make disbursements in accordance with this Agreement and not for any other purpose.

(j) For the avoidance of doubt, for all purposes of this Agreement, including this Section 3.3 and Section 5.1, (i) no payment by any Purchase Money Notes Guarantor with respect to the Guaranteed Obligations under any Purchase Money Notes Guaranty (including pursuant to Section 16(b) of any Purchase Money Notes Guaranty) shall be deemed to constitute a payment by the Company in respect of the Purchase Money Notes (such that, for example, any determination for purposes of any Purchase Money Note or this Agreement of the aggregate outstanding principal amount of the Purchase Money Notes (or any Class of Purchase Money Notes) shall disregard any such payment by any Purchase Money Notes Guarantor), (ii) any payment to any Purchase Money Notes Guarantor (from the Company, from the proceeds of any Secured Parties Collateral or otherwise from any Asset Proceeds, but excluding for the avoidance of doubt any deemed payment pursuant to clause (iii)) on account of amounts owed to such Purchase Money Notes Guarantor pursuant to Section 2.1 of the Reimbursement, Security and Guaranty Agreement shall be applied as set forth in said Section 2.1, and to the extent (and solely to the extent) so applied as described in clause (B)(III) of said Section 2.1 shall be deemed to constitute a payment by the Company in respect of the Class of Purchase Money Notes in respect of which the Purchase Money Notes Guarantor payment was made, and (iii) any payment to any Purchase Money Notes Guarantor as the subrogee (as the result of any payment made by such Purchase Money Notes Guarantor with respect to the Guaranteed Obligations under any Purchase Money Notes Guaranty) to the rights of any Holders of Guaranteed Purchase Money Notes (excluding for the avoidance of doubt any deemed payment pursuant to clause (ii)), shall, as between the Grantors and such Purchase Money Notes Guarantor, for the purpose of determining the amount owed by the Company pursuant to said Section 2.1, be deemed to be applied in the order set forth in clauses (B)(I), (II) and (III) of said Section 2.1.

Section 3.4 [Intentionally Omitted]

Section 3.5 [Intentionally Omitted]

Section 3.6 Working Capital Reserve Account.

(a) On the date hereof, the Company shall establish the “Working Capital Reserve Account” with the Paying Agent (the “**Working Capital Reserve Account**”) for the purpose of paying the Working Capital Expenses. To the extent there are insufficient funds in the Collection Account with which to pay the outstanding amount of the Working Capital Expenses then due and payable, the Company may instruct the Paying Agent to release some or all of the funds from the Working Capital Reserve Account (in an amount that the Manager determines in the exercise of its reasonable discretion) and allocate and distribute such released funds to the Collection Account, from which the funds will be available to pay such Working Capital Expenses. (In determining whether there are “insufficient funds in the Collection Account” for purposes of the preceding sentence, the Company reasonably may take into account, during the portion of any calendar month preceding the Distribution Date to occur during such month, the transfer from the Collection Account to the Distribution Account to occur on such Distribution Date). In addition to the foregoing, each Existing Servicer is authorized during the Interim Servicing Period to request releases from the Working Capital Reserve Account as set forth in Section 3.3(b) of the Contribution Agreement.

(b) The Working Capital Reserve Account shall be funded initially in accordance with Section 12.11 of the LLC Operating Agreement and thereafter replenished through deposits made into the Working Capital Reserve Account in accordance with Section 5.1(b)(v) of this Agreement.

(c) The Manager, in the exercise of its reasonable discretion, shall determine the Working Capital Reserve Target from time to time, which shall be in such an amount that is equal to or greater than the Working Capital Reserve Floor but not more than the Working Capital Reserve Replenishment Cap; provided, however, that the Manager, in the exercise of its reasonable discretion, may determine to release funds from the Working Capital Reserve Account (into the Collection Account) and reduce the Working Capital Reserve to an amount below the Working Capital Reserve Floor if such funds are required to pay Working Capital Expenses then due and payable. The Working Capital Reserve Target shall be specified in each Monthly Report. In the case of each Monthly Report for all Due Periods ending prior to or during the calendar month in which the final Servicing Transfer Date occurs, the Manager shall inform the Initial Member, not later than the third Business Day prior to the Distribution Date in respect of such Due Period, of the Working Capital Reserve Target that should be specified in such Monthly Report.

(d) During the Due Period in respect of which the Final Distribution will occur, the Paying Agent shall, pursuant to applicable instructions provided by the Manager pursuant to Section 9.2 of the LLC Operating Agreement, transfer all remaining funds held in the Working Capital Reserve Account to the Collection Account.

(e) In addition, if the Manager determines in the exercise of its reasonable discretion that the funds held in the Working Capital Reserve Account in excess of the Working Capital Reserve Target no longer are necessary to satisfy the purposes for which the Working Capital Reserve has been established, the Manager may instruct the Paying Agent to release such

excess funds from the Working Capital Reserve Account, and thereafter the Paying Agent shall allocate and distribute such excess funds to the Collection Account.

(f) The Paying Agent shall invest the amounts on deposit in the Working Capital Reserve Account in Permitted Investments in accordance with investment directions from the Company but with maturities that allow for their transfer in accordance with this Section 3.6. No funds from any other source (other than interest or earnings on the funds held in the Working Capital Reserve Account and funding from the Members as described in this Section 3.6) shall be commingled in the Working Capital Reserve Account.

(g) The Paying Agent is authorized and directed to withdraw funds from the Working Capital Reserve Account only to make disbursements in accordance with this Agreement and not for any other purpose.

Section 3.7 Excess Working Capital Advances. The Manager is (under certain circumstances) required to, and (under certain other circumstances) may in its discretion, from time to time make Excess Working Capital Advances to the Paying Agent from its own funds pursuant to Sections 5.5 and 12.6 of the LLC Operating Agreement. The Manager shall direct the Paying Agent to deposit any Excess Working Capital Advances (i) if made to pay Working Capital Expenses, into the Collection Account (from which the funds will be available to pay Working Capital Expenses) or (ii) if made pursuant to clause (y) of the first sentence of Section 5.5 of the LLC Operating Agreement, as set forth in Section 5.1(c) hereof.

Section 3.8 Discretionary Funding Advances. Pursuant to Section 5.4 of the LLC Operating Agreement, the Manager may make, at its discretion, Discretionary Funding Advances from its own funds to fund Permitted Discretionary Funding Expenses on an Asset-by-Asset basis. All Discretionary Funding Advances are to be designated as applicable only to the Asset to which such Discretionary Funding Advance relates. Any Discretionary Funding Advances are to be deposited into the Collection Account, from which the funds will be available to be disbursed to the Borrower (with respect to the Collateral) or used by the Company (with respect to the Acquired REO Property), as applicable, to pay the Permitted Discretionary Funding Expenses relating to the specified Asset.

Section 3.9 Private Owner Pledged Account.

(a) On the date hereof, the Private Owner shall establish the “Private Owner Pledged Account” with the Paying Agent (the “**Private Owner Pledged Account**”) for the exclusive purpose of holding Qualifying Cash Collateral, whether such Qualifying Cash Collateral is delivered on the date hereof or subsequent to the date hereof in full and complete substitution for a Qualifying Letter of Credit pursuant to the LLC Operating Agreement or upon the liquidation or drawing down of a Qualifying Letter of Credit pursuant to the LLC Operating Agreement. The Private Owner Pledged Account (and all funds and Permitted Investments therein or allocated thereto) shall be held by the Paying Agent in a segregated account subject to the security interest granted for the benefit of the Initial Member pursuant to the LLC Operating Agreement, this Agreement and the Private Owner Pledged Account Control Agreement in substantially the form attached hereto as Exhibit Q. In no event shall the Private Owner have

any right or authority to withdraw any funds from the Private Owner Pledged Account except as expressly provided in Section 3.9(b) below. The Paying Agent shall invest the amounts on deposit in the Private Owner Pledged Account in Permitted Investments in accordance with investment directions from the Private Owner but with maturities that allow for their transfer in accordance with this Section 3.9.

(b) From time to time, at the request of the Private Owner, the Paying Agent may release funds from the Private Owner Pledged Account to the Private Owner only to the extent that, after such release, the remaining balance of the Qualifying Cash Collateral on deposit in the Private Owner Pledged Account is not less than the Private Owner Pledged Amount. Any such release shall be pursuant to applicable instructions and documentation satisfactory to, and executed by (or with the written consent of), both of the Initial Member and the Private Owner (and prepared at the sole cost and expense of the Private Owner).

(c) At the time of the Final Distribution, the Paying Agent shall distribute to the Private Owner all funds remaining in the Private Owner Pledged Account after effecting any other distribution from the Private Owner Pledged Account involved in such Final Distribution.

Section 3.10 Certain General Provisions Regarding the Accounts.

(a) Anything in this Article III above to the contrary notwithstanding (but subject in any event to clause (ii) of Section 3.10(b) below), funds in the Collection Account and the Working Capital Reserve Account may be used, and Excess Working Capital Advances or Discretionary Funding Advances may be made (and the proceeds thereof used), to fund amounts other than those set forth in the relevant provisions of this Article III above, to the extent (and only to the extent) of express joint written directions to such effect from the Company and each Required Consenting Party, pursuant to the last two sentences of Section 12.14 of the LLC Operating Agreement.

(b) Each Company Account (and all funds and Permitted Investments therein or allocated thereto) (i) subject to clause (ii), shall be held by the Paying Agent in a segregated trust or custodial account established and maintained (under this Agreement) at a branch of the Paying Agent for the benefit of the Company, and (ii) is subject to Section 5.3. The Private Owner Pledged Account (x) subject to clause (y), shall be held by the Paying Agent in a segregated trust or custodial account established and maintained (under this Agreement) at a branch of the Paying Agent for the benefit of the Private Owner, and (y) is subject to a first priority security interest in favor of the Initial Member in accordance with the LLC Operating Agreement and (without limitation of the foregoing) is subject to the Private Owner Pledged Account Control Agreement.

ARTICLE IV
ADDITIONAL PROVISIONS RELATED TO THE ACCOUNTS

Section 4.1 Investment of Funds in Accounts.

(a) The Company, the PMN Agent or the Private Owner, as applicable, may, at any time or from time to time, direct the Paying Agent to, and, upon receipt of such investment direction, the Paying Agent shall, invest amounts received and retained in the Collection Account, the Working Capital Reserve Account, the Defeasance Account, the Distribution Account (as provided in Section 5.1(c)), or the Private Owner Pledged Account, as applicable, as so directed in Permitted Investments. If the Company, the PMN Agent or the Private Owner, as applicable, shall not have given any such investment directions, the Paying Agent shall seek investment directions from such Person. If the Company, the PMN Agent or the Private Owner, as applicable, does not provide the Paying Agent with investment directions pursuant to Sections 3.1, 3.3, 3.6, 3.9, 4.1 or 5.1(c), the balance standing to the credit of the Collection Account, the Working Capital Reserve Account, the Defeasance Account, the Distribution Account or the Private Owner Pledged Account, as applicable, will remain uninvested with no liability for interest thereon. It is agreed and understood that the Paying Agent may earn fees associated with Permitted Investments.

