

**EXECUTION**

**CUSTODIAL AND PAYING AGENCY AGREEMENT**

**by and among**

**MULTIBANK 2010-1 SFR VENTURE, LLC,**

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
in its corporate capacity, as Purchase Money Note Guarantor,**

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
in its capacity as Receiver for various failed financial institutions,  
as Collateral Agent**

**and**

**WELLS FARGO BANK, N.A.,  
as Bank**

Dated as of April 1, 2010

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## 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 April 1, 2010, by and among Multibank 2010-1 SFR Venture, LLC, a Delaware limited liability company (the “**Company**”), the Federal Deposit Insurance Corporation (acting in any capacity, the “**FDIC**”), in its corporate capacity, as the guarantor of the Purchase Money Note (as such term is defined below) (together with its successors and assigns, the “**Purchase Money Note Guarantor**”), the FDIC, in its capacity as the Receiver, as the Collateral Agent under the Reimbursement and Security Agreement (as such term is defined below) (in such capacity, or any successor collateral agent, the “**Collateral Agent**”), and Wells Fargo Bank, N.A., a national banking association, as Custodian and Paying Agent (the “**Bank**”).

### RECITALS

WHEREAS the FDIC was appointed receiver for the Failed Banks; and

WHEREAS the Failed Banks previously owned the Mortgage Loans as described on the Mortgage Loan Schedule; and

WHEREAS the FDIC, as receiver for the Failed Banks (the FDIC, in its separate capacities as receiver with respect to each such receivership, the “**Receiver**”), and the Company have entered into Contribution Agreement dated as of the Closing Date, pursuant to which the Receiver, in its capacity as the Initial Member, transferred all of its right, title, and interest in and to the Mortgage Loans to the Company partly as a capital contribution and partly as a sale and, in consideration for the transfer of the Mortgage Loans to the Company to the extent such transfer constitutes a sale, the Company has issued to the FDIC, as a Holder, the Purchase Money Note, dated of the Closing Date, in the aggregate principal face amount of \$137,449,238.00; and

WHEREAS, to provide support for the payment and performance of the Company’s obligations under the Purchase Money Note, the Purchase Money Note Guarantor entered into that certain Purchase Money Note Guaranty; and

WHEREAS, pursuant to the Reimbursement and Security Agreement dated as of the date Closing Date, by and among the Company, the Collateral Agent and the Purchase Money Note Guarantor, the Company has pledged the Mortgage Loans and other underlying collateral to the Collateral Agent for the benefit of the Purchase Money Note Guarantor, and the Reimbursement and Security Agreement requires that the Company retain a document custodian, meeting the requirements set forth in the Reimbursement and Security Agreement, to take possession of the Custodial Documents (as such term is defined below), in accordance with the terms and conditions hereof; and

WHEREAS the Initial Member and the Private Owner have entered into the LLC Operating Agreement dated as of the Closing Date; and

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 herein and to appoint the Bank as Custodian and Paying Agent (as such terms are defined below) to perform the services contemplated by this Agreement; and

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 and the Bank wish to enter into this Agreement to, among others, 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, certain terms used in this Agreement shall have the meaning and definitions set forth in that certain Agreement of Common Definitions dated as of the Closing Date among the Initial Member, the Company and others. In addition, for purposes of this Agreement, the following terms shall have the meanings and definitions hereinafter respectively set forth.

“**Accounts**” has the meaning given in Section 4.1(b).

“**Acquired Property Deed**” means the instrument or document required by the law of the jurisdiction in which the Acquired Property is located to convey fee title.

“**Acquired Property Files**” means, with respect to each Acquired Property, to the extent applicable, the following: (A) if the related Acquired Property Deed has been delivered for recordation, a copy thereof (which might be electronic) file-stamped with evidence of recording thereon in the name of the Ownership Entity, together with a certificate of the related servicer or the foreclosure attorney certifying that such Acquired Property Deed is a true, correct and complete copy of the original document, or (y) if the related Acquired Property Deed has been delivered for recordation but not yet returned, a copy thereof (which might be electronic) together with a certificate of the servicer or the foreclosure attorney certifying that such Acquired Property Deed is a true, correct and complete copy of the original document, and that the original Acquired Property Deed has been delivered to the proper recording office for recordation; (B) as applicable, either (x) a copy of each Acquired Property Deed (which might be electronic) that is intervening between the lender that obtained title to such property assets as a result of foreclosure or deed in lieu of foreclosure of a mortgage or deed of trust and the Ownership Entity, with the same certification documentation required in clause (A) above, or (y) the original or a copy of the assignment of foreclosure bid between the foreclosing lender and the Ownership Entity with respect to the related Acquired Property, and in the case of a copy, together with a certificate of the Servicer or the foreclosure attorney certifying that such assignment of foreclosure bid is a true, correct and complete copy of the original document, with the same certification documentation required in clause (A) above; (C) the original or copy policy of title insurance prior to foreclosure of the related mortgage loan accompanied by a title report

procured upon foreclosure of the related mortgage loan, with respect to the Acquired Property; and (D) for any Acquired Property that is subject to a lease, (x) a copy of the lease together with a certificate of the applicable servicer certifying that such lease is a true, correct and complete copy of the original document, and (y) if required by the Purchase Money Note Guarantor, the original assignment of such lease from the lessor thereunder to the Ownership Entity or a copy thereof together with a certificate of the applicable servicer certifying that such assignment is a true, correct and complete copy of the original document.

“**Agent Member**” means the members of, or participants in, DTC and the Clearing Agencies.

“**Agreement**” has the meaning given in the preamble.

“**Authorized Denominations**” has the meaning given in Section 2.5(b).

“**Authorized Representative**” means, with respect to any Person, each individual designated, in writing as required by Section 17.1, by such Person to the Custodian to act as an authorized representative of such Person for purposes of this Agreement.

“**Benefit Plan**” has the meaning given in Section 2.7(o)(iv).

“**Certificated Note**” has the meaning given in Section 2.4(a).

“**Clearing Agency**” means an organization registered as a “clearing agency” pursuant to Section 17A of the Exchange Act.

“**Clearstream**” means Clearstream Banking, *société anonyme*, a corporation organized under the laws of Grand Duchy of Luxembourg, or any successor thereto.

“**Closing**” means the consummation of the transactions contemplated in the Transferred LLC Interest Sale Agreement.

“**Collateral Certificate**” has the meaning given in Section 6.1(b).

“**Custodial Delivery Failure**” has the meaning given in Section 13.1(b).

“**Custodial Report**” means a report prepared by the Custodian, which shall be in a form acceptable to the Company, detailing, with respect to any Mortgage Loan that has been released by the Custodian, the following: (i) the borrower’s name and any identification number assigned to the Mortgage Loan, (ii) the location to which the Custodial Documents with respect to such Mortgage Loan were delivered by the Custodian and (iii) the date on which such Custodial Documents were released by the Custodian.

“**Debt Agreements**” has the meaning given in Section 2.2.

“**Depository**” or “**DTC**” means the Depository Trust Company, its nominees, and their respective successors.



“**Euroclear**” means Euroclear Bank S.A./N.V. as operator of the Euroclear System, and any successor thereto.

“**Exception**” means, with respect to any Mortgage Loan, any variance from the requirements of Section 6.1(c), including any missing Custodial Document and any document that does not meet the applicable requirements set forth in Section 6.1(c).

“**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended.

“**Exchange Date**” has the meaning given in Section 2.4(b).

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

“**Federal Reserve District**” means one of the twelve districts represented by a regional Federal Reserve Bank.

“**Final Disposition**” means with respect to any asset, any sale, assignment (excluding pledges or other assignments for collateral purposes), conveyance, transfer or other disposition thereof. The terms “**Finally Dispose**” and “**Finally Disposed of**” have correlative meanings.

“**Foreclosure Loss**” means any loss realized when the Company completes the foreclosure on a Mortgage Loan and realizes final recovery on any Underlying Collateral securing such Mortgage Loan through liquidation and recovery of all insurance proceeds.

“**Global Note**” has the meaning given in Section 2.4(a).

“**Holder**” means any Person or Persons whose name appears on the Purchase Money Note Register as the registered holder or holders of the Purchase Money Note.

“**Holder Percentage**” means, with respect to each Holder, a fraction (expressed as a percentage, carried out to the ninth decimal place), (i) the numerator of which is the outstanding principal amount of the Purchase Money Note for such Holder at such time and (ii) the denominator of which is the aggregate outstanding principal amount of the Purchase Money Note at such time.

“**Interest Proceeds**” means with respect to any Distribution Date, all amounts on deposit in the Distribution Account other than those items included in Principal Proceeds.

“**Liquidation Proceeds**” means cash proceeds of any foreclosure in respect of a defaulted Mortgage Loan, revenues received with respect to the conservation and disposition of a foreclosed property or Acquired Property, any other amounts received in connection with the liquidation of defaulted Mortgage Loans, whether through trustee’s sale, foreclosure sale or otherwise and any sale proceeds received in connection with a Final Disposition.