(b) Whenever the Paying Agent is directed or authorized in accordance with the terms hereof to make a transfer of funds among the Accounts, after application of all other available funds, the Paying Agent shall allocate to the Account to which such funds are to be transferred a portion of any Permitted Investment that would otherwise have to be liquidated to accomplish such transfer in an amount corresponding to the amount to be so transferred. Whenever the Paying Agent is directed or authorized in accordance with the terms hereof to make a transfer of funds from the Accounts (unless such transfer is between the Accounts), if, after application of all other available funds, liquidation of a Permitted Investment is necessary to make any such transfer, the Paying Agent is authorized to liquidate such Permitted Investment. If any Permitted Investment so liquidated is then allocated to more than one Account, and it is not possible to liquidate only the portion of such Permitted Investment allocated to the Account from which such transfer is to be made, then the entire Permitted Investment shall be liquidated, and the proceeds of such liquidation shall be allocated to the Accounts involved in the same proportion as the allocation of such Permitted Investment, except that the net costs and expenses, if any, of such liquidation (including any loss of principal) shall be allocated entirely to the Account from which the transfer of funds was required to be made. The Paying Agent shall liquidate all those Permitted Investments that can be liquidated without interest cost or penalty before it shall liquidate any Permitted Investment, the liquidation of which would involve an interest cost or penalty. The Paying Agent shall have no liability with respect to any interest cost or penalty on the liquidation of any Permitted Investment pursuant to this Section 4.1.

(c) The Paying Agent shall have no liability with respect to Permitted Investments (or any losses resulting therefrom) made at the direction of the Company, the PMN Agent or the Private Owner, as applicable, pursuant to this Agreement.

(d) All references in this Agreement to the Accounts and to cash, moneys or funds therein or balances thereof shall include the investments in which such moneys are invested.

(e) The Paying Agent may execute any investment directions provided to it in respect of the Permitted Investments through its Affiliates, and neither the Paying Agent nor its Affiliates shall have a duty to monitor the investment rating of any such Permitted Investments. The Paying Agent will have no obligation to invest or reinvest any funds if all or a portion of such funds are deposited with the Paying Agent after 11:00 a.m. New York City time on the day of deposit. Directions to invest or reinvest that are received after 11:00 a.m. New York City time will be treated as if received on the following Business Day in New York. Subject to Section 4.1(b) above, the Paying Agent will have the power to sell or liquidate Permitted Investments whenever the Paying Agent will be required to make a transfer pursuant to the terms hereof. The Paying Agent will have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of any funds in accordance with the terms of this Agreement.

Section 4.2 Interest. Any interest or other earnings accrued on any balances in any Account or on any investment thereof, shall be credited to and accumulated in such Account and thereafter be applied without differentiation from other funds in such Account. Any losses incurred from the investment of the balances in any Account or the liquidation of any such investment shall be charged to such Account. Promptly after the end of each Due Period, the Paying Agent shall determine and report to the Manager (with a copy to the PMN Agent) the net interest or other earnings credited, or the net loss charged, to the Collection Account (in respect of investments of the funds therein) during such Due Period.

Section 4.3 Inadequately Identified Amounts. If the Paying Agent receives any amount that is inadequately or incorrectly identified and the Paying Agent is unable to determine the Account into which such amount is to be credited, the Paying Agent shall notify the Company, the Initial Member, the Private Owner and the PMN Agent and shall request instructions as to the Account into which such amount should be credited. The Paying Agent shall credit such amount to the Collection Account until such time as it receives instructions from the Company (with the written consent of the PMN Agent and the Initial Member) stating that such amount should be credited to another Account in accordance with this Agreement, in which case it shall credit such amount, if still available, to the Account designated by the Company (with the written consent of the PMN Agent and the Initial Member).

Section 4.4 Payment Procedures. All amounts that from time to time are distributable by the Paying Agent from the Distribution Account or (except as otherwise expressly provided herein) the Defeasance Account in accordance herewith shall be paid by the Paying Agent from amounts on deposit in such account on the related Distribution Date or on the Purchase Money Notes Maturity Date, as applicable, in immediately available funds (but not before such amounts become immediately available to it). All payments made by the Paying Agent shall be made to such account(s) as shall be designated in writing by the Company in accordance with (except as otherwise expressly provided herein) the Cash Flow and Distribution Report or the Maturity Date Report, as applicable, and this Agreement.

ARTICLE V DISTRIBUTIONS

Section 5.1 Priority of Payments.

(a) On each Distribution Date (by not later than 11:00 a.m. New York City time), the Paying Agent shall disburse amounts transferred to the Distribution Account from the Collection Account pursuant to Section 3.2 in accordance with the priorities set forth in Section 5.1(b) below (the “**Priority of Payments**”) and pursuant to the Distribution Date instructions contained in the Cash Flow and Distribution Reports delivered pursuant to Section 11.3. Subject to Section 5.3 hereof but otherwise notwithstanding any provisions in this Agreement to the contrary, however, the Paying Agent shall take disbursement instructions from the Initial Member with respect to the distributions payable to the Private Owner pursuant to Section 5.1(b)(ix) below upon the delivery of written notice from the Initial Member to the Paying Agent providing that such distributions (i) instead should be paid to the Initial Member pursuant to the terms of the LLC Operating Agreement or (ii) should be suspended pursuant to Section 8.5 of the LLC Operating Agreement (it being understood that this sentence above shall not apply absent delivery of such notice).

(b) On each Distribution Date, all funds in the Distribution Account as described in Section 11.3 (for the avoidance of doubt, excluding funds held in the Distribution Account pursuant to Section 5.1(c) hereof) will be distributed in the following order of priority (using (for purposes of clause (v) below) the Working Capital Reserve Target specified for such Distribution Date in the Cash Flow and Distribution Report for such Distribution Date but otherwise as determined as of the close of business on the Determination Date with respect to such Distribution Date).

(i) first, to pay the fees and expenses of the Custodian and Paying Agent, including any indemnification payments owing to the Custodian and Paying Agent pursuant to Section 13.1, in accordance with the terms of this Agreement;

(ii) [Intentionally Omitted];

(iii) third, (A) for each Due Period during the Interim Servicing Period, to pay to (1) the Transferor the Interim Servicing Fee with respect to such Due Period, together with any unpaid portion of the Interim Servicing Fee with respect to any prior Due Period, and (2) the Manager the Interim Management Fee with respect to such Due Period, together with any unpaid portion of the Interim Management Fee for any prior Due Period, and (B) for each Due Period following the Interim Servicing Period, to pay to the Manager an amount equal to the Management Fee with respect to such Due Period, together with any unpaid portion of the Management Fee for any prior Due Period;

(iv) fourth, to repay any Excess Working Capital Advances made by the Manager pursuant to Section 5.5 of the LLC Operating Agreement and Section 3.7;

(v) fifth, prior to the Final Distribution, to replenish the Working Capital Reserve (by means of a deposit into the Working Capital Reserve Account) until the amount of funds held in the Working Capital Reserve Account is equal to the Working Capital Reserve Target;

(vi) sixth, until (and including) the Guaranty Issuance Date, any remaining amount shall be distributed to the Holders of the Purchase Money Notes in accordance with their respective Holder Percentages, in respect of and to the extent of (and as partial prepayment of) the outstanding principal balance of the Purchase Money Notes;

(vii) seventh, after (but not including) the Guaranty Issuance Date, to pay (i) first, accrued interest on any reimbursement amounts and (ii) second, any reimbursement amounts, due and payable to any Purchase Money Notes Guarantor pursuant to the Reimbursement, Security and Guaranty Agreement for previous payments made by such Purchase Money Notes Guarantor pursuant to any Purchase Money Notes Guaranty, in each case ratably to each Purchase Money Notes Guarantor in proportion to the respective amounts described in this clause (vii) payable to them (until all such amounts owed to all Purchase Money Note Guarantors are paid in full);

(viii) eighth, after (but not including) the Guaranty Issuance Date, any remaining amount shall be deposited into the Defeasance Account to the extent necessary so that, after giving effect to such deposit, the balance of the Defeasance Account (plus any Net Loss on Investments, and disregarding for purposes of such calculation any amounts deposited into the Defeasance Account pursuant to Section 2.8 of the Custodial and Paying Agency Agreement or pursuant to any Purchase Money Notes Guaranty (and any related disbursement from the Defeasance Account in respect of any such deposit)) equals the then-outstanding principal balance of the Purchase Money Notes; and

(ix) finally, all remaining amounts shall be distributed to the Initial Member and the Private Owner (as distributions with respect to their respective LLC Interests) in accordance with Section 6.6 of the LLC Operating Agreement.

(c) If the Paying Agent receives the proceeds of any Excess Working Capital Advance pursuant to clause (y) of the first sentence of Section 5.5 of the LLC Operating Agreement, the Paying Agent shall distribute such funds in the manner set forth in Sections 5.1(b)(vi), (vii), (viii) and (if applicable) (ix) hereof (in such order of priority and, to the extent relevant, after giving effect to any distributions made or to be made on such Distribution Date pursuant to Section 5.1(b)). If the Paying Agent receives any transfer of funds pursuant to Section 3.1(f), the Paying Agent shall (x) distribute a portion of such funds equal to the Purchase Money Notes Asset Value of the relevant Asset (as specified to the Paying Agent as described in Section 3.1(f)) in the manner set forth in the preceding sentence, and (y) distribute (for the avoidance of doubt, as Distributable Cash) a portion of such funds equal to the Adjusted Equity Asset Value of the relevant Asset (as specified to the Paying Agent as described in Section 3.1(f)) in the manner set forth in Section 5.1(b)(ix). The Paying Agent shall make each distribution pursuant to this Section 5.1(c) above by not later than 11:00 a.m. New York City time on the first Distribution Date occurring on or after (A) if such funds are so paid to the

Paying Agent prior to 12:00 noon New York City time on any particular Business Day, the immediately following Business Day or (B) if such funds are so paid to the Paying Agent after 12:00 noon New York City time on any particular Business Day, the second following Business Day. Pending such distribution, any such funds shall be invested as set forth in Section 3.3(d) (as if such funds were then being held in the Defeasance Account), and any interest or other earnings accrued, or any losses incurred, from the investment of such amount shall correspondingly increase or reduce, as the case may be, the amount or amounts, as the case may be, distributed pursuant to this Section 5.1(c) above. (In the case of any funds held as a result of a transfer pursuant to Section 3.1(f), such earnings or losses shall be applied proportionately to the Purchase Money Notes Asset Value and Adjusted Equity Asset Value components thereof.)

(d) This Section 5.1 is subject to Section 5.3 hereof.

Section 5.2 Notices of Payment Failure.

(a) The Paying Agent shall deliver prompt written notice to the Company and the PMN Agent in the event that it fails to receive in full on the related Distribution Date or the Purchase Money Notes Maturity Date, as applicable (based on the applicable Cash Flow and Distribution Report or Maturity Date Report), the amount required to be paid by the Company on any Distribution Date or the Purchase Money Notes Maturity Date, as applicable, which notice shall include a statement that the required payment was not made by the Company in full and shall set forth the amount of such required payment and in the case of receipt of a partial payment, the amount of such partial payment.