“**Loss**” means, in respect of any Mortgage Loan, the amount equal to (as applicable and without duplication): (a) with respect to any Mortgage Loan Finally Disposed of by the Company, the amount (if any) by which the Unpaid Principal Balance of such Mortgage Loan, all unpaid interest accrued thereon, and all Recovery Expenses related thereto (in each case as of

the date of the Final Disposition) exceeds the proceeds from such Final Disposition; (b) with respect to any Mortgage Loan maturing subsequent to the Cut-Off Date (including as a result of acceleration) as to which collection efforts have ceased, the amount (if any) by which the Unpaid Principal Balance of such Mortgage Loan, all interest accrued thereon, and all Recovery Expenses related thereto immediately prior to its maturity exceeds the principal payments and fees received by the Company in connection with its maturity; (c) the amount of any Foreclosure Loss in respect of such Mortgage Loan; or (d) the amount of any Short-Sale Loss in respect of such Mortgage Loan.

“**Loss Severity**” means, with respect to any Determination Date, the fraction, expressed as a percentage, the numerator of which is the aggregate of Losses incurred during the related Due Period and the denominator of which is the Unpaid Principal Balance (determined in each case immediately prior to liquidation) of the Mortgage Loans with respect to which such Losses were incurred.

“**Mortgage Loan Schedule and Exception List**” means a list of the Mortgage Loans and Acquired Property, identifying, with respect to each Mortgage Loan, each Exception, and that sets forth, with respect to any Mortgage Loan that has been released by the Custodian, the following: (i) the Borrower name and any identification number assigned to the Mortgage Loan, (ii) the location to which the Custodial Documents with respect to such Mortgage Loan were delivered by the Custodian, (iii) the date on which such Custodial Documents were released by the Custodian and (iv) the Person to which such Custodial Documents were released.

“**MERS Designated Mortgage Loan**” has the meaning given in the Electronic Tracking Agreement.

“**MERS Report**” means the schedule listing the MERS Designated Mortgage Loans and other information.

“**Non-Permitted Holder**” has the meaning given in Section 2.12(b).

“**Office**” has the meaning given in Section 6.1(a).

“**Performance Tests**” means collectively, the Severity Test and the Principal Reduction Test.

“**Prepaid Purchase Money Note**” has the meaning given in Section 2.8.

“**Principal Proceeds**” means with respect to any Distribution Date, (i) any and all proceeds received as principal payments on the Mortgage Loans during the related Due Period (excluding Permitted Investments purchased with Interest Proceeds), (ii) any and all proceeds received from sales or dispositions of any Mortgage Loans during such Due Period, and (iii) all Liquidation Proceeds (including any such proceeds attributed to unpaid interest thereon), insurance proceeds, condemnation payments, rental income, draws on additional collateral, including but not limited to letters of credit and guaranties, and forfeited deposits on contracts of sale received during such Due Period.

**“Principal Reduction Test”**: (i) shall be inapplicable for the period from the Closing Date to but not including the date of the first anniversary of the Closing Date; (ii) shall be satisfied for any Distribution Date in each period set forth below if the outstanding principal amount of the Purchase Money Note as of the Determination Date immediately prior to such Distribution Date does not exceed the percentage set forth below opposite such period of the original principal balance of the Purchase Money Note:

<u>Period</u>	<u>Percentage</u>
The date of the first anniversary of the Closing Date to but not including the date of the second anniversary of the Closing Date	90%
the date of the second anniversary of the Closing Date to but not including the date of the third anniversary of the Closing Date	80%
the date of the third anniversary of the Closing Date to but not including the date of the fourth anniversary of the Closing Date	70%
the date of the fourth anniversary of the Closing Date to but not including the date of the fifth anniversary of the Closing Date	60%
the date of the fifth anniversary of the Closing Date to but not including the date of the sixth anniversary of the Closing Date	50%
the date of the sixth anniversary of the Closing Date to but not including the date of the seventh anniversary of the Closing Date	40%
the date of the seventh anniversary of the Closing Date to but not including the date of the eighth anniversary of the Closing Date	30%
the date of the eighth anniversary of the Closing Date to but not including the date of the ninth anniversary of the Closing Date	20%
the date of the ninth anniversary of the Closing Date to but not including the date of the tenth anniversary of the Closing Date	10%

**“Purchase Money Note Guaranty Fee Rate”** is one percent (1.00%) per annum, computed on the basis of a 360-day year comprised of twelve 30-day months.

**“Purchase Money Note Guaranty Fee”** is the product of (a) one-twelfth (1/12<sup>th</sup>) of the Purchase Money Note Guaranty Fee Rate and (b) the aggregate unpaid principal balance of the Purchase Money Note on the related Determination Date.

**“Purchase Money Note Interest Rate”** is equal to 4.00% per annum, computed on the basis of a 360-day year comprised of twelve 30-day months.

**“Purchase Money Note Register”** and **“Purchase Money Note Registrar”** have the meanings given in Section 2.7(a).

**“Qualified Institutional Buyer”** means a “qualified institutional buyer” as defined in Rule 144A under the Securities Act.

**“Qualified Purchaser”** means a “qualified purchaser” within the meaning of Section 3(c)(7) of the Investment Company Act.

**“Receiver”** has the meaning given in the recitals.

**“Record Date”** means, with respect to any Distribution Date, the date on which the Holders entitled to receive a payment in respect of principal, interest or other amounts on such Distribution Date are determined, such being the Determination Date.

**“Recording Office”** means the appropriate recording office of the jurisdiction in which the Mortgaged Property is located with respect to any given Mortgage Loan (if such Mortgage Loan is not Acquired Property) or in which the Acquired Property is located.

**“Recovery Expenses”** means for any period, the amount of actual, reasonable and necessary out-of-pocket expenses paid to third parties (other than the Private Owner or any of its Affiliates) by or on behalf of the Company to recover amounts owed with respect to any Mortgage Loan as to which a Loss was incurred.

**“Regulation S”** means “Regulation S” promulgated pursuant to the Securities Act.

**“Regulation S Global Note”** has the meaning given in Section 2.4(b).

**“Reissued Purchase Money Note”** has the meaning given in Section 2.8.

**“Required Special Reserve Amount”** means an amount equal to \$2,000,000.00.

**“Review Procedures”** has the meaning given in Section 6.1(d).

**“Rule 144A Global Note”** has the meaning given in Section 2.4(c).

**“Rule 144A Information”** has the meaning given in Section 2.7(j).

**“Severity Test”** shall be satisfied for any Distribution Date if the average Loss Severity (weighted by the unpaid principal balance of the Loans with respect to which Losses were incurred during the applicable Due Period) for the immediately preceding three (3) Determination Dates does not exceed 80%.

“**Short-Sale Loss**” means any loss resulting from the Company’s agreement with a mortgagor to accept a payoff in an amount less than the balance due on any Mortgage Loan.

“**Supplemental Delivery Certificate**” has the meaning given in Section 6.1(d).

“**Temporary Global Note Notations**” has the meaning given in Section 2.4(b).

“**Temporary Regulation S Global Note**” has the meaning given in Section 2.4(b).

“**Termination**” has the meaning given in Section 8.1.

“**Transferee Certificate**” has the meaning given in Section 2.7(h).

“**Unrestricted Note**” has the meaning given in Section 2.4(d).

Section 1.2 Rules of Construction. This Agreement shall be construed and interpreted in accordance with the following:

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

(b) The term “or” is not exclusive.

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

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

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

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

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

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

## **ARTICLE II PAYING AGENT AND PURCHASE MONEY NOTE**

Section 2.1 Appointment of Paying Agent. Subject to the terms and conditions of this Agreement, the Company hereby appoints the Bank to perform the duties of 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 Purchase Money Note, the Purchase Money Note Guaranty, the Reimbursement and Security Agreement and the Account Control Agreement (the “**Debt Agreements**”) 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 the Purchase Money Note Guarantor or the Collateral 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.

(b) The Paying Agent shall retain the Debt Agreements 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 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 the Debt Agreements in the form attached hereto as Exhibit I from an Authorized Representative of the FDIC, the Paying Agent shall deliver the Debt Agreements to the FDIC in accordance with the instructions provided in such notice.

Section 2.3 Duties. The Paying Agent shall have no duties other than those specifically set forth or provided for in this Agreement and each Debt Agreement to which it is a party, and no implied covenants or obligations of the Paying Agent shall be read into this Agreement or any Debt Agreement or any related agreement to which it is a party. The Paying Agent shall have no obligation to inquire whether any request, instruction, certificate, direction, receipt, demand, consent, resolution, statement, 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 Note.

(a) Forms Generally. The form of the Purchase Money Note shall be as set forth in the applicable portion of Exhibit B hereto. The Purchase Money Note may have notations, legends or endorsements required by law, stock exchange rule or usage. Any Purchase Money Note issued shall be initially sold to the Receiver and may be initially issued in the form of one or more (i) certificated notes in definitive, fully registered form without interest coupons substantially in the form of Exhibit B-1 attached hereto (each, a “**Certificated Note**”), which shall be registered in the name of the owner or nominee thereof, duly executed by the Company as herein provided or (ii) a temporary or permanent (as applicable) global note in definitive, fully registered form without interest coupons substantially in the form of Exhibit B-2 attached hereto (each, a “**Global Note**”), which (I) shall be registered in the name of the Depository for such Global Note or Global Note or the nominee of such Depository and (II) shall be held by the Paying Agent as custodian for the Depository unless the Depository instructs otherwise.

(b) Regulation S Global Note. Subject to Section 2.4(d) below, if the Purchase Money Note is deemed to be initially sold outside the United States to non-U.S. Persons in accordance with Regulation S, and the purchaser of such Purchase Money Note wishes to take delivery of such Purchase Money Note in the form of beneficial interests in a Global Note, the purchaser shall receive beneficial interests in one or more temporary Global Notes in definitive, fully registered form without interest coupons, substantially in the form of Exhibit B-2 attached hereto (each, a “**Temporary Regulation S Global Note**”), which shall bear the following legend and other notations necessary for such temporary global notes (collectively, the “**Temporary Global Note Notations**”):

THIS PURCHASE MONEY NOTE IS A TEMPORARY GLOBAL NOTE FOR PURPOSES OF REGULATION S UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, THAT IS EXCHANGEABLE FOR A PERMANENT GLOBAL NOTE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH HEREIN AND IN THE CUSTODIAL AND PAYING AGENCY AGREEMENT REFERRED TO HEREIN.

On or after the 40th day after [ ]<sup>a</sup>, interests in this Temporary Regulation S Global Note may be exchanged (free of charge) for beneficial interests in a permanent Regulation S Global Note. The permanent Regulation S Global Note shall be so issued and delivered in exchange for only that portion of this Temporary Regulation S Global Note in respect of which there shall have been presented to the Depository by Euroclear or Clearstream a certification to the effect that it has received from or in respect of a person entitled to a beneficial interest (as shown by

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<sup>a</sup> Insert the date of initial sale of the Purchase Money Note under Regulation S.

its records) a certification that the beneficial interests in such Temporary Regulation S Global Note are owned by persons who are not U.S. Persons.

On an exchange of the whole of this Temporary Regulation S Global Note, this Temporary Regulation S Global Note shall be surrendered to the Depository at its office. On an exchange of only part of this Temporary Regulation S Global Note, details of such exchange shall be entered by or on behalf of the Issuer in Schedule A hereto. If, following the issue of a permanent Regulation S Global Note in exchange for a portion of the Purchase Money Note represented by this Temporary Regulation S Global Note, further Purchase Money Note are to be exchanged pursuant to this paragraph, such exchange may be effected, without the issue of a new permanent Regulation S Global Note, by the Issuer or the Depository endorsing Schedule A of the permanent Regulation S Global Note previously issued to reflect an increase in the aggregate principal amount of such permanent Regulation S Global Note by an amount equal to the aggregate principal amount of an additional Purchase Money Note to be exchanged.

On or after the first Business Day following the 40th day after such initial sale of such Purchase Money Note (the “**Exchange Date**”), upon certification that the beneficial interests in such Temporary Regulation S Global Note are owned by Persons who are not U.S. Persons, such Temporary Regulation S Global Note shall be exchanged for a permanent Global Note of like aggregate principal amount in definitive, fully registered form without interest coupons, substantially in the form of Exhibit B-2 attached hereto (each, a “**Regulation S Global Note**”), which shall not bear the Temporary Global Note Notations.

(c) Rule 144A Global Note. Subject to Section 2.4(d) below, if a Purchase Money Note is deemed to be initially sold to any U.S. Person that is a Qualified Institutional Buyer and a Qualified Purchaser and the purchasers of such Purchase Money Note wish to take delivery of such Purchase Money Note in the form of beneficial interests in a Global Note, those purchasers shall receive beneficial interests in a temporary Global Note in definitive, fully registered form without interest coupons, substantially in the form of Exhibit B-2 attached hereto, which shall be registered in the name of the owner or nominee thereof, duly executed by the Company as set forth herein (each, a “**Rule 144A Global Note**”).

(d) If at any time the Purchase Money Note Guarantor determines that the Purchase Money Note is exempt from the registration requirements of the Securities Act (the “**Unrestricted Note**”), then (i) if such determination occurred prior to the issuance of such Purchase Money Note, such Purchase Money Note shall be issued in the form of an Unrestricted Note which shall be substantially in the form of the relevant portion of Exhibit B attached hereto and (ii) if such determination occurred after the issuance of such Purchase Money Note and such Purchase Money Note is represented by a Restricted Note, then such Restricted Note shall become exchangeable for an Unrestricted Note.

(e) OID Legend. To the extent required by Sections 1272, 1273 and 1275 of the Code, and any regulations issued regarding such elections, the 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 FEDERAL DEPOSIT INSURANCE CORPORATION AT 550 17TH STREET, N.W., ROOM F-7014, WASHINGTON, D.C. 20429, ATTENTION: [\_\_\_\_], AND THE FDIC WILL PROVIDE YOU WITH THE ISSUE PRICE AND THE YIELD TO MATURITY OF THIS PURCHASE MONEY NOTE.

Section 2.5 Authorized Amount; Stated Maturity; Denominations; Prepayment

(a) The aggregate face amount of the Purchase Money Note that may be executed and delivered under this Agreement is limited to U.S.\$137,449,238.00 except for a Purchase Money Note executed and delivered upon registration of transfer of, or in exchange for, or in lieu of, another Purchase Money Note pursuant to Section 2.7, 2.8 or 2.9 of this Agreement.

The Purchase Money Note shall be issuable in minimum denominations of U.S.\$500,000 and integral multiples of U.S.\$1,000 in excess thereof (except that one Purchase Money Note may be issued in a different amount which must be in excess of the minimum denomination) (each such denomination, an “**Authorized Denomination**”)

(b) . Any interest in a Purchase Money Note equal to or in excess of the applicable minimum denomination at the time of the issuance thereof that ceases or fails to be such minimum or multiple as a result of the repayment of principal may be transferred in its entirety.

Section 2.6 Execution, Delivery and Dating

(a) The Purchase Money Note shall be executed on behalf of the Company by one of the Authorized Representatives of the Company. The signature of such Authorized Representative on the Purchase Money Note may be manual or facsimile.

(b) A Purchase Money Note 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 Note or did not hold such offices at the date of issuance of such Purchase Money Note.

(c) The Purchase Money Note executed and delivered by the Company on the Closing Date shall be dated as of the Closing Date. Any other Purchase Money Note that is executed and delivered after the Closing Date for any other purpose under this Agreement shall be dated the date of its execution.

(d) A Purchase Money Note issued upon transfer, exchange or replacement of another Purchase Money Note shall be issued in Authorized Denominations reflecting the original aggregate principal or face amount of the Purchase Money Note so transferred,

exchanged or replaced, but shall represent only the current outstanding principal or face amount of the Purchase Money Note so transferred, exchanged or replaced. In the event that the Purchase Money Note is divided into more than one Purchase Money Note in accordance with this Article II, the original principal or face amount of such Purchase Money Note shall be proportionately divided among the Purchase Money Notes delivered in exchange therefor and such proportionate amount shall be deemed to be the original aggregate principal or face amount of such subsequently issued Purchase Money Note.

Section 2.7 Registration, Registration of Transfer and Exchange.

(a) The Company shall cause to be kept a register (the “**Purchase Money Note 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 the Purchase Money Note. The Paying Agent is hereby initially appointed “**Purchase Money Note Registrar**” for the purpose of registering the Purchase Money Note and transfers of such Purchase Money Note as herein provided. Upon any resignation or removal of the Purchase Money Note 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 Note Registrar, the Company will give the Paying Agent and the Purchase Money Note Guarantor prompt notice of the appointment of a Purchase Money Note Registrar and of the location, and any change in the location, of the Purchase Money Note Registrar, and the Paying Agent shall have the right to inspect the Purchase Money Note 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 Note Registrar by an officer thereof as to the names and addresses of the Holders of the Purchase Money Note and the principal or face amounts and numbers of such Purchase Money Note. Upon written request at any time, the Purchase Money Note Registrar promptly shall provide to the Company or the Collateral Agent a current list of Holders as reflected in the Purchase Money Note Register.

(c) Subject to this Section 2.7, upon surrender to the Purchase Money Note Registrar for registration of transfer of any Purchase Money Note, the Purchase Money Note 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 Note of any Authorized Denomination and of like terms and a like aggregate principal or face amount. The Company shall furnish a copy of the executed Purchase Money Note to the Purchase Money Note Registrar.

(d) At the option of a Holder, the Purchase Money Note may be exchanged for one or more Purchase Money Notes of like terms, in any Authorized Denominations and of like aggregate principal or 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 Note Registrar for exchange, the Purchase Money Note Registrar shall prepare, and the Company shall execute and deliver, the Purchase Money Note that the Holder making the exchange is entitled to receive and shall deliver a copy of such executed Purchase Money Note to the Purchase Money Note Registrar.

(e) All Purchase Money Note issued upon any registration of transfer or exchange of such Purchase Money Note shall be the valid obligations of the Company, evidencing the same debt (to the extent they evidence debt), and entitled to the same benefits under this Agreement, as the Purchase Money Note 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 Note Registrar duly executed by the Holder thereof or his 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 Note, 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.