(b) If the Paying Agent has actual knowledge of any actual payment failure in advance of the related Distribution Date or the Purchase Money Notes Maturity Date, as applicable, it will deliver written notice thereof to the Company and the PMN Agent as soon as is practicable in accordance with Section 5.2(a). Upon the Paying Agent's receipt from the PMN Agent of written notice at its Office that an Event of Default pursuant to the Reimbursement, Security and Guaranty Agreement (and as such term is defined therein) has occurred, the Paying Agent shall deliver prompt written notice to the Holders and (unless notified of such Event of Default by the PMN Agent in the first instance) the PMN Agent of the occurrence of such Event of Default.

(c) If the Paying Agent receives notice from the Holders of any Class of Purchase Money Notes that such Class of Guaranteed Purchase Money Notes has been declared immediately due and payable in accordance with the terms of such Class of Purchase Money Notes no later than 12:00 noon (New York City time) on the fourth Business Day prior to a Distribution Date, the Paying Agent shall determine the amount payable by the applicable Purchase Money Notes Guarantor pursuant to the applicable Purchase Money Notes Guaranty (based on the related Cash Flow and Distribution Report) and shall make a demand therefor no later than 5:00 p.m. (New York City time) on the fourth Business Day prior to such Distribution Date to such Purchase Money Notes Guarantor on behalf of the applicable Holders in accordance with Section 16(a) of such Purchase Money Notes Guaranty. If, based on any Cash Flow and Distribution Report and Maturity Date Report, the Paying Agent has actual knowledge no later than 12:00 noon (New York City time) on the fourth Business Day prior to a Purchase Money

Notes Maturity Date that any Class of Purchase Money Notes will not be paid in full on the related Purchase Money Notes Maturity Date, the Paying Agent shall determine the amount payable by the applicable Purchase Money Notes Guarantor pursuant to the applicable Purchase Money Notes Guaranty (based on such Cash Flow and Distribution Report and Maturity Date Report) and shall make a demand therefor no later than 5:00 p.m. (New York City time) on the fourth Business Day prior to such Purchase Money Notes Maturity Date to such Purchase Money Notes Guarantor on behalf of the applicable Holders in accordance with Section 16(a) of such Purchase Money Notes Guaranty.

(d) If the Paying Agent receives any such notice from the Holders, or obtains such actual knowledge, as applicable, later than 12:00 noon (New York City time) on the fourth Business Day prior to a Distribution Date or Purchase Money Notes Maturity Date, as applicable, the Paying Agent shall determine the amount payable by the Purchase Money Notes Guarantor pursuant to the respective Purchase Money Notes Guaranty (based on the Cash Flow and Distribution Report for the immediately succeeding Distribution Date) and shall make a demand therefor no later than four Business Days prior to the immediately succeeding Distribution Date to the Purchase Money Notes Guarantor on behalf of the applicable Holders in accordance with Section 16(a) of such Purchase Money Notes Guaranty.

(e) For the avoidance of doubt, nothing herein relieves the Company of its obligation to pay the Purchase Money Notes when due in accordance with the terms thereof.

Section 5.3 Event of Default. Any other term of this Agreement to the contrary notwithstanding, each Company Account (and all funds and Permitted Investments therein or allocated thereto) shall be subject to a first priority security interest granted to the PMN Agent under the Reimbursement, Security and Guaranty Agreement and/or the Account Control Agreement (and, without limiting the generality of the foregoing, is held as security for the Secured Obligations as set forth in Reimbursement, Security and Guaranty Agreement and/or the Account Control Agreement) and to the rights and remedies of the PMN Agent thereunder.

ARTICLE VI CUSTODIAL DOCUMENTS

Section 6.1 Delivery of Custodial Documents.

(a) Delivery. Pursuant to Section 3.1 of the Contribution Agreement, the Transferor (i) is required to deliver or cause to be delivered, at the expense of the Company (which expense shall constitute a Pre-Approved Charge), to the extent they are in the possession of the Transferor or any of its employees or contractors (and have actually been located and separately collected as of the Closing Date for delivery under the Contribution Agreement), the Notes and other Custodial Documents (other than the Transfer Documents) to the Custodian as soon as is practicable after the date hereof, and (ii) may deliver all or some portion of the Transfer Documents to the Custodian on or about the date hereof (or within a reasonable period of time after the Closing Date as specified by the Transferor by written notice to the Company delivered on the Closing Date). As soon as practicable after the date hereof (and in any event in accordance with Section 3.1 of the Contribution Agreement), the Company shall deliver or cause

to be delivered to the Custodian (x) to the extent that the Transferor does not deliver all the Transfer Documents to the Custodian on or about the Closing Date (or within a reasonable period of time after the Closing Date as specified by the Transferor by written notice to the Company delivered on the Closing Date), the Transfer Documents, (y) the Custodial Documents described in clauses (i)(x)(B), (vii), (xi), (xv)(y) and (xvi) of Section 6.1(c) and (z) to the extent that the Transferor does not deliver or cause to be delivered the same on or about the Closing Date, and to the extent that they can reasonably be obtained (and in any event subject to the last sentence of Section 6.1(e)), the Custodial Documents (other than the Transfer Documents) in existence as of the Closing Date. Documents to be delivered to the Custodian pursuant to this Section 6.1(a) shall so be delivered at the office of the Custodian at Wells Fargo Document Custody, 1055 10th Avenue, SE, Minneapolis, MN 55414, Attention: Kathleen A. Marshall, email: Kathleen.A.Marshall@wellsfargo.com (the “**Office**”). Without limitation of the foregoing, the Company shall deliver a notice to the Custodian (with a copy to the PMN Agent) when it considers itself to have complied with the obligation set forth in the second sentence of this Section 6.1(a).

(b) Collateral Certificate; Exceptions. The Custodian shall make available during normal business hours, and at such other hours as may be reasonable in the circumstances, (i) to representatives of the Transferor (and, if the Transferor so determines, the Company) and the PMN Agent an office space at the Office that is sufficient to accommodate up to six people to review the Custodial Documents to be delivered, or delivered, by the Transferor pursuant to Section 6.1(a) with representatives of the Custodian for a period (of not more than ten days) specified by the Transferor upon reasonable prior notice to the Custodian, and (ii) to representatives of the Company (and, if the Company so determines, of the Transferor) and the PMN Agent an office space at the Office that is sufficient to accommodate up to six people to review the Custodial Documents to be delivered, or delivered, by the Company pursuant to Section 6.1(a) with representatives of the Custodian for a period (of not more than ten days) specified by the Company upon reasonable prior notice to the Custodian. Within forty-five days after notice from the Transferor that it has delivered to the Custodian all of the Custodial Documents that it intends to deliver to the Custodian pursuant to Section 3.1 of the Contribution Agreement, the Custodian shall execute and deliver to the Company, each Purchase Money Notes Guarantor and the PMN Agent a certificate, substantially in the form attached hereto as Exhibit E (including an Asset Schedule and Exception List) (“**Collateral Certificate**”). Further, within forty-five days after the Custodian’s receipt of the notice from the Company described in the last sentence of Section 6.1(a) hereof (or, if earlier, within forty-five days after the first anniversary of the date hereof), the Custodian shall execute and deliver to the Company and the PMN Agent a new Collateral Certificate (including a new Asset Schedule and Exception List). In reviewing the documents provided with respect to an Asset, the Custodian shall examine the same and determine, with respect to each such document, whether (A) it meets the Review Criteria and (B) it (i) appears regular on its face (*i.e.*, is not mutilated, damaged, torn, defaced or otherwise physically altered), (ii) relates to the Asset to which it purports to relate, (iii) has been executed by the named parties thereon, (iv) where applicable, purports to be recorded, and (v) appears to be what it purports to be. Each Collateral Certificate delivered pursuant to this Agreement shall certify to all of the Custodial Documents received up to and including the date of such Collateral Certificate.

(c) Custodial Documents. For each Asset, to the extent applicable, the “Custodial Documents” shall include the following:

(i) either (x) (A) the original Note bearing all intervening endorsements (including through allonges attached thereto) and endorsed (including through an allonge attached thereto) “PAY TO THE ORDER OF CRE VENTURE 2011-2, LLC, WITHOUT RECOURSE AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, OF ANY KIND OR NATURE WHATSOEVER” and signed in the name of the Federal Deposit Insurance Corporation as the receiver for the applicable Failed Bank, and (B) an allonge attached thereto providing for the endorsement of the Note and endorsed “Pay to the order of _____, without recourse” and signed by the Company as the last endorsee, or (y) in the event that the original Note is not available, a fully executed Assignment and Lost Instrument Affidavit (in the form of Attachment F to the Contribution Agreement);

(ii) the original, or a copy, of the Mortgage with evidence of recording thereon, or a certified copy thereof from the applicable Recording Office, or a copy thereof together with an officer’s certificate of the related Borrower, title company, escrow agent or closing attorney certifying that such represents a true and correct copy of the original and that such original has been submitted for recordation in the applicable Recording Office;

(iii) the originals or copies of all assumption, Modification, consolidation or extension agreements (if any) with evidence of recording thereon, or certified copies thereof from the applicable Recording Office, or copies thereof together with a certification by or other similar evidence from the applicable Recording Office or an officer’s certificate of the related Borrower, title company, escrow agent or closing attorney certifying that such represents a true and correct copy of the original and that such original has been submitted for recordation in the applicable Recording Office;

(iv) the Acquired Property Files;

(v) except in the case of any MERS Designated Loan, the Mortgage Assignment to the Company (in the form specified in the Contribution Agreement) signed in the name of the Federal Deposit Insurance Corporation as receiver for the applicable Failed Bank, with evidence of recording thereon, or certified copies thereof from the applicable Recording Office, or copies thereof together with an officer’s certificate of the title company certifying that such represents a true and correct copy of the original and that such original has been submitted for recordation in the applicable Recording Office;

(vi) except in the case of any MERS Designated Loan, the originals of all intervening Mortgage Assignments (if any) with evidence of recording thereon, or certified copies thereof from the applicable Recording Office, or copies thereof together with an officer’s certificate of the title company certifying that such represents a true and correct copy of the original of each such intervening Mortgage Assignment and that such original has been submitted for recordation in the applicable Recording Office;

(vii) except in the case of any MERS Designated Loan, an original Mortgage Assignment in blank, in form and substance acceptable for recording in the applicable Recording Office and signed in the name of the Company;

(viii) the original or a copy of the attorney's opinion of title and abstract of title or the original mortgage title insurance policy or, if the original mortgage title insurance policy has not been issued, the irrevocable commitment to issue the same or a true and correct copy of the title policy from the issuing title company;

(ix) the originals of all Collateral Documents executed in connection with the Asset;

(x) Uniform Commercial Code financing statements with recording information thereon from the Recording Offices if necessary to perfect the security interest of the Asset under the Uniform Commercial Code;

(xi) (x) if the equity interests of any Ownership Entity are certificated (it being understood that such certification currently is prohibited under the LLC Operating Agreement and the Reimbursement, Security and Guaranty Agreement), the certificate representing such equity interest, together with a stock power for such certificate executed in blank by the Company, and (y) and if the equity interests of any Ownership Entity are not certificated, an Assignment of LLC Interest similar in form to Exhibit I to the Contribution Agreement executed in blank by the Company;

(xii) any bailee letters regarding any Notes or other Custodial Documents held by the bailee;

(xiii) solely with respect to each MERS Designated Loan, a MERS Report;

(xiv) with respect to any Acquired REO Property (x) the original or a copy of the attorney's opinion of title and abstract of title and/or the original owner's title insurance policy or, if the original owner's title insurance policy has not been issued, the irrevocable commitment to issue the same or a true and correct copy of the title policy from the issuing title company, and (y) the other REO Collateral Documents;

(xv) (x) the originals of all leases related to any Asset and (y) with respect to any Acquired REO Property, an original assignment of such leases executed in blank by the applicable Ownership Entity; and

(xvi) such other documents for each Asset as determined by the Company or the PMN Agent.