The Restricted Note may only be sold or resold, as the case may be, (i) outside the United States to non-U.S. Persons in accordance with Regulation S, (ii) within the United States and to U.S. Persons that are both (A) Qualified Institutional Buyers and (B) Qualified Purchasers or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act. An Unrestricted Note may only be sold or resold, as the case may be, to persons who are Qualified Purchasers.

The Paying Agent shall require, prior to any sale or other transfer of a Restricted Note, that the Holder’s prospective transferee 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**”).

(i) 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.

(j) 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 Holder, the Paying Agent, on behalf of the Company, shall promptly furnish to such Holder or to a prospective purchaser of any Purchase Money Note designated by such Holder the information required to be delivered to Holders 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 Holder with Rule 144A in connection with the

resale of such Purchase Money Note by such Holder. 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 Holders or prospective purchasers, at and pursuant to the Company's written direction, the foregoing materials prepared and provided by the Company; provided 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).

(k) So long as any Certificated Note that also is a Restricted Note remains outstanding, transfers and exchanges of such Certificated Note, in whole or in part, shall only be made in accordance with this Section 2.7(k) and Section 2.7(l). So long as any Global Note which is also a Restricted Note remains outstanding and is held by or on behalf of the Depository, transfers and exchanges of such Global Note, in whole or in part, shall only be made in accordance with this Section 2.7(k) and Section 2.7(l). For the avoidance of doubt, this Section 2.7(k) and Section 2.7(l) shall not apply to a Certificated Note and a Global Note that also are Unrestricted Note, the transfer of which shall be governed by Section 2.7(m).

(i) Rule 144A Global Note to Temporary Regulation S Global Note or Regulation S Global Note. If a Holder of a beneficial interest in a Rule 144A Global Note deposited with the Depository wishes at any time to exchange such Rule 144A Global Note for an interest in the corresponding Temporary Regulation S Global Note or Regulation S Global Note, or to transfer such interest in such Rule 144A Global Note to a Person who wishes to take delivery thereof in the form of an interest in the corresponding Temporary Regulation S Global Note or Regulation S Global Note, such Holder, provided that such Holder or, in the case of a transfer, the transferee is not a U.S. Person, subject to the rules and procedures of the Depository, may exchange or transfer, or cause the exchange or transfer of, such interest for an equivalent beneficial interest in the corresponding Temporary Regulation S Global Note or Regulation S Global Note. Upon receipt by the Purchase Money Note Registrar of (A) instructions given in accordance with the Depository's procedures from an Agent Member directing the Purchase Money Note Registrar to credit or cause to be credited a beneficial interest in the corresponding Temporary Regulation S Global Note or Regulation S Global Note, but not less than the Authorized Denomination applicable to such Holder's Purchase Money Note, in an amount equal to the beneficial interest in the Rule 144A Global Note to be exchanged or transferred, (B) a written order, in accordance with the Depository's procedures, containing information regarding the participant account of the Depository and the Euroclear or Clearstream account to be credited with such increase, (C) a certificate in the form of Exhibit C-1 attached hereto given by the Holder of such beneficial interest stating that the exchange or transfer of such note has been made in compliance with the transfer restrictions applicable to the Global Note, including that the Holder or the transferee, as applicable, is not a U.S. Person, and that such transfer has been made pursuant to and in accordance with Regulation S and (D) in the case of a transfer, a certificate in the form of Exhibit C-2 attached hereto given by the proposed transferee stating that it is not a U.S. Person, then the Purchase Money Note Registrar shall approve the instruction at the Depository to reduce the principal amount of the Rule 144A Global Note and to increase the principal amount of the Temporary Regulation S Global Note or Regulation S Global Note,

as the case may be, by the outstanding principal amount of the beneficial interest in the Rule 144A Global Note to be transferred or exchanged and to credit or cause to be credited to the securities account of the Person specified in such instructions a beneficial interest in the corresponding Temporary Regulation S Global Note or Regulation S Global Note equal to the reduction in the principal amount of the Rule 144A Global Note.

(ii) Temporary Regulation S Global Note or Regulation S Global Note to Rule 144A Global Note. If a Holder of a beneficial interest in a Temporary Regulation S Global Note or Regulation S Global Note deposited with the Depository wishes at any time to exchange its interest in such Temporary Regulation S Global Note or Regulation S Global Note for an interest in the corresponding Rule 144A Global Note or to transfer its interest in such Temporary Regulation S Global Note or Regulation S Global Note to a Person who wishes to take delivery thereof in the form of an interest in the corresponding Rule 144A Global Note, such Holder, subject to the rules and procedures of Euroclear, Clearstream and/or the Depository, as the case may be, may exchange or transfer, or cause the exchange or transfer of such interest for an equivalent beneficial interest in the corresponding Rule 144A Global Note. Upon receipt by the Purchase Money Note Registrar of (A) instructions from Euroclear, Clearstream and/or the Depository, as the case may be, directing the Purchase Money Note Registrar to cause to be credited a beneficial interest in the corresponding Rule 144A Global Note in an amount equal to the beneficial interest in such Temporary Regulation S Global Note or Regulation S Global Note, but not less than the Authorized Denomination applicable to such Holder's Purchase Money Note, to be exchanged or transferred, 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-3 attached hereto given by the Holder of such beneficial interest and stating, among other things, that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and is also a Qualified Purchaser or, in the case of a transfer, the Person transferring such interest in such Temporary Regulation S Global Note or Regulation S Global Note reasonably believes that the Person acquiring such interest in a 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-4 attached hereto given by the proposed transferee stating that it is a Qualified Institutional Buyer and a Qualified Purchaser, then the Purchase Money Note Registrar shall instruct the Depository to reduce, or cause to be reduced, the principal amount of the Temporary Regulation S Global Note or Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Temporary Regulation S Global Note or Regulation S Global Note to be transferred or exchanged and the Purchase Money Note Registrar shall approve the instruction at the Depository, concurrently with such reduction, to credit or cause to be credited to the securities account of the Person specified in such instructions a beneficial interest in the corresponding Rule 144A Global Note equal to the reduction in the outstanding principal amount of the Temporary Regulation S Global Note or Regulation S Global Note.

(iii) Rule 144A Global Note to Certificated Note. If a Holder of a beneficial interest in 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, such Holder may, subject to the rules and procedures of the Depository,

transfer or cause the transfer of such interest for an equivalent principal amount of one or more such Certificated Note as described below. Upon receipt by the Purchase Money Note 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 Note, designating the registered name or names, address, payment instructions, and principal amounts of the Certificated Note to be executed and delivered (the aggregate outstanding principal amounts of such Certificated Note being equal to the outstanding principal amount of the Rule 144A Global Note to be transferred), in Authorized Denominations and (B) a certificate in the form of Exhibit C-5 hereto given by the transferee of such beneficial interest, then the Purchase Money Note Registrar shall instruct the Depository to reduce, or cause to be reduced, the applicable Rule 144A Global Note by the aggregate principal amount of the beneficial interest in such Rule 144A Global Note to be transferred and the Purchase Money Note Registrar shall record the transfer in the Purchase Money Note Register in accordance with Section 2.7(a) and authenticate and deliver one or more Certificated Note registered in the names specified in the certificate described in clause (B) above in principal amounts designated by the transferee (the aggregate of such amounts being equal to the beneficial interest in the Rule 144A Global Note to be transferred) and in Authorized Denominations.

If a Holder of a beneficial interest in a Rule 144A Global Note wishes at any time to exchange such interest in a Rule 144A Global Note for one or more Certificated Note, such Holder may exchange or cause the exchange of such interest for an equivalent principal amount of one or more such Certificated Note as provided below. Upon receipt by the Purchase Money Note 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 Certificated Note, (B) a certificate in the form of Exhibit C-5 hereto given by the Holder of such beneficial interest and (C) written instructions from such Holder designating the registered name or names, address and payment instructions of such Holder and principal amounts of the applicable Certificated Note to be executed and delivered to such Holder (the aggregate outstanding principal amounts of such Certificated Note being the same as the beneficial interest in the Rule 144A Global Note to be exchanged), then the Purchase Money Note Registrar shall instruct the Depository to reduce the Rule 144A Global Note by the outstanding principal amount of the beneficial interest in the Rule 144A Global Note to be exchanged, shall record the exchange in the Purchase Money Note Register in accordance with Section 2.7(a) and authenticate and deliver one or more Certificated Note registered as specified in the instructions described in clause (A) above, in Authorized Denominations.

(iv) Temporary Regulation S Global Note or Regulation S Global Note to Certificated Note. If a Holder of a beneficial interest in a Temporary Regulation S Global Note or Regulation S Global Note wishes at any time to transfer its interest in such Temporary Regulation S Global Note or Regulation S Global Note to a Person who wishes to take delivery thereof in the form of a Certificated Note, such Holder may, subject to the rules and procedures of Euroclear and/or Clearstream, as the case may be, transfer or cause the transfer of such interest for an equivalent principal amount of one or more such Certificated Note as described below. Upon receipt by the Purchase Money Note Registrar of (A) instructions from Euroclear and/or Clearstream, as the case may be, directing the Paying Agent to deliver one or more such Certificated Note, designating the registered name or names, address, payment instructions, the principal amounts of the Certificated Note to be executed and delivered (the aggregate

outstanding principal amounts of such Certificated Note being equal to the outstanding principal amount of the Temporary Regulation S Global Note or Regulation S Global Note to be transferred), in Authorized Denominations and, (B) a certificate in the form of Exhibit C-5 hereto given by the transferee of such beneficial interest, then the Purchase Money Note Registrar shall instruct the Depository to reduce, or cause to be reduced, the corresponding Temporary Regulation S Global Note or Regulation S Global Note by the aggregate principal amount of the beneficial interest in such Temporary Regulation S Global Note or Regulation S Global Note to be transferred and the Purchase Money Note Registrar shall record the transfer in the Purchase Money Note Register in accordance with Section 2.7(a) and authenticate and deliver one or more Certificated Notes registered in the names specified in the certificate described in clause (B) above in principal amounts designated by the transferee (the aggregate of such amounts being equal to the beneficial interest in the Temporary Regulation S Global Note or Regulation S Global Notes to be transferred) and in Authorized Denominations.

If a Holder of a beneficial interest in a Temporary Regulation S Global Note or Regulation S Global Note wishes at any time to exchange such interest in a Temporary Regulation S Global Note or Regulation S Global Note for one or more Certificated Notes, such Holder may exchange or cause the exchange of such interest for an equivalent beneficial interest in one or more such Certificated Notes as provided below. Upon receipt by the Purchase Money Note Registrar of (A) instructions from Euroclear and/or Clearstream, as the case may be, directing the Paying Agent to deliver one or more Certificated Notes, (B) a certificate in the form of Exhibit C-5 hereto given by the Holder of such beneficial interest and (C) written instructions from such Holder designating the registered name or names, address and payment instructions of such Holder and the principal amounts of the applicable Certificated Notes to be executed and delivered to such Holder (the aggregate outstanding principal amounts of such Certificated Notes being the same as the beneficial interest in the Temporary Regulation S Global Note or Regulation S Global Note to be exchanged), then the Purchase Money Note Registrar shall instruct the Depository to reduce the Temporary Regulation S Global Note or Regulation S Global Note by the aggregate principal amount of the beneficial interest in the Temporary Regulation S Global Note or Regulation S Global Note to be exchanged, shall record the exchange in the Purchase Money Note Register in accordance with Section 2.7(a) and authenticate and deliver one or more Certificated Notes registered as specified in the instructions described in clause (A) above, in Authorized Denominations.

(l) So long as a Certificated Note which is also a Restricted Note remains outstanding, transfers of such Certificated Note, in whole or in part, shall only be made in accordance with this Section 2.7(l). For the avoidance of doubt, this Section 2.7(l) shall not apply to any Certificated Note which is also an Unrestricted Note, the transfer of which shall be governed by Section 2.7(m).

(i) Certificated Note to Temporary Regulation S Global Note or Regulation S Global Note. If a Holder of a Purchase Money Note represented by a Certificated Note wishes to exchange such Certificated Note for an interest in the corresponding Temporary Regulation S Global Note or Regulation S Global Note, or to transfer such Certificated Note to a Person who wishes to take delivery thereof in the form of an interest in the corresponding Temporary Regulation S Global Note or Regulation S Global Note, such Holder may exchange or transfer, or cause the exchange or transfer of, such Purchase Money Note for an equivalent

beneficial interest in the corresponding Temporary Regulation S Global Note or Regulation S Global Note, provided that such proposed transferee or the Person requesting such exchange, as applicable, is not a U.S. person. Upon receipt by the Purchase Money Note 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 Temporary Regulation S Global Note or Regulation S Global Note in an amount equal to the principal amount of such Certificated Note, (B) a written order containing information regarding the Euroclear or Clearstream account to be credited with such increase, (C) a certificate in the form of Exhibit C-6 hereto, given by the Holder of such Certificated Note stating that the exchange or transfer of such interest has been made in compliance with the transfer restrictions applicable to the Temporary Regulation S Global Note or Regulation S Global Note, including that the proposed transferee or the Person requesting such exchange, as the case may be, is not a U.S. Person and that the proposed transfer is being made pursuant to and in accordance with Regulation S and (D) in the case of a transfer, a certificate in the form of Exhibit C-2 hereto given by the proposed transferee stating that it is not a U.S. person, 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 instruct the Depository to increase the principal amount of the Temporary Regulation S Global Note or Regulation S Global Note by the aggregate principal amount of the Certificated Note to be exchanged or transferred, and to credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Temporary Regulation S Global Note or Regulation S Global Note equal to the amount specified in the instructions received pursuant to clause (A) above. Notwithstanding anything else in this Section 2.7(l)(i), prior to the Exchange Date a Certificated Note may only be exchanged or transferred for an equivalent beneficial interest in the corresponding Temporary Regulation S Global Note.

(ii) Certificated Note to Rule 144A Global Note. If a Holder of a Certificated Note wishes to exchange its interest in such Certificated Note for an interest in the corresponding Rule 144A Global Note, or to transfer its interest in such Certificated Note to a Person who wishes to take delivery thereof in the form of an interest in the corresponding Rule 144A Global Note, such Holder may exchange or transfer, or cause the exchange or transfer of, such Certificated Note for an equivalent beneficial interest in the corresponding Rule 144A Global Note, provided 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 in an amount equal to the principal 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-7 hereto given by the Holder of such Certificated Note and stating that, in the case of an exchange, the Holder is a Qualified Institutional Buyer and is also 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-4 hereto given 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 in the Purchase Money Notes Registrar 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 equal to the amount specified in the instructions received pursuant to clause (A) above.

(iii) 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-8 attached hereto given 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 principal amounts designated by the transferee (the aggregate of such principal amounts being equal to the aggregate principal amount of the Certificated Notes surrendered by the transferor), and in Authorized Denominations.

If a Holder of one or more Certificated Notes wishes at any time to exchange such Certificated Notes for one or more Certificated Notes of different outstanding principal 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 principal amounts of the Certificated Notes to be issued (the aggregate outstanding principal amounts being equal to the outstanding principal 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 outstanding principal amounts designated by such Holder and in Authorized Denominations.

(m) A Holder of a Certificated Note that also is an Unrestricted Note may at any time exchange such Certificated Note for a beneficial interest in a Global Note which is also an Unrestricted Note or transfer such Certificate Note to a Person who wishes to take delivery thereof in the form of an interest in the corresponding Global Note. A Holder of a beneficial interest in a Global Note which is also an Unrestricted Note may at any time exchange such beneficial interest for a Certificated Note which is also an Unrestricted Note or transfer such beneficial interest to a Person who wishes to take delivery thereof in the form of a corresponding Certificate Note.

(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 to this Agreement 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, shall, after due execution by the Company deliver Purchase Money Notes that do not bear such applicable legend.

(o) Each Person who becomes a beneficial owner of a Purchase Money Note represented by an interest in a Rule 144A Global Note will be deemed to have represented and agreed as follows:

(i) Such beneficial owner (A) is a Qualified Institutional Buyer and is acquiring such Purchase Money Notes in reliance on the exemption from Securities Act registration provided by Rule 144A thereunder, (B) is a Qualified Purchaser and (C) understands such Purchase Money Notes will bear a legend set forth in the applicable exhibit attached hereto and be represented by either one or more Rule 144A Global Notes. In addition, it represents and warrants that it (S) was not formed for the purpose of investing in the Company (except when each beneficial owner of the purchaser is a Qualified Purchaser), (T) has received the necessary consent from its beneficial owners if the purchaser is a private investment company formed before April 30, 1996, (U) is not a broker-dealer that owns and invests on a discretionary basis less than U.S.\$25,000,000 in securities of unaffiliated issuers, (V) 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, (W) will provide notice to any subsequent transferee of the transfer restrictions provided in the legend, (X) will hold and transfer Purchase Money Notes in an amount of not less than U.S.\$500,000 for it or for each account for which it is acting, (Y) will provide the Company and Paying Agent from time to time such information as it may reasonably request in order to ascertain compliance with this Clause (i) and (Z) the investor understands that the Company may receive a list of participants holding positions in its securities from one or more book entry depositories.

(ii) Such beneficial owner understands that such Purchase Money Note is 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 Note has not been and will not be registered under the Securities Act and, if in the future such beneficial owner decides to offer, resell, pledge or otherwise transfer such Purchase Money Note, such Purchase Money Note may be offered, resold, pledged or otherwise transferred only in accordance with the provisions of this Agreement and the legend on such Purchase Money Note. Such beneficial owner 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 any Purchase Money Note.