(d) Supplemental Deliveries. The Company shall deliver or cause to be delivered to the Custodian any and all Custodial Documents (in addition to those delivered pursuant to Section 6.1(a)) within ten days following the execution and delivery, receipt or other generation by or on behalf of the Company or any Ownership Entity of any such Custodial

Document at any time after the Closing Date or (with respect to any Custodial Document that was not initially provided pursuant to Section 6.1(a) because it had not then been located or otherwise was not available) such Custodial Document otherwise first having been located or becoming available. All such deliveries of Custodial Documents pursuant to this Section 6.1(d) shall be accompanied by a certificate in the form of Exhibit G hereto (a “Supplemental Delivery Certificate”), prepared by an Authorized Representative of the Company, itemizing the Custodial Documents being delivered to the Custodian in such delivery and identifying the Asset with respect to which each such Custodial Document relates. After the receipt thereof, the Custodian shall (A) examine the additional Custodial Documents and determine, with respect to each such document, whether (I) it meets the Review Criteria and (II) it (i) appears regular on its face (*i.e.*, is not mutilated, damaged, torn, defaced or otherwise physically altered), (ii) relates to such Asset, (iii) has been executed by the named parties thereon, (iv) where applicable, purports to be recorded, and (v) appears to be what it purports to be, and (B) ensure that all such Custodial Documents with respect to an Asset are placed in the file for the related Asset. In the event the Custodian determines that the Supplemental Delivery Certificate is inaccurate, the Custodian shall so notify the Company in writing no later than the first Business Day following its receipt of the Supplemental Delivery Certificate. Within seven Business Days after the receipt of the additional Custodial Documents by the Custodian, the Custodian shall provide the Company (with a copy to each Purchase Money Note Guarantor and the PMN Agent) with a new Collateral Certificate (including a new Asset Schedule and Exception List), provided that, if the Custodian has not yet delivered the first Collateral Certificate pursuant to Section 6.1(b), the Custodian instead will reflect such Custodial Document in such initial Collateral Certificate when delivered.

(e) Asset Schedules; Exception Lists; Review Criteria. Each Asset Schedule and Exception List shall list all Exceptions using such codes as shall be in form and substance agreed to by the Custodian and the Company. Each Asset Schedule and Exception List delivered by the Custodian to the Company shall supersede and cancel the Asset Schedule and Exception List previously delivered by the Custodian to the Company hereunder, and shall replace the then existing Asset Schedule and Exception List to be attached to the Collateral Certificate. Notwithstanding anything to the contrary set forth herein, in the event that the Asset Schedule and Exception List attached to the Collateral Certificate is different from the Asset Schedule and Exception List most recently delivered to the Company, then the most recently delivered Asset Schedule and Exception List shall control and be binding upon the parties hereto. A copy of each Asset Schedule and Exception List delivered to the Company contemporaneously shall be delivered to the PMN Agent and each Purchase Money Notes Guarantor. The delivery of each Asset Schedule and Exception List to the Company shall constitute the Custodian’s representation (to each of the Company, each Purchase Money Notes Guarantor and the PMN Agent) that, other than the Exceptions listed as part of the last delivered Asset Schedule and Exception List: (i) all documents required to be delivered in respect of an Asset pursuant to Section 6.1(c) of this Agreement have been delivered and are in the possession of the Custodian as part of the Custodial Documents, (ii) all such documents have been reviewed and examined by the Custodian in accordance with the review procedures specified in this Agreement and (x) meet the Review Criteria and (y) appear on their face to be regular and to relate to such Asset and to satisfy (except in the case of a MERS Designated Loan) the requirements set forth in

Section 6.1(c) of this Agreement, (iii) subject to the provisions of Section 7.2(b), each Asset (except in the case of a MERS Designated Loan) identified on such Asset Schedule and Exception List is being held by the Custodian as the bailee for the Company and (iv) subject to the provisions of Section 7.2(b), each MERS Designated Loan is being held by MERS® as the nominee for the Company. In connection with an Asset Schedule and Exception List delivered hereunder by the Custodian, the Custodian shall make no representations as to and shall not be responsible for verifying, except as set forth in Sections 6.1(b) and 6.1(d) of this Agreement, (A) the validity, legality, enforceability, due authorization, recordability, sufficiency or genuineness of any of the Custodial Documents or (B) the collectability, insurability, effectiveness or suitability of any such Asset. To the extent that any of the documents or materials required to be provided by the Company to the Custodian pursuant to Sections 6.1(c)(ii), (iii), (vi), (viii) and (ix) are not available as originals or as certified copies and the absence of such item would not, in the reasonable judgment of the Company, affect the value of the Asset or the ability to enforce the rights of the mortgagee (and the Manager is not otherwise required to do so in order to comply with the Servicing Obligations), the Company shall not be required to expend more than nominal funds to provide such original or certified copies unless or until they are necessary for the enforcement of such rights, or unless or until the PMN Agent provides written notice to the Custodian that they require the Company to act to cure such exceptions, and all such matters shall remain as exceptions on the Asset Schedule and Exception List.

Section 6.2 Examination of Custodian Files; Copies.

(a) Upon reasonable prior written notice to the Custodian, the Company, each of each Purchase Money Notes Guarantor and the PMN Agent and their respective agents, accountants, attorneys and auditors, and any other Persons designated by the Company, any Purchase Money Notes Guarantor or the PMN Agent, as applicable, in writing as authorized to access and review the Custodial Documents, shall be permitted during normal business hours to examine the Custodial Documents.

(b) Upon the request of the Company, any Purchase Money Notes Guarantor or the PMN Agent, and at the cost and expense of the requesting party, the Custodian shall provide copies of any requested Custodial Documents; provided, however, the requesting party shall reimburse the Custodian for the actual, reasonable and customary costs incurred in providing copies of such Custodial Documents.

Section 6.3 Shipment of Custodial Documents. Prior to any shipment of any Custodial Documents pursuant to this Agreement, the Company shall deliver to the Custodian written instructions as to the method of shipment and the shipper that the Custodian is to utilize in connection with the transmission of such Custodial Documents. The Company shall arrange for the provision of such services at its sole cost and expense (or, at the Custodian's option, reimburse the Custodian for all costs and expenses incurred by the Custodian consistent with such instructions) and will maintain such insurance against loss or damage to the Custodial Documents as the Company may deem appropriate. It is expressly agreed that in no event shall the Custodian have any liability for any losses or damages to any Person, including the Company, arising out of actions of the Custodian pursuant to this Section 6.3 consistent with the instructions of the Company. In the event that the Custodian does not receive such written

instructions, the Custodian shall be authorized and shall be indemnified as provided in this Agreement to utilize a nationally recognized courier service.

ARTICLE VII CUSTODIAN

Section 7.1 Appointment of the Custodian. Subject to the terms and conditions of this Agreement, the Company hereby appoints the Bank to perform the duties of the Custodian, and the Bank hereby accepts such appointment as Custodian, to act as the Company's agent, custodian and bailee to hold and maintain custody of the Custodial Documents.

Section 7.2 Obligations of the Custodian.

(a) Maintenance of Custody. Subject to the provisions of Section 7.2(b), the Custodian shall (i) segregate, hold and maintain continuous custody of all Custodial Documents received by it in trust for and for the benefit of the Company in secure and fire resistant facilities and in accordance with customary controls on access regarding the safety and security of the Custodial Documents, (ii) act with the same degree of care and skill that the Custodian exercises with respect to any loan files relating to similar loans owned, serviced or held as custodian by the Custodian and, in any event, in accordance with customary standards for such custody, (iii) reflect in its records the interest of the Company therein, (iv) make disposition of the Custodial Documents only in accordance with the provisions of this Agreement, and (v) hold all Custodial Documents received by it for the exclusive use and benefit of the Company, and make disposition thereof only in accordance with written instructions furnished by the Company. In the event that the Custodian moves any Custodial Documents from the state where the Custodial Documents are initially kept pursuant to this Agreement, the Custodian shall provide prompt written notice to the Company and the PMN Agent of the location of such Custodial Documents.

(b) Pledge of Assets to the PMN Agent. Pursuant to the terms and conditions of the Reimbursement, Security and Guaranty Agreement, the Company has pledged all of its rights, title and interest in and to the Loans and the Custodial Documents to the PMN Agent for the benefit of the Holders, any Purchase Money Notes Guarantors and the other Secured Parties as security for (among other things) the obligations of the Company pursuant to the Purchase Money Notes and each Purchase Money Notes Guaranty. Accordingly, notwithstanding anything to the contrary contained in this Agreement, the Custodian acknowledges and agrees that it holds possession of the Notes and the other Custodial Documents for the PMN Agent's benefit pursuant to Section 9-313(c) of the NY UCC (or the analogous provision under the Uniform Commercial Code as adopted in any other relevant jurisdiction) and as bailee for the PMN Agent, and the Custodian shall mark its records to reflect the pledge of the Loans and the Custodial Documents by the Company to the PMN Agent; provided, however, that, subject to the provisions of Section 7.2(d), such pledge shall not affect the right of the Custodian to rely on instructions from the Company hereunder. With respect to all Custodial Documents that are removed from the Custodian's possession, the Custodian shall use commercially reasonable efforts to obtain the return of such removed Custodial Documents until such time as the Custodial Documents are returned and provide on a monthly basis to the PMN Agent and the Company a report identifying the released (and unreturned) Custodial Documents.

(c) Qualification to Conduct Business. Nothing contained in this Agreement shall be construed to require the Custodian to qualify to do business in any jurisdiction other than (i) any jurisdiction in which any Custodial Document is or may be held by the Custodian from time to time under this Agreement or (ii) any jurisdiction in which the ownership of its property or the conduct of its business requires such qualification and in which the failure to qualify could have a material adverse effect on the Custodian or its property or business or on the ability of the Custodian to perform its duties and obligations under this Agreement.

(d) Events of Default pursuant to the Reimbursement, Security and Guaranty Agreement. Any term of this Agreement to the contrary notwithstanding, (i) upon the Custodian's receipt from the PMN Agent or any Purchase Money Notes Guarantor of written notice at its Office that an Event of Default (as defined in the Reimbursement, Security and Guaranty Agreement) has occurred and is continuing, the Custodian shall take instructions only from the PMN Agent, and (ii) to the extent that the Custodian has actual knowledge that an Event of Default (as defined in the Reimbursement, Security and Guaranty Agreement) has occurred and is continuing, the Custodian promptly shall notify the PMN Agent in writing and seek instructions from (and take instructions only from) the PMN Agent, in each case as to any action to be taken by the Custodian pursuant to this Agreement.