(iii) In connection with the purchase of such Purchase Money Notes, (A) the Company is not acting as a fiduciary or financial or investment advisor for such

beneficial owner; (B) such beneficial owner is not relying (for purposes of making any investment decision or otherwise) upon any advice, counsel or representations (whether written or oral) of the Company or the Receiver or any of their agents (in their capacities as such), other than any statements in a current offering circular for such Purchase Money Notes and any representations expressly set forth in a written agreement with such party; (C) such beneficial owner has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisers to the extent it has deemed necessary and has made its own investment decisions based upon its own judgment and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the Company or the Receiver; (D) such beneficial owner's purchase of the Purchase Money Notes will comply with all applicable laws in any jurisdiction in which it resides or is located; (E) such beneficial owner is acquiring the Purchase Money Notes as principal solely for its own account for investment and not with a view to the resale, distribution or other disposition thereof in violation of the Securities Act; (F) such beneficial owner has made investments prior to the date hereof and was not formed solely for the purpose of investing in the Purchase Money Notes; (G) such beneficial owner is not a (1) partnership, (2) common trust fund or (3) special trust, pension, profit sharing or other retirement trust fund or plan in which the partners, beneficiaries or participants may designate the particular investments to be made; (H) such beneficial owner may not hold any Purchase Money Note for the benefit of any other Person, it will at all times be the sole beneficial owner thereof for purposes of the Investment Company Act and all other purposes and it will not sell participation interests in the Purchase Money Notes or enter into any other arrangement pursuant to which any other Person will be entitled to a beneficial interest in the distributions on the Purchase Money Notes; (I) all securities of the Company purchased and held directly or indirectly by such beneficial owner have a value in the aggregate of no more than 40% of its total assets or capital (exclusive of government securities and cash items) on an unconsolidated basis; and (J) it is a sophisticated investor and is purchasing the Purchase Money Notes with a full understanding of all of the terms, conditions and risks thereof, and it is capable of assuming and willing to assume those risks.

(iv) On each day from the date on which such beneficial owner acquires the Purchase Money Notes (or any interest therein) through and including the date on which such beneficial owner disposes of its interests in such Purchase Money Note, either that (A) such beneficial owner 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 non-U.S., federal, state or local law that is similar to the provisions of Section 406 of ERISA or Section 4975 of the Code (any plan, account or arrangement described in this clause (A), a "**Benefit Plan**") or (B) such beneficial owner's acquisition, holding (including, without limitation, the exercise of rights thereunder) and disposition of such Purchase Money Note (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 any substantially similar foreign, federal, state or local law).

(v) Such beneficial owner understands that this Agreement permits the Company to demand that any Holder of Rule 144A Global 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, to sell the Purchase Money Notes (a) to a Person who is both (1) a Qualified Institutional Buyer and (2) a Qualified Purchaser in a transaction meeting the requirements of Rule 144A or another applicable exemption from the registration requirements of the Securities Act or (b) to a Person who will take delivery in the form of an interest in a Temporary Regulation S Global Note or Regulation S Global Note and who is not a U.S. Person in a transaction meeting the requirements of Regulation S and, if the Holder does not comply with such demand within 30 days thereof, the Company may sell such Holder's interest in the Purchase Money Note in accordance with and pursuant to the terms of this Agreement.

(vi) Such beneficial owner 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, 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.

(vii) Such beneficial owner, if it is not a "United States person", as such term is defined in Section 7701(a)(30) of the Code, 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.

(viii) Such beneficial owner is aware that, except as provided in this Agreement, the Purchase Money Notes sold to it 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.

(ix) Such beneficial owner 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.

(x) Such beneficial owner understands that the Company, the Paying Agent and the Receiver, their respective Affiliates and their counsel will rely upon the accuracy and truth of the foregoing representations, and it hereby consents to such reliance.

(xi) Such beneficial owner 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.

(xii) If such beneficial owner is acquiring the Purchase Money Notes from an existing Holder, such beneficial owner has satisfied and will satisfy all applicable registration and other requirements of the FRB in connection with its acquisition of the Purchase Money Notes.

(p) Each Person who becomes a beneficial owner of Purchase Money Notes represented by an interest in a Temporary Regulation S Global Note or Regulation S Global Note

will be deemed to have made the representations set forth in clauses (ii), (iii), (iv), (vi), (vii), (viii), (ix) and (x) above and will be deemed to have further represented and agreed as follows:

(i) Such beneficial owner is aware that the sale of Purchase Money Notes to it is being made in reliance on the exemption from registration provided by Regulation S under the Securities Act and understands that the Purchase Money Notes offered in reliance on Regulation S under the Securities Act will bear a legend set forth in the applicable Exhibit attached hereto and be represented by one or more Temporary Regulation S Global Notes or Regulation S Global Notes. The Purchase Money Notes so represented may not at any time be held by or on behalf of U.S. Persons as defined in Regulation S under the Securities Act. It and each beneficial owner of the Purchase Money Notes that it holds is not, and will not be, a U.S. Person as defined in Regulation S under the Securities Act or a U.S. resident within the meaning of the Investment Company Act, and its purchase of the Purchase Money Notes will comply with all applicable laws in any jurisdiction in which it resides or is located.

(ii) Such beneficial owner understands that this Agreement permits the Company to demand that any Holder of Regulation S Global Notes who is determined to be a U.S. Person to sell the Purchase Money Notes (A) to a Person who is not a U.S. Person in a transaction meeting the requirements of Regulation S or (B) to a Person who will take delivery of the Holder's Temporary Regulation S Global Notes or Regulation S Global Notes, as applicable, in the form of an interest in a Rule 144A Global Note or a Certificated Note and who is both a Qualified Institutional Buyer and a Qualified Purchaser, in a transaction meeting the requirements of Rule 144A or another applicable exemption from the registration requirements of the Securities Act and, if the Holder does not comply with such demand within 30 days thereof, the Company may sell such Holder's interest in the Purchase Money Note in accordance with and pursuant to the terms of this Agreement.

(iii) A Holder of a beneficial interest in a Temporary Regulation S Global Note must provide Euroclear or Clearstream or the participant organization through which it holds such interest, as the case may be, with a certificate certifying that the beneficial owner of the interest in the Temporary Regulation S Global Note is a non-U.S. Person, and Euroclear or Clearstream, as the case may be, must provide to the Paying Agent a certificate to such effect, prior to (A) the payment of principal with respect to such Holder's beneficial interest in the Temporary Regulation S Global Note and (B) any exchange of such beneficial interest for a beneficial interest in a Regulation S Global Note.

(iv) Such beneficial owner is aware that, except as otherwise provided in this Agreement, the Purchase Money Notes being sold to it, if any, in reliance on Regulation S will be represented by one or more Temporary Regulation S Global Notes or Regulation S Global Notes and that in each case beneficial interests therein may be held only through Euroclear or Clearstream.

(v) Such beneficial owner does not have its principal place of business in any Federal Reserve District of the FRB, or it has satisfied and will satisfy all applicable registration and other requirements of the FRB in connection with its acquisition of the Purchase Money Notes

(vi) On each day from the date on which such beneficial owner acquires any Temporary Regulation S Global Note or Regulation S Global Note (or any interest therein) through and including the date on which such beneficial owner disposes of its interests in such Temporary Regulation S Global Note or Regulation S Global Note, either that (A) such beneficial owner is not, and is not acting on behalf of, or using the assets of any Benefit Plan, or (B) such beneficial owner's acquisition, holding (including, without limitation, the exercise of rights thereunder) and disposition of such Purchase Money Note (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 any substantially similar foreign, federal, state or local law).

(q) The provisions of the "Operating Procedures of the Euroclear System" of Euroclear and the "Terms and Conditions Governing Use of Participants" of Clearstream, respectively, shall be applicable to the Temporary Regulation S Global Notes and Regulation S Global Notes insofar as interests in such Global Notes are held by the Agent Members of Euroclear or Clearstream, as the case may be.

(r) Agent Members shall have no rights under this Agreement with respect to any 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 Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein 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 Global Note.

(s) Notwithstanding any provision to the contrary herein, 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.

(t) 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.

(u) 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.

(v) Notwithstanding anything contained herein 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; provided 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.

(w) 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 Note 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 the Purchase Money Note. The Company, at the direction of the Purchase Money Note Guarantor, may prepay the entire unpaid principal balance of the Purchase Money Note (such prepaid Purchase Money Note, the “**Prepaid Purchase Money Note**”) and reissue a new Purchase Money Note (such reissued Purchase Money Note, a “**Reissued Purchase Money Note**”) to the Receiver (or its assignee) with terms and conditions, other than the Purchase Money Note Interest Rate, substantially similar to the terms and conditions of the Prepaid Purchase Money Note; provided, however, that (x) (i) the maturity date of such Reissued Purchase Money Note shall not be later than the tenth anniversary of the Closing Date and (ii) the outstanding principal amount of such Reissued Purchase Money Note at the time of its issuance shall be equal to the then outstanding principal amount of the related Maturing Purchase Money Note and (y) no modification contained in such Reissued Purchase Money Note shall adversely affect (i) the amount or timing of distributions to the Private Owner pursuant to the Priority of Payments or (ii) any other rights or obligations of the Private Owner pursuant to this Agreement or any Ancillary Document (other than the Purchase Money Note). Simultaneously with the issuance of any Reissued Purchase Money Note, the Company shall use the proceeds of such Reissued Purchase Money Note to prepay the Holders of the Prepaid Purchase Money Note in accordance with their Holder Percentages. The Reissued Purchase Money Note shall be subject to all of the terms and conditions of this Agreement and the Reimbursement and Security Agreement.

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

(a) If (i) any mutilated or defaced Purchase Money Note is surrendered to a 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 the same date of issuance) and equal principal or face amount registered in the same manner, dated the date of its authentication, bearing interest from the date to which interest has been paid on the mutilated, defaced, destroyed, lost or stolen Purchase Money Note 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 Note 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 under 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 hereunder.

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 Note.

#### Section 2.10 Payments with Respect to the Purchase Money Note.

(a) All reductions in the principal amount of a Purchase Money Note (or one or more predecessor Purchase Money Notes) effected by payments and prepayments of principal shall be binding upon all future Holders 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 or distributions 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 Depository or its nominee with respect to a Global Note and to the Holder or its designee with respect to a Certificated Note, by wire transfer, as directed by the Holder, in immediately available funds to a U.S. dollar account maintained by the Depository or its nominee with respect to a Global Note, and to the Holder or its designee with respect to a Certificated Note; provided 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 15 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 Note 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 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, such final payment shall be made without presentation or surrender. All notices and communications to be given to the Holders and all payments to be made to Holders 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 Euroclear, Clearstream or any of the Agent Members relating to or for payments made thereby on account of beneficial interests in a Global Note.

(c) No payment shall be made to the Holder of any beneficial interest in a Temporary Regulation S Global Note unless such Holder has provided Euroclear or Clearstream or the participant organization through which it holds such interest with a certificate certifying that such Holder is not a U.S. Person.

#### Section 2.11 Mandatory Exchange.

(a) A Global Note deposited with the Depository shall be exchanged for one or more Certificated Notes issued to the beneficial owners thereof if (i) either the Depository notifies the Company that it is unwilling or unable to continue as depository for such Global Note or (ii) at any time the Depository, Clearstream or Euroclear, as applicable, ceases to be a Clearing Agency registered under the Exchange Act and, in each case, a successor depository is not appointed by the Company within 90 days after such notice; and provided that such exchange complies with Section 2.7 hereof.

(b) Any 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 Global Note, an equal aggregate principal amount of Certificated Notes in Authorized Denominations. Any Certificated Note delivered in exchange for an interest in a Global Note shall, except as otherwise provided by Section 2.7(m) hereof, 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 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 under this Agreement or the Purchase Money Note.

(d) In the event of the occurrence of the event specified in subsection (a) of this Section 2.11, the Company shall promptly make available to the Paying Agent a reasonable supply of Certificated Notes in definitive, fully registered form without interest coupons. The Certificated Notes shall be in substantially the same form as the Exhibits to this Agreement 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 Global Note or Global Notes, as the case may be, the same original aggregate principal amount of Certificated Notes of Authorized Denominations.

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 Certificated Note which is also a Restricted Note to a U.S. Person that is not both a Qualified Institutional Buyer and a Qualified Purchaser, (ii) a Regulation S Global Note or a Temporary Regulation S Global Note to any U.S. Person or (iii) an Unrestricted Note to a Person who is not a Qualified Purchaser shall be null and void, 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 U.S. Person that is not a Qualified Institutional Buyer and a Qualified Purchaser shall become the owner of a beneficial interest in any Rule 144A Global Note or the owner of a Certificated Note which is also a Restricted Note, (ii) any U.S. Person shall become the owner of a beneficial interest in any Temporary Regulation S Global Note or Regulation S Global Note or (iii) any Person shall become the owner of (or, in case of Global Notes, the owner of the beneficial interest in) any Unrestricted Note (any such Person, a “**Non-Permitted Holder**”), the Company, or the Paying Agent acting on behalf of the Company shall, 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), 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 30 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 Note and selling such interest to the highest such bidder. However, the Company 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 Note, 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 under 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 Note 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 Holder, such tax shall reduce the amount otherwise payable to such Holder. The Company is hereby authorized to withhold from amounts otherwise payable to any Holder

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 Holder shall be treated as cash paid to such Holder 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 beneficial owner of Purchase Money Note 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 Note.

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 Note Register on the applicable Record Date for the purpose of receiving payments of principal of and interest on 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, nor the Paying Agent, nor any agent of the Company or the Paying Agent, shall be affected by notice to the contrary.

Section 2.15 Holder Voting. With respect to the Purchase Money Note and the Purchase Money Note Guaranty, in any case in which consent of the Holders is required, such consent requirement shall be satisfied if the Holders of more than fifty percent (50%) of the outstanding principal amount of the Purchase Money Note consent. Notwithstanding the foregoing, with respect to each of the following, such consent requirement shall only be satisfied if each affected Holder consents:

(a) any amendment, waiver or other modification that would (I) extend the due date for, or reduce the amount of any scheduled repayment of principal of, the Purchase Money Note; (II) affect adversely the interests, rights or obligations of any Holder individually in comparison to any other Holder; (III) change any place of payment where, or the coin or currency in which, the Purchase Money Note is payable; (IV) amend or otherwise modify the definition of “Event of Default” as defined in the Purchase Money Note; or (V) amend, waive or otherwise modify this Section 2.15; and

(b) any amendment, waiver or other modification that would release the Purchase Money Note Guarantor from all or any part of its obligation to make each and every payment under the Purchase Money Note Guaranty.

Section 2.16 Cancellation. Any 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 Note 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)(7) Procedures.

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

(i) The Company shall direct the Depository to include the “3c7” marker in the Depository 20-character security descriptor and the 48-character additional descriptor for (A) the Rule 144A Global Notes in order to indicate that sales are limited to Persons that are both Qualified Institutional Buyers and Qualified Purchasers and (B) the Unrestricted Notes represented by Global Notes in order to indicate that sales are limited to Persons that Qualified Purchasers.

(ii) The Company shall direct the Depository to cause each physical Depository deliver order ticket delivered by the Depository to purchasers to contain the Depository 20-character security descriptor and 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 Q hereto to all Depository participants in connection with the offering of the Rule 144A Global Notes or the Unrestricted Notes represented by 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 and the Unrestricted Notes represented by 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 Note Registrar) request the Depository to deliver to the Company a list of all Depository participants holding an interest in the Rule 144A Global Notes or the Unrestricted Notes represented by 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 and Section 3(c)(7) restrictions on the Unrestricted Notes represented by 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 or the Unrestricted Notes represented by Global Notes:

(i) The “Note Box” on the bottom of the “Security Display” page describing (A) each Rule 144A Global Note should state: “Iss’d Under 144A/3c7” and (B) each Unrestricted Note represented by a Global Note should state: “Iss’d Under 3c7”.

(ii) The “Security Display” page should have a flashing red indicator stating “See Other Available Information”.

(iii) Such indicator should link to an “Additional Security Information” page, which should state that (A) the Rule 144A Global Notes “are being offered in reliance on the exemption from registration under Rule 144A to Persons that are both (1) qualified institutional buyers (as defined in Rule 144A) and (2) qualified purchasers (as defined under Section 3(c)(7))” and (B) the Unrestricted Notes represented by Global Notes “are being offered to Persons that are qualified purchasers (as defined under Section 3(c)(7))”.

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

### **ARTICLE III ACCOUNTS**

Section 3.1 Collection Account. On the date hereof, the Company shall establish the Collection Account with the Paying Agent.

(a) The Receiver shall transfer all Mortgage Loan Proceeds (i) it receives during the Interim Servicing Period with respect to Mortgage Loans for which the Servicing Transfer Date has not occurred, net of any Servicing Expenses and Pre-Approved Charges then due and payable to the Receiver, no later than two (2) Business Days prior to the applicable Distribution Date to the Paying Agent for deposit into the Collection Account and (ii) it receives after the Interim Servicing Period with respect to the Mortgage Loans for which the Servicing Transfer Date has occurred promptly following receipt to the Paying Agent for deposit into the Collection Account.

(b) For all Mortgage Loan Proceeds with respect to any Group of Mortgage Loans by or on behalf of the Company received after the Interim Servicing Period and for which the Servicing Transfer Date has occurred, the Company shall transfer, or cause the Servicer or Subservicer to transfer, all Mortgage Loan Proceeds within two (2) 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 Mortgage Loan Proceeds, interest or earnings on the Mortgage Loan Proceeds, funds transferred from the Liquidity Account pursuant to Section 3.7, funds advanced by the Manager as Excess Liquidity Advances pursuant to the LLC Operating Agreement and Section 3.8) shall be commingled in the Collection Account. Amounts on deposit in the Collection Account (including interest and earnings thereon) shall be distributed as follows:

(i) first, to the payment of the then-outstanding amount of Servicing Expenses and Pre-Approved Charges either then due and payable or subject to reimbursement;

(ii) second, to fund any Funding Draws permitted pursuant to any Mortgage Loan Document; and

(iii) third, the balance, if any, to be transferred to the Distribution Account.

(c) At any time during the Interim Servicing Period, the Initial Member is authorized to request the withdrawal of funds from the Collection Account to pay Servicing Expenses and Pre-Approved Charges and to fund any Funding Draws. The Manager will have authority to request the withdrawal of funds from the Collection Account at any time to pay Servicing Expenses and Pre-Approved Charges and to fund any Funding Draws, all in accordance with the terms of this Agreement and the Related Agreements, and if the Receiver, the Company, the Servicer or any Subservicer at any time erroneously deposits any amount into the Collection Account, the Manager will have authority to request the withdrawal of such amount and instruct the Paying Agent to pay such amount to the Receiver, 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. 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.