(e) Third Party Demands. In the event that (i) the Company or the Custodian shall be served by a third party with any type of levy, attachment, writ or court order with respect to any Custodial Document or (ii) a third party shall institute any court proceeding by which any Custodial Document shall be required to be delivered otherwise than in accordance with the provisions of this Agreement, the party receiving such service shall promptly deliver or cause to be delivered to the other parties to this Agreement copies of all court papers, orders, documents and other materials concerning such proceedings. The Custodian shall, to the extent permitted by Law, continue to hold and maintain all of the Custodial Documents that are the subject of such proceedings pending a final, nonappealable order of a court of competent jurisdiction permitting or directing disposition thereof. Upon final determination of such court, the Custodian shall release such Custodial Documents as directed by the Company, which shall give a direction consistent with such court determination.

(f) Release of Custodial Documents. Subject to the provisions of Sections 7.2(d) and 7.2(e), the Custodian shall retain the Custodial Documents in its possession and custody at all times during the term hereof unless any one of the following events has occurred:

(i) If the Custodian has resigned or has been removed in accordance with the provisions of Section 9.1, the Custodian shall deliver the Custodial Documents to the successor Custodian in accordance with Section 9.1.

(ii) If the Custodian has received a notice in the form of Exhibit H hereto from an Authorized Representative of the Company stating that the Company has received all amounts due under an Asset, or a discounted payoff as payment in full of such Asset, the Custodian shall release the related Custodial Documents to the Company or to the Manager in accordance with the instructions provided in such notice.

(iii) If the Custodian has received notice in the form of Exhibit H hereto from an Authorized Representative of the Company (and, prior to the PMN Satisfaction/Defeasance Date, also executed by the outside attorney for the Company or for the Manager to whom the Custodial Documents are to be released) that the Company or the Private Owner needs the Custodial Documents in order to foreclose on a Mortgaged Property, accept a deed in lieu thereof or modify or restructure the terms thereof, the Custodian shall release the related Custodial Documents to (x) prior to the PMN Satisfaction/Defeasance Date, an outside attorney for either the Company or the Manager in accordance with the instructions provided in such notice, or (y) after the PMN Satisfaction/Defeasance Date, the Company or the Manager in accordance with the instructions provided in such notice.

(iv) If the Custodian has received notice in the form of Exhibit H hereto from an Authorized Representative of the Company that the Company has agreed to sell an Asset or the Collateral, the Custodian shall deliver the related Custodial Documents to the Company or to the Manager in accordance with the instructions provided in such notice.

(g) No Other Duties. The Custodian shall have no duties or responsibilities as Custodian except those that are specifically set forth herein and shall not be liable except for the performance of such duties and obligations. No implied covenants or obligations shall be read into this Agreement.

(h) No Investigation. The Custodian shall be under no obligation to make any investigation into the facts or matters stated in any resolution, certificate, statement, acknowledgement, consent, order or other document that is included in the Custodial Documents.

(i) Cooperation. The Company shall cooperate and use commercially reasonable efforts to provide any additional documentation or information reasonably requested by the Custodian in performing its duties and obligations hereunder.

(j) Survival. The provisions of this Section 7.2 shall survive the resignation or removal of the Custodian and Paying Agent and the termination of this Agreement.

ARTICLE VIII FEES AND EXPENSES

Section 8.1 Fees and Expenses. The Bank shall charge such fees for its services and be reimbursed for such of its expenses pursuant to this Agreement as are set forth on Exhibit J hereto, which fees and expenses must be reasonable and customary and which fees and expenses shall not include any attorneys' or other professionals' fees and expenses. The Company shall pay such fees and expenses (other than those specified in the next sentence). The Private Owner shall pay any fees and expenses in connection with the Private Owner Pledged Account. In furtherance of the foregoing, in the event, and to the extent that, any fees or expenses in connection with the Private Owner Pledged Account are paid pursuant to Section 5.1(b) instead of being separately paid by the Private Owner, the Paying Agent shall notify the Initial Member and the Private Owner of such payment and the Private Owner forthwith shall make a deposit (from its own funds) into the Collection Account of an amount equal to such fees or expenses,

and to the extent that the Private Owner fails to make such payment in full by the end of the month following receipt of such notice by the Initial Member, at the direction of the Initial Member, the Paying Agent shall, on each succeeding Distribution Date, deposit into the Collection Account an amount equal to any such outstanding deposit obligation of the Private Owner (after giving effect to any prior deposits into the Collection Account pursuant to this Section 8.1) (as specified by the Initial Member to the Paying Agent) by deducting such deposit amount from the amounts that otherwise would have been distributed to the Private Owner (including as Manager) pursuant to Section 5.1(b). Upon the resignation or removal of the Bank as Custodian or Paying Agent or the termination or assignment ("**Termination**") of this Agreement, all fees and expenses as described in this Section 8.1 also shall terminate as of the date of Termination; provided, however, that the Bank will be entitled to receive fees and expenses accruing prior to the date of Termination. Nothing in this Section 8.1 shall be construed to limit in any way the right of the Bank, in its respective capacities as Custodian and Paying Agent, to receive indemnification and reimbursement from the Company and the Private Owner, as applicable, pursuant to Section 13.1.

ARTICLE IX REMOVAL OR RESIGNATION

Section 9.1 Removal or Resignation of Custodian and Paying Agent.

(a) Resignation. Subject to the provisions of Section 9.1(c), the Bank may at any time resign and terminate its obligations as the Custodian and Paying Agent pursuant to this Agreement upon at least sixty days' prior written notice to the Company, the Initial Member, the Private Owner and the PMN Agent. In the event the Bank resigns it must resign as both the Custodian and Paying Agent. Promptly after receipt of notice of the Bank's resignation as the Custodian and Paying Agent, subject to the provisions of the LLC Operating Agreement and the Reimbursement, Security and Guaranty Agreement as they relate to the Company, the Company shall appoint, by written instrument, a successor Custodian and Paying Agent. In the event that no successor shall have been appointed as the Custodian and Paying Agent within such sixty day period, the Bank may petition any court of competent jurisdiction to appoint a successor Custodian and Paying Agent.

(b) Removal. Subject to the provisions of Section 9.1(c), the Company or the PMN Agent may remove and discharge the Bank as the Custodian and Paying Agent (or any successor custodian and paying agent thereafter appointed) without cause from the performance of its obligations pursuant to this Agreement upon at least thirty days' prior written notice to the Bank. Promptly after the giving of notice of removal to the Bank as the Custodian and Paying Agent, subject to the provisions of the LLC Operating Agreement and the Reimbursement, Security and Guaranty Agreement as they relate to the Company, the Company shall appoint, by written instrument, a successor Custodian and Paying Agent.

(c) Effectiveness. No resignation or removal of the Person serving as Custodian and Paying Agent pursuant to Section 9.1(a) or (b) shall be effective prior to the appointment of a successor Custodial and Paying Agent, the acceptance of such appointment by such successor Custodian and Paying Agent and (i) the execution by such successor Custodian

and Paying Agent and by the Company (which the Company shall do upon demand of the PMN Agent), and delivery to the PMN Agent, of an Account Control Agreement in the form of Exhibit N hereto or otherwise satisfactory to the PMN Agent, and (ii) the execution by such successor Custodian and Paying Agent and by the Private Owner (which the Private Owner shall do upon demand of the Initial Member), and delivery to the Initial Member, of a Private Owner Pledged Account Control Agreement in the form of Exhibit Q hereto or otherwise satisfactory to the Initial Member. Upon appointment of a successor Custodian and Paying Agent, the successor Custodian and Paying Agent shall execute, acknowledge and deliver an instrument accepting such appointment under, and agreeing to be bound by the terms of, this Agreement, at which time the resignation or removal of the predecessor Custodian and Paying Agent shall become effective and the successor Custodian and Paying Agent, without any further act, deed or conveyance, shall become fully vested with all rights, powers, duties and obligations of the Custodian and the Paying Agent pursuant to this Agreement, as if originally named the Custodian and Paying Agent hereunder. One original counterpart of such instrument shall be delivered to each of the Company, the Initial Member, the Private Owner, the PMN Agent, the predecessor Custodian and Paying Agent and the successor Custodian and Paying Agent.

(d) Transfer of Documents. In the event of any removal or resignation as Custodian and Paying Agent, the Bank promptly shall transfer to the successor Custodian and Paying Agent, as directed, all Custodial Documents, all funds deposited in the Accounts and all executed original counterparts of the Debt Agreements and the Private Owner Pledged Account Control Agreement, in the possession of the Paying Agent, and the Company and the Bank shall execute and deliver such instruments and do such other things as may reasonably be required for more fully and certainly vesting and confirming in the successor Custodian and Paying Agent all rights, powers, duties and obligations of the Bank as the Custodian and Paying Agent under this Agreement.

(e) Costs. The Company shall be responsible for payment to the successor Custodian and Paying Agent of all fees and expenses of the successor Custodian and Paying Agent and any fees and expenses for transferring Custodial Documents and funds deposited in the Accounts to the successor Custodian and Paying Agent except with respect to the Private Owner Pledged Account, the fees and expenses with respect to which are to be paid by the Private Owner.

ARTICLE X REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 10.1 Representations, Warranties and Covenants.

(a) The Bank as the Custodian and Paying Agent, the Company, the Initial Member and the Private Owner, as applicable, represent and warrant to each other and to the PMN Agent and each Purchase Money Notes Guarantor as follows:

(i) it has the requisite power and authority and the legal right to execute and deliver, and to perform its obligations under, this Agreement, and has taken all

necessary corporate or other action to authorize its execution, delivery and performance of this Agreement;

(ii) no consent or authorization of, filing with, or other act by or in respect of, any United States or non-United States national, federal, state, local or provincial or international government or any political subdivision of any governmental, regulatory or administrative authority, agency or commission, or judicial or arbitral body, and no consent of any other Person (including any stockholder or creditor) is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement by it; and

(iii) this Agreement has been duly executed and delivered on behalf of it and constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally and by general principles of equity (whether enforcement is sought in a proceeding in equity or at Law).

(b) The Bank as the Custodian and Paying Agent represents and warrants to the Company, the Initial Member, the Private Owner, the PMN Agent and each Purchase Money Notes Guarantor that the Bank is a Qualified Custodian and Paying Agent.

Section 10.2 Insurance. At its own expense, the Custodian and Paying Agent shall maintain at all times and keep in full force and effect (i) fire and other casualty insurance, (ii) fidelity insurance, (iii) theft of documents insurance, (iv) forgery insurance, and (v) errors and omissions insurance. All such insurance shall be in amounts, with standard coverage and subject to deductibles, as are customary for insurance typically maintained by financial institutions which act as paying agent and as custodian of collateral substantially similar to the Custodial Documents. Upon written request, the Company shall be entitled to receive a certificate of the respective insurer that such insurance is in full force and effect.

ARTICLE XI REPORTS

Section 11.1 Custodian and Paying Agent Report.

(a) The Custodian and Paying Agent shall cause to be furnished to the Private Owner, the Initial Member, the PMN Agent and each Purchase Money Notes Guarantor, no later than 12:00 noon, New York City time, on each Distribution Date, a report for the applicable Due Period (the "**Custodian and Paying Agent Report**") with respect to the Assets and Collateral (including the Accounts setting forth in reasonable detail the balances of and any investments in the Accounts as of such date and all deposits to and disbursements from such Accounts, including the date on which made, since the date of the previous report) held by the Custodian and Paying Agent pursuant to this Agreement and on such other information as may otherwise be agreed by the parties with respect to such Due Period, all as set forth on Exhibit K hereto. The Custodian and Paying Agent shall follow the procedures and perform the calculations and reconciliations required to prepare the Custodian and Paying Agent Report, in each case as set forth on Exhibit K hereto. The Custodian and Paying Agent also shall make such Custodian and

Paying Agent Reports available to Note Owners each month in accordance with Section 2.7(k) via the Paying Agent's internet website. Access to all information on the Paying Agent's internet website will be restricted to Note Owners who provide the Paying Agent with a separate investor certification substantially in the form of Exhibit O hereto. As a condition to accessing the Paying Agent's internet website, the Paying Agent may require registration and the acceptance of a disclaimer. The Paying Agent will not be liable for the dissemination of information in accordance with this Agreement.

(b) The Custodian and Paying Agent Report shall be based on information included in (i) the Manager's Monthly Report for the applicable Due Period and certified by an Authorized Representative of the Manager, (ii) the Cash Flow and Distribution Report for the applicable Due Period and (iii) such other information as may be agreed upon by the parties, all as set forth in Exhibit K hereto.

Section 11.2 Additional Reports.

(a) Within two Business Days after receipt of a written request of the Company, any Purchase Money Notes Guarantor or the PMN Agent for a Custodial Report or an updated Asset Schedule and Exception List, the Custodian and Paying Agent shall provide the requesting party with the Custodial Report or the updated Asset Schedule and Exception List, as applicable.

(b) The Custodian and Paying Agent shall provide any additional information or reports relating to the Accounts and the transactions therein reasonably requested from time to time by the Company, any Purchase Money Notes Guarantor or the PMN Agent.

Section 11.3 Company and Servicer Distribution Date Accounting. For each Due Period, no later than five Business Days prior to the related Distribution Date, the Company shall prepare and deliver or cause the Manager to prepare and deliver to the Paying Agent, the Initial Member, each Purchase Money Notes Guarantor and the PMN Agent a report which shall specify the amounts and recipients of all funds to be distributed by the Paying Agent on the relevant Distribution Date (using (for purposes of clause (v) of the Priority of Payments) the Working Capital Reserve Target specified in such report but otherwise as determined as of the close of business on the applicable Determination Date) and shall be certified by an Authorized Representative (who shall be the chief financial officer (or an equivalent officer)) of the Company (the "**Cash Flow and Distribution Report**"); provided, however, that (unless the Company and the Initial Member agree otherwise) the Initial Member will prepare and deliver to the Paying Agent, each Purchase Money Notes Guarantor and the PMN Agent the Cash Flow and Distribution Report for all Due Periods ending prior to or during the calendar month in which the final Servicing Transfer Date occurs, and each such Cash Flow and Distribution Report shall be due no later than two (rather than five) Business Days prior to the related Distribution Date. The Cash Flow and Distribution Report shall be a portion of the Monthly Report to be provided to the Paying Agent, the Initial Member, each Purchase Money Notes Guarantor and the PMN Agent in accordance with the LLC Operating Agreement. The Cash Flow and Distribution Report shall contain the following information:

(a) the aggregate amount of Asset Proceeds received during the applicable Due Period and deposited into the Collection Account in accordance with Section 3.1(a).

(b) for the Collection Account:

(i) the amount to be transferred from the Collection Account to the Distribution Account which shall equal the sum of: (A) the amount described in Section 11.3(a) *plus* (B) the total amount of funds transferred from the Working Capital Reserve Account into the Collection Account during the applicable Due Period *plus* (C) the total amount of Excess Working Capital Advances deposited in the Collection Account during the applicable Due Period *plus* (D) the total amount of Discretionary Funding Advances deposited in the Collection Account during the applicable Due Period *less* (E) the total amount of funds withdrawn from the Collection Account as permitted pursuant to Section 3.1 during the applicable Due Period *plus* *plus* (F) the total amount of funds transferred from the Defeasance Account into the Collection Account pursuant to Section 3.3(h) during the applicable Due Period *plus* (G) the total amount of funds transferred into the Collection Account during the applicable Due Period pursuant to Section 8.1, *plus* (H) an amount equal to any net interest or other earnings credited to the Collection Account (in respect of investments of the funds therein) during such Due Period, as determined by the Paying Agent and reported pursuant to Section 4.2, *less* (I) an amount equal to any net loss charged to the Collection Account (in respect of investments of the funds therein) during such Due Period, as determined by the Paying Agent and reported pursuant to Section 4.2;

(ii) the amounts payable from the Distribution Account (following the transfer from, and from the amount to be transferred from, the Collection Account to the Distribution Account described in clause (b)(i)) on such Distribution Date pursuant to the Priority of Payments, itemized by each clause or sub-clause of the Priority of Payments; and

(iii) with respect to the election by the Company to prepay any Class of Purchase Money Notes in full or in part in accordance with the terms of such Class of Purchase Money Notes, the related Company Principal Prepayment Amount.

(c) Any other amounts or calculations required by Section 5.1.

With respect to the Distribution Date immediately preceding the Purchase Money Notes Maturity Date for each Class of Purchase Money Notes, the Company shall prepare and deliver or cause the Manager to prepare and deliver to the Paying Agent, the Initial Member, each Purchase Money Notes Guarantor and the PMN Agent a Maturity Date Report with respect to such Class of Purchase Money Notes.

Section 11.4 Distribution Date Instructions. Each Cash Flow and Distribution Report shall contain, or be accompanied by, irrevocable instructions to the Paying Agent to (i) transfer from the Collection Account to the Distribution Account the amount described in Section 11.3(b)(i) and (ii) withdraw on the related Distribution Date from the Distribution Account and the Defeasance Account, as applicable, and pay or transfer (on such Distribution Date) the amounts set forth in such report in the manner specified, and in accordance with the priorities

established, in Sections 3.3 and 5.1, including with respect to any distributions to be made to the applicable Holders following an acceleration of any Class of Purchase Money Notes prior to the related Distribution Date or on the Purchase Money Notes Maturity Date.

Section 11.5 Books and Records. The Paying Agent shall maintain all such accounts, books and records as may be necessary to record properly all transactions carried out by it with respect to the Accounts, including all disbursements therefrom, or otherwise with respect to the Purchase Money Notes, including all payments thereon. The Paying Agent also shall maintain a complete and accurate set of files, books and records regarding the Assets and the Collateral. This obligation to maintain a complete and accurate set of records shall encompass all files in the Custodian and Paying Agent's custody, possession or control pertaining to the Assets and the Collateral, including all Custodial Documents. The Paying Agent shall permit the Company, each Purchase Money Notes Guarantor, the PMN Agent and the Initial Member to examine all such accounts, books and records and shall permit the Private Owner to examine such accounts, books and records that relate to the Private Owner Pledged Account; provided, however, that any such examination shall occur upon reasonable prior notice and during normal business hours.

ARTICLE XII NO ADVERSE INTERESTS

Section 12.1 No Adverse Interests. By execution of this Agreement, the Bank represents and warrants that no Responsible Officer of the Bank has any actual knowledge of any adverse interest, by way of security or otherwise, in any Asset. The Bank shall not pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any third party interest in, any of the Assets pursuant to this Agreement. Notwithstanding any other provisions of this Agreement and without limiting the generality of the foregoing, neither the Custodian nor the Paying Agent (nor any Person claiming by or through either of them) shall at any time exercise or seek to enforce any claim, right or remedy, including any statutory or common law rights of set-off, if any, that the Custodian or the Paying Agent may otherwise have against all or any part of a Custodial Document, Asset or proceeds of either. For the purposes of this Section 12.1, a Responsible Officer of the Bank means any managing director, director, associate, principal, vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Bank customarily performing functions similar to those performed by any of the above designated officers and directly responsible for the administration of this Agreement and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

ARTICLE XIII LIABILITY AND INDEMNIFICATION

Section 13.1 Liability; Indemnification.

(a) Except with respect to the Private Owner Pledged Account and, if applicable, any funds or Permitted Investments on deposit in, or credited to, such Account, the Company shall indemnify and hold harmless the Custodian and Paying Agent and the directors,

officers, agents and employees of the Custodian and Paying Agent from and against any and all Losses of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against it or them in any way relating to or arising out of this Agreement or any action taken or not taken by it or them hereunder unless such Losses were imposed on, incurred by or asserted against the Custodian and Paying Agent because of the breach by the Custodian and Paying Agent of its obligations pursuant to this Agreement, which breach was caused by negligence, lack of good faith or willful misconduct on the part of the Custodian and Paying Agent or any directors, officers, agents or employees of the Custodian and Paying Agent. The foregoing indemnification shall survive any resignation or removal of the Custodian and Paying Agent or the termination or assignment of this Agreement.

(b) The Private Owner shall indemnify and hold harmless the Paying Agent and the directors, officers, agents and employees of the Paying Agent from and against any and all Losses of any kind or nature whatsoever that may be imposed on, incurred by or asserted against it or them in any way relating to or arising out of this Agreement with respect to the Private Owner Pledged Account or, if applicable, any funds or Permitted Investments on deposit in, or credited to, such Account, or any action taken or not taken by it hereunder with respect to the Private Owner Pledged Account or, if applicable, any funds or Permitted Investments on deposit in, or credited to, such Account, unless such Losses were imposed on, incurred by or asserted against the Paying Agent because of the breach by the Paying Agent of its obligations pursuant to this Agreement with respect to the Private Owner Pledged Account or, if applicable, any funds or Permitted Investments on deposit in, or credited to, such Account, which breach was caused by negligence, lack of good faith or willful misconduct on the part of the Paying Agent or any directors, officers, agents or employees of the Paying Agent. The foregoing indemnification shall survive any resignation or removal of the Paying Agent or the termination or assignment of this Agreement.

(c) In the event that the Custodian fails to produce a Custodial Document that was not identified as an Exception in the then controlling Asset Schedule and Exception List within two Business Days after required or requested by the Company, and such Custodial Document is not outstanding pursuant to a Request for Release and Receipt of the Custodial Documents in the form attached as Exhibit H hereto (a “**Custodial Delivery Failure**”), then (i) with respect to any missing Note with respect to which a Custodial Delivery Failure has occurred and has continued in excess of three Business Days, the Custodian promptly shall deliver to the Company upon request a Lost Instrument Affidavit in the form attached hereto as Exhibit L (unless the original Note shall have been delivered prior to such time) and (ii) with respect to any missing document related to such Asset, including a missing Note, (A) the Custodian shall indemnify the Company, each Purchase Money Notes Guarantor, the PMN Agent and the Holders in accordance with Section 13.1(d) and (B) at the Company’s option, at any time the long term obligations of the Custodian are rated below the second highest rating category of Moody’s Investors Service, Inc. or Standard and Poor’s Ratings Group, a division of McGraw-Hill Companies, Inc., the Custodian shall obtain and maintain an insurance bond naming the Company, each Purchase Money Notes Guarantor, the PMN Agent and the Holders and their respective successors in interest and assigns as loss payees, insuring against any losses associated with the loss of such document, in an amount equal to the then-outstanding principal balance of

the related Asset or such lesser amount requested by the Company in the Company's sole discretion.

(d) The Custodian and Paying Agent shall indemnify and hold harmless the Company, the Initial Member, the PMN Agent, each Purchase Money Notes Guarantor and the Holders and their respective directors, officers, employees, agents and designees, from and against any and all Losses of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against it or them in any way relating to or arising out of a Custodial Delivery Failure or the Custodian and Paying Agent's negligence, lack of good faith or willful misconduct or any breach of any of the conditions, representations, warranties or obligations of the Custodian and Paying Agent contained in this Agreement; provided, however, that in no event shall the Custodian and Paying Agent or any directors, officers, agents or employees of the Custodian and Paying Agent have any liability with respect to any special, indirect, punitive or consequential damages suffered by the Company. The foregoing indemnification shall survive any termination or assignment of this Agreement.

ARTICLE XIV CUSTODIAN AND PAYING AGENT

Section 14.1 Reliance of Custodian and Paying Agent.

(a) Documents; Communications. The Custodian and Paying Agent may rely conclusively on any request, instruction, certificate, direction, receipt, demand, consent, resolution, statement, instrument, opinion, report, notice or other document or communication furnished to the Custodian and Paying Agent pursuant to this Agreement or any Asset Document that the Custodian and Paying Agent believes in good faith (i) to have been signed or presented by an Authorized Representative of the party required to sign or present such document and (ii) conforms in form to the requirements of this Agreement; provided, however, that in the case of any request, instruction, certificate, direction, receipt, demand, consent, resolution, statement, instrument, opinion, report, notice or other document or communication which by any provision hereof is specifically required to be furnished to the Custodian and Paying Agent, the Custodian and Paying Agent shall be under a duty to examine the same in accordance with the requirements of this Agreement and any Asset Document.

(b) Requested Instructions. Subject to the provisions of Section 7.2(d), in which case the Custodian and Paying Agent shall take instructions only from the PMN Agent, and subject to Section 5.3 hereof, if the Custodian and Paying Agent requests instructions from the PMN Agent, the Company, the Initial Member or the Private Owner, as applicable, with respect to any act, action or failure to act in connection with this Agreement, the Custodian and Paying Agent shall be entitled (without incurring any liability therefor to the Company, any Purchase Money Notes Guarantor, the PMN Agent or any other Person) to refrain from taking such action and continue to refrain from acting unless and until the Custodian and Paying Agent shall have received written instructions from the PMN Agent, the Company, the Initial Member, the Private Owner, as the case may be (with the consent of the PMN Agent, if such instructions are from a Person other than the PMN Agent).

(c) Certificates. Whenever the Custodian and Paying Agent shall deem it necessary or desirable that a matter be proved or established in connection with taking or omitting any action by it hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct on the part of the Custodian and Paying Agent, be deemed to be conclusively proved or established by a certificate of an Authorized Representative of the relevant Party delivered to the Custodian and Paying Agent.

(d) Reliance on Experts. The Custodian and Paying Agent may consult with and obtain advice from reputable and experienced outside counsel, certified public accountants that are nationally recognized, or other experts and the advice or any opinion of such counsel, accountants or other experts shall be full and complete authorization and protection in respect of any action taken or omitted by it pursuant to this Agreement in good faith and in accordance with such advice or opinion of counsel, accountants or other experts.

(e) Limited Risk. None of the provisions of this Agreement shall require the Custodian and Paying Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties pursuant to this Agreement, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

(f) Merger or Consolidation. Any corporation into which the Custodian and Paying Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Custodian and the Paying Agent shall be a party, or any corporation succeeding to the business of the Custodian and Paying Agent, except for any such Person who is or, upon consummation of such transaction, will be an Affiliate of the Company, the Servicer or any Subservicer, shall be the successor of the Custodian and Paying Agent pursuant to this Agreement without the execution or filing of any paper with any party to this Agreement or any further act on the part of any of the parties to this Agreement except where an instrument of transfer or assignment is required by Law to effect such succession, anything in this Agreement to the contrary notwithstanding; provided, however, that any such successor shall satisfy the representations, warranties and covenants set forth in Section 10.1 of this Agreement. The Custodian and Paying Agent or successor Custodian and Paying Agent shall provide the Company with written notice prior to or within ten days after the consummation of any such transaction. At no time shall an Affiliate of the Company, the Servicer or any Subservicer be the Custodian and Paying Agent pursuant to this Agreement.

ARTICLE XV TAXES

Section 15.1 Tax Reports. The Custodian and Paying Agent shall not be responsible for the preparation or filing of any reports or returns relating to federal, state or local income Taxes with respect to this Agreement, other than in respect of the Custodian and Paying Agent's compensation or for reimbursement of expenses.

Section 15.2 Stamp and Other Similar Taxes. The Company agrees to indemnify and hold harmless the Custodian and Paying Agent from, and shall reimburse the Custodian and Paying Agent for, any present or future claim for liability for any stamp or other similar Tax and any penalties or interest with respect thereto, which may be assessed, levied or collected by any jurisdiction in connection with this Agreement. The obligations of the Company pursuant to this Section 15.2 shall survive the termination of the other provisions of this Agreement.

Section 15.3 Tax Characterization. Each Holder and Note Owner of a Purchase Money Note, by acceptance of such Purchase Money Note or its interest in such Purchase Money Note, shall be deemed to have agreed to treat, and shall treat, such Purchase Money Note as debt of the Company for U.S. federal income tax purposes except as otherwise required by Law.

Section 15.4 Back-Up Withholding. Each Holder and Note Owner of a Purchase Money Note, by acceptance of such Purchase Money Note or its interest in such Purchase Money Note, shall be deemed to understand and acknowledge that failure to provide the Company, the Custodian or the Paying Agent with an originally executed version of the applicable U.S. federal income tax certifications (generally, an Internal Revenue Service Form W-9 (or successor applicable form) in the case of a Person that is a United States Person or an appropriate Internal Revenue Service Form W-8 (or successor applicable form) in the case of a Person that is not a United States Person) may result in U.S. federal back-up withholding from payments in respect of such Purchase Money Note.

ARTICLE XVI TERM

Section 16.1 Term. This Agreement shall terminate upon (a) the final payment or other liquidation of all of the Assets (including all Acquired Property), (b) the release and delivery to the Company or the PMN Agent of all Custodial Documents held by or in the possession of the Custodian in accordance with the terms of this Agreement and (c) the disbursement in accordance with the terms hereof of all of the funds and financial assets on deposit in all of the Accounts. Notwithstanding anything to the contrary herein, this Agreement may be terminated without cause upon at least thirty days' prior written notice to the Custodian and Paying Agent, by either the Company (with the consent of the PMN Agent) or the PMN Agent.

ARTICLE XVII AUTHORIZED REPRESENTATIVES

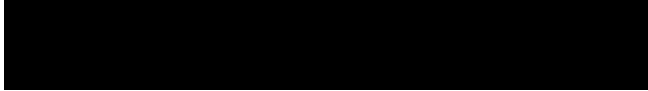
Section 17.1 Authorized Representatives. Each individual designated as an Authorized Representative of any Person is authorized to give and receive notices, requests and instructions and to deliver certificates and documents in connection with this Agreement on behalf of such Person, and the specimen signature for each such Authorized Representative, initially authorized pursuant to this Agreement, is set forth on Exhibit M hereto. From time to time, any Person (including any Purchase Money Notes Guarantor) may, by delivering to the other parties hereto a revised copy of Exhibit M or any resolution, incumbency certificate or similar document setting forth the officers of such Person, which officers shall be deemed to be Authorized Representatives of such Person for purposes of this Agreement, change (including, to the extent

applicable, initially specify) such Person's Authorized Representatives (and amend this Agreement to so provide), but until a new Exhibit M or resolution, incumbency certificate or similar document with the information regarding such successor (or initial) Authorized Representatives is delivered to a party in accordance with this Agreement, that party shall be entitled to rely conclusively on the Exhibit M or resolution, incumbency certificate or similar document, as applicable, last delivered hereunder. The parties acknowledge and agree that unless and until the occurrence of an Event of Default pursuant to the LLC Operating Agreement and the removal of the Private Owner as the Manager pursuant to the LLC Operating Agreement, the Private Owner in its capacity as the Manager will have the right to designate Authorized Representatives of the Manager to act (on behalf of the Manager in its capacity as such) as Authorized Representatives of the Company, and that notwithstanding any provisions in this Agreement to the contrary, however, upon the delivery of written notice to the Custodian and Paying Agent by the Initial Member of the occurrence of an Event of Default by the Private Owner pursuant to the LLC Operating Agreement and the removal of the Private Owner as the Manager pursuant to the LLC Operating Agreement, the Initial Member or the replacement Manager appointed pursuant to Section 3.13(a) of the LLC Operating Agreement will have the right to designate replacement Authorized Representatives of the Company.

ARTICLE XVIII NOTICES

Section 18.1 Notices. All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be mailed or delivered to the applicable address or electronic mail address of the parties specified below for such Person or to such other address, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties. All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt (or refusal thereof) by the relevant party hereto and (ii) (A) if delivered by hand or by nationally recognized courier service, when signed for (or refused) by or on behalf of the relevant party hereto; (B) if delivered by mail, four Business Days after deposit in the mails, postage prepaid; and (C) if delivered by electronic mail, when delivered. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder. From time to time, any Person may designate a new address for purposes of notice hereunder by notice to such effect to the other Persons identified below. A copy of each notice or other communication to the PMN Agent hereunder shall contemporaneously be delivered to each Purchase Money Notes Guarantor (until the Guaranteed Purchase Money Notes Satisfaction Date with respect to such Purchase Money Notes Guarantor shall have occurred), a copy of each notice or other communication to the Company hereunder shall contemporaneously be delivered to the Initial Member, and a copy of each notice or other communication to or by the Custodian or the Paying Agent hereunder (other than any such notice that is from, or given to, the PMN Agent in the first instance) shall contemporaneously be delivered to the PMN Agent and (until the Guaranteed Purchase Money Notes Satisfaction Date with respect to such Purchase Money Notes Guarantor shall have occurred) each Purchase Money Notes Guarantor.

If to the Bank for all purposes other than cancellation, presentment, transfer and/or exchange of Purchase Money Notes:

Wells Fargo Bank, N.A.
9062 Old Annapolis Road
Columbia, Maryland 21045
Attention: Client Services Manager
Reference: CRE Venture 2011-2 Structured Transaction
Email Addresses: 


For purposes of cancellation and presentment of Purchase Money Notes:

Wells Fargo Bank, N.A.
6th Street & Marquette Avenue
Minneapolis, Minnesota 55479
Attention: Corporate Trust Services Bondholder Communications
Reference: CRE Venture 2011-2 Structured Transaction

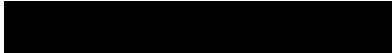
For purposes of transfer and/or exchange of Purchase Money Notes:

Wells Fargo Bank, N.A.
6th Street & Marquette Avenue
Minneapolis, Minnesota 55479
Attention: Corporate Trust Services Transfer Agent Department
Reference: CRE Venture 2011-2 Structured Transaction

If to the Company:

CRE Venture 2011-2, LLC
2450 Broadway, 6th Floor
Santa Monica, California 90404
Attention: Paul Fuhrman
Email Address: 

with a copy to:

Colony Capital, LLC
660 Madison Avenue
New York, New York 10065
Attention: Ronald M. Sanders
Email Address: 

If to the PMN Agent or the Initial Member:

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

with a copy to:

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

If to any Purchase Money Notes Guarantor:

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

If to the Private Owner:

ColFin 2011-2 CRE Funding, LLC
2450 Broadway, 6th Floor
Santa Monica, California 90404
Attention: Paul Fuhrman
Email Address: [REDACTED]

with a copy to:

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

**ARTICLE XIX
MISCELLANEOUS**

Section 19.1 Governing Law. EACH PARTY TO THIS AGREEMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS AGREEMENT IS TO BE

GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE 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 AND EACH PARTY TO THIS AGREEMENT UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS AGREEMENT .

Section 19.2 Waiver of Jury Trial. EACH OF THE COMPANY, THE INITIAL MEMBER, THE PRIVATE OWNER, THE PMN AGENT AND THE BANK 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 19.3 Jurisdiction; Venue and Service.

(a) Each of (x) the Company, the Private Owner and the Bank, for itself and its Affiliates, and (y) the Initial Member 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 such Affiliate commenced by the PMN Agent, the Initial Member or any Purchase Money Notes Guarantor arising out of, relating to, or in connection with this Agreement or any Transaction Document, and waives any right to:

(A) remove or transfer such suit, action or proceeding to any court or dispute-resolution forum other than the court in which the PMN Agent, the Initial Member or any Purchase Money Notes Guarantor, as applicable, files the suit, action or proceeding without the consent of the PMN Agent, the Initial Member or such Purchase Money Notes Guarantor, as applicable;

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

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

(ii) consents to the jurisdiction of the Supreme Court of the State of New York for any suit, action or proceeding against it or any such Affiliate commenced by the PMN Agent, the Initial Member or any Purchase Money Notes Guarantor arising out of, relating

to, or in connection with this Agreement or any Transaction Document (other than the LLC Operating Agreement), and waives any right to:

(A) remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the PMN Agent, the Initial Member or such Purchase Money Notes Guarantor, as applicable;

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

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

(iii) agrees to bring any suit, action or proceeding by it or any such Affiliate against the PMN Agent, the Initial Member or any Purchase Money Notes Guarantor in only either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the PMN Agent, the Initial Member or such Purchase Money Notes Guarantor, as applicable, and agrees to consent thereafter to transfer of the suit, action or proceeding to either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia at the option of the PMN Agent, the Initial Member or such Purchase Money Notes Guarantor, as applicable; and

(iv) agrees, if the United States District Court for the Southern District of New York and the United States District Court for the District of Columbia both lack jurisdiction to hear a suit, action or proceeding falling within Section 19.3(a)(iii), to bring that suit, action or proceeding in only the Supreme Court of the State of New York, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the PMN Agent, the Initial Member or the relevant Purchase Money Notes Guarantor, as applicable.

(b) Each of the Company, the Private Owner and the Bank, 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 19.3(a) may be enforced in any court of competent jurisdiction.

(c) Subject to the provisions of Section 19.3(d), each of the (i) Company, the Private Owner and the Bank, on behalf of itself and its Affiliates, and each of (ii) the Initial Member, each Purchase Money Notes Guarantor and the PMN Agent hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 19.3(a) or Section 19.3(b) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 18.1 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 19.3(c) shall affect the right of any party to serve process in any other manner permitted by Law.

(d) Nothing in this Section 19.3 shall constitute consent to jurisdiction in any court by the FDIC (in any capacity, including as the Initial Member), other than as expressly provided in Section 19.3(a)(iii) and Section 19.3(a)(iv), or in any way limit the FDIC's (in any capacity, including as the Initial Member) right to remove, transfer, seek to dismiss, or otherwise respond to any suit, action, or proceeding against it in any forum.

Section 19.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Agreement and any amendments hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No signatory to this Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

Section 19.5 Severability. Any provision of this Agreement 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. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 19.5 is intended to, or shall, limit the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or the intended effect of Section 19.1.

Section 19.6 Compliance With Law. Except as otherwise specifically provided herein, each party to this Agreement shall, at its own cost and expense, obey and comply with all applicable Laws, as they may pertain to such party's performance of its obligations hereunder.

Section 19.7 Entire Agreement. This Agreement contains the entire agreement between the Company, the Initial Member, the Private Owner, the PMN Agent and the Bank with respect to the subject matter hereof and supersedes any and all other prior agreements, whether oral or written.

Section 19.8 Assignment; Binding Effect.

(a) Except as is permitted pursuant to the provisions of this Agreement providing for successor Custodians and Paying Agents, the Custodian and Paying Agent shall not assign or delegate this Agreement or any of its rights or obligations hereunder without the prior written consent of the Company and any such purported assignment or delegation without such consent shall be void *ab initio*. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns, and (subject to Section 19.8(b)), no other Person or Persons shall have any rights or remedies under or by reason of this Agreement. Without limiting the generality of the preceding sentence, this Agreement shall be binding on and inure to the benefit of (i) any successor "PMN Agent" under, and in accordance with, the Reimbursement, Security and Guaranty Agreement, (ii) any successor "Initial Member" under, and in accordance with, the LLC Operating Agreement and (iii) any successor "Private Owner" under, and in accordance with, the LLC Operating Agreement.

(b) Each Purchase Money Notes Guarantor (and its successors or assigns) is hereby constituted (until the Guaranteed Purchase Money Notes Satisfaction Date with respect to such Purchase Money Notes Guarantor) an express third party beneficiary of this Agreement in its entirety, and, as such, each Purchase Money Notes Guarantor (and its successors or assigns) is entitled to enforce such provisions of this Agreement to the same extent as if such Person were a party hereto. To the extent that this Agreement confers directly any rights, remedies or other benefits upon any Holder or the Transferor (or any Existing Servicer), this Agreement (subject to Sections 19.1 and 19.2 hereof as if such Holder or the Transferor, respectively, was a party hereto, and in any event to Section 19.10 hereof) also shall inure to the benefit of, and may be enforced by, such Holder or the Transferor, respectively.

(c) Upon the indefeasible payment, satisfaction and discharge in full of all of the Secured Obligations, the rights hereunder of the PMN Agent and any Purchase Money Notes Guarantor shall terminate, and from and after such termination all references herein to the PMN Agent and/or the Purchase Money Notes Guarantors shall be disregarded.

Section 19.9 Rights Cumulative. The rights, powers and remedies of the Custodian and Paying Agent, the Initial Member, the Private Owner, the PMN Agent, the Purchase Money Notes Guarantors, the Holders and the Company pursuant to this Agreement shall be in addition to all rights, powers and remedies given to the Custodian and Paying Agent, the Initial Member, the Private Owner, the PMN Agent, the Purchase Money Notes Guarantors, the Holders and the Company by virtue of any statute or rule of Law, or any other agreement, all of which rights, powers and remedies shall be cumulative and may be exercised successively or concurrently.

Section 19.10 Amendments. Subject to the requirements of the LLC Operating Agreement as they relate to the Company, this Agreement may be amended from time to time by

written agreement signed by (i) the Company, the Initial Member, the PMN Agent, each Purchase Money Notes Guarantor (or successor or assign thereof) that is a third-party beneficiary hereof pursuant to Section 19.8(b), the Custodian and Paying Agent and (x) if such amendment relates to the Private Owner Pledged Account or the Qualifying Cash Collateral, the Private Owner, and (y) if such amendment relates to the Transferor (or any Existing Servicer), the Transferor, or (ii) if such written agreement relates solely to the Private Owner Pledged Account or, if applicable, any funds or Permitted Investments on deposit in, or credited to, such Account, the Initial Member, the Private Owner and the Paying Agent (with the consent of the PMN Agent, not to unreasonably be withheld).

Section 19.11 Headings. Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof. All section and paragraph references contained herein shall refer to sections and paragraphs in this Agreement unless otherwise specified.

Section 19.12 Non-petition. Notwithstanding anything in this Custodial Agreement to the contrary, the Bank, in its capacity as Custodian and/or Paying Agent hereunder, shall not, prior to the date which is one year and one day after the termination of this Agreement, institute or join, or join or assist any other Person in instituting or joining, (i) any Insolvency Proceeding with respect to the Company or the Private Owner or any of their respective Subsidiaries or (ii) any proceeding for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for, or for any substantial part of the property of, the Company or the Private Owner or any of their respective Subsidiaries, or for the ordering of the dissolution, winding-up or liquidation of the affairs of the Company or the Private Owner or any of their respective Subsidiaries.

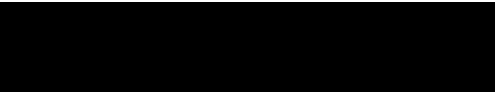
(remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Bank, the PMN Agent, the Initial Member, the Private Owner and the Company have each caused this Agreement to be executed as of the date first written above.

Company

CRE VENTURE 2011-2, LLC
a Delaware limited liability company


By: ColFin 2011-2 CRE Funding, LLC,
a Delaware limited liability company,
its Manager

By 
Name: Mark M. Hedstrom
Title: Vice President

[Signature Pages to Custodial and Paying Agency Agreement]


PMN Agent

**FEDERAL DEPOSIT INSURANCE
CORPORATION IN ITS CAPACITY AS
RECEIVER (AS DEFINED IN THE
AGREEMENT OF DEFINITIONS REFERRED
TO HEREIN), as PMN Agent**

By: 
Name: Jocelyn M. Spector
Title: Attorney in Fact

Initial Member

**FEDERAL DEPOSIT INSURANCE
CORPORATION IN ITS CAPACITY AS
RECEIVER (AS DEFINED IN THE
AGREEMENT OF DEFINITIONS REFERRED
TO HEREIN), as Initial Member**

By: 
Name: Jocelyn M. Spector
Title: Attorney in Fact

Private Owner

**COLFIN 2011-2 CRE FUNDING, LLC,
a Delaware limited liability company**

By: 
Name: Mark M. Hedström
Title: Vice President

[Signature Pages to Custodial and Paying Agency Agreement]

Bank

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**, a national banking association, as
the Bank

By: 

Name: Amy Moisenon

Title: Vice President

[Signature Pages to Custodial and Paying Agency Agreement]