(d) Upon instruction, the Paying Agent shall be authorized and directed to withdraw funds from the Collection Account only to pay the Servicing Expenses and Pre-Approved Charges, to fund any Funding Draws, 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. The Collection Account (and all funds therein) shall be subject to the security interest granted to the Collateral Agent under the Reimbursement and Security Agreement and to the Account Control Agreement in substantially the form attached hereto as Exhibit N.

Section 3.2 Distribution Account. On the date hereof, the Company shall establish the Distribution Account with the Paying Agent. 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 p.m. New York time on the Business Day immediately preceding each Distribution Date, the amount specified in the Distribution Date instructions delivered pursuant to Section 11.4 for such Distribution Date. No funds from any other source shall be commingled in the Distribution Account. 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. 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. The Distribution Account (and all funds therein) shall be subject to the security interest granted to the Collateral Agent under the Reimbursement and Security Agreement and to the Account Control Agreement.

Section 3.3 [Intentionally Omitted]

Section 3.4 [Intentionally Omitted]

### Section 3.5 Special Reserve Account

(a) On the Closing Date, the Company shall establish the Special Reserve Account with the Paying Agent for the purpose of holding any funds drawn by the Company under the Qualifying Letter of Credit pursuant to the LLC Operating Agreement.

(b) Earnings on investments (including any earned interest thereon) made pursuant to Section 4.1 of funds on deposit in the Special Reserve Account shall be immediately deposited in the Special Reserve Account.

(c) At the time of the Final Distribution, the Paying Agent shall allocate in accordance with the Distribution Date Report provided to it and distribute all remaining funds held in the Special Reserve Account to the Collection Account from which account the funds will be transferred to the Distribution Account and paid to the Private Owner pursuant to the LLC Operating Agreement.

(d) No funds from any other source (other than interest and earnings on the funds on deposit in the Special Reserve Account and funds deposited pursuant to Section 5.3 of the LLC Operating Agreement as described in Section 3.5(b) above) shall be deposited in the Special Reserve Account. The Paying Agent shall withdraw funds from the Special Reserve Account in accordance with the Distribution Date Report provided to it only upon (i) receipt of a written certification from the Initial Member stating that there has been a breach of the obligations of the Manager as set forth in the LLC Operating Agreement or (ii) the winding up of the Company for delivery to the Private Owner. The Special Reserve Account (and all funds therein) shall be subject to (i) the security interest granted to the Collateral Agent under the Reimbursement and Security Agreement and (ii) to the related Account Control Agreement.

### Section 3.6 [Intentionally Omitted]

### Section 3.7 Liquidity Account

(a) On the date hereof, the Company shall establish the Liquidity Account with the Paying Agent for the purpose of:

(i) paying the Operating Expenses to the extent there are insufficient funds in the Collection Account with which to pay the outstanding amount of the Operating Expenses then due and payable, in which case the Company shall instruct the Paying Agent to withdraw funds on deposit in the Liquidity Account in an amount that the Manager determines in the exercise of its reasonable discretion and deposit such funds into the Collection Account; and

(ii) funding all Funding Draws as permitted pursuant to the applicable Mortgage Loan Documents, in which case the Company, in the exercise of its reasonable discretion, may instruct the Paying Agent to release some or all of the funds from the Liquidity Account and allocate and distribute such released funds to the Company for the funding of such Funding Draws.

(b) The Liquidity Account shall be funded and thereafter replenished at the discretion of the Manager through deposits made in the Liquidity Account in accordance with Section 5.1(b)(vii) of this Agreement. Earnings on investments (including any earned interest thereon) made pursuant to Section 4.1 of funds on deposit in the Liquidity Account shall be immediately deposited in the Liquidity Account.

(c) At any time after the Liquidity Account has been funded as described herein, the Company may, in the exercise of its reasonable discretion, instruct the Paying Agent to release some or all of the funds on deposit in the Liquidity Account and allocate and distribute such released funds to the Collection Account.

(d) The Manager, in the exercise of its reasonable discretion, shall determine the amount of funds to be on deposit in the Liquidity Account, which amount shall at all times be less than or equal to the Liquidity Account Cap. At the time of the Final Distribution, the Paying Agent shall allocate in accordance with the Distribution Date Report provided to it and distribute all remaining funds held in the Liquidity Account to the Collection Account from which account the funds will be transferred to the Distribution Account and made available for distribution in accordance with the Priority of Payments pursuant to Section 5.1 of this Agreement and the LLC Operating Agreement. In addition, if at any time after the Purchase Money Note Maturity Date, the Manager, in the exercise of its reasonable discretion, determines that the funds on deposit in the Liquidity Account are no longer necessary to satisfy the purposes for which the Liquidity Account has been established, the Manager may instruct the Paying Agent to withdraw such excess funds from the Liquidity Account and allocate and distribute such excess funds to the Collection Account from which account the funds shall be transferred to the Distribution Account and made available for distribution in accordance with the Priority of Payments pursuant to Section 5.1 of this Agreement and the LLC Operating Agreement.

(e) No funds from any other source (other than interest and earnings on the funds on deposit in the Liquidity Account and funds deposited pursuant to Section 12.11 of the LLC Operating Agreement as described in Section 3.7(b) above) shall be deposited in the Liquidity Account. The Paying Agent shall withdraw funds from the Liquidity Account only to make distributions in accordance with this Agreement and for no other purpose. The Liquidity Account (and all funds therein) shall be subject to (i) the security interest granted to the Collateral Agent under the Reimbursement and Security Agreement and (ii) to the related Account Control Agreement.

### Section 3.8 Excess Liquidity Advances

The Manager shall make Excess Liquidity Advances to the Paying Agent for deposit into the Collection Account from its own funds in accordance with the terms described in Section 5.4 of the LLC Operating Agreement and to the extent that there are insufficient funds in the Collection Account and the Liquidity Account with which to pay Operating Expenses, other than the Management Fee and any Interim Management Fee, in full. The Manager shall deposit any Excess Liquidity Advances into the Collection Account from which the funds will be available to pay such Operating Expenses.



**ARTICLE IV**  
**ADDITIONAL PROVISIONS RELATED TO THE ACCOUNTS**

Section 4.1 Investment of Funds in Accounts.

(a) The Company or the Purchase Money Note Guarantor, as applicable, shall at all times direct the Paying Agent to, and, upon receipt of such investment direction, the Paying Agent shall, invest, amounts on deposit and retained in the Collection Account, the Liquidity Account and the Special Reserve Account, as so directed in Permitted Investments. Upon receipt of conflicting investment directions from the Company and the Purchase Money Note Guarantor, the Paying Agent shall follow the investment directions of the Purchase Money Note Guarantor. If neither the Company nor the Purchase Money Note Guarantor shall have given any such investment directions, the Paying Agent shall seek investment directions from such Persons within three (3) Business Days after transfer of such funds to the Collection Account, the Liquidity Account, or the Special Reserve Account, as applicable. If neither the Company nor the Purchase Money Note Guarantor shall have provided the Paying Agent with investment directions pursuant to this Section 4.1, the balance standing to the credit of the Collection Account, the Liquidity Account or the Special Reserve 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 Collection Account, the Liquidity Account, the Distribution Account and the Special Reserve Account (collectively, 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 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 or the Purchase Money Note Guarantor, 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 4:00 p.m. New York time on the day of deposit. Directions to invest or reinvest that are received after 4:00 p.m. New York 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 deposited in such Account and thereafter be applied without differentiation from other funds in such Account.

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 Purchase Money Note Guarantor and the Collateral Agent of such event 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 Purchase Money Note Guarantor and the Collateral Agent) 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 Purchase Money Note Guarantor and the Collateral Agent).

Section 4.4 Payment Procedures. All amounts that from time to time are distributable by the Paying Agent from the Distribution Account in accordance herewith shall be paid by the Paying Agent on the Distribution Date 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 the Distribution Date Report and this Agreement.

## **ARTICLE V DISTRIBUTIONS**

### Section 5.1 Priority of Payments.

(a) Notwithstanding any other provision in this Agreement, on or before each Distribution Date, the Paying Agent shall distribute amounts transferred to the Distribution Account from the Collection Account pursuant to Section 3.2 for application by the Paying

Agent in accordance with the priorities set forth in Sections 5.1(b) and (c) below (the “**Priority of Payments**”) and pursuant to the Distribution Date instructions contained in the Distribution Date Reports delivered pursuant to Section 11.3.

(b) On each Distribution Date, the Paying Agent shall distribute all Interest Proceeds in the Distribution Account in the following order of priority:

(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) second, to reimburse the Manager for any Excess Liquidity Advances;

(iii) third, (A) for each Due Period during the Interim Servicing Period, with respect to each Mortgage Loan for which the Initial Member provides interim servicing, to pay to (1) the Initial Member the Interim Servicing Fee, and (2) the Manager, an amount equal to the Management Fee less the Interim Servicing Fee (the “**Interim Management Fee**”), and (B) for each Due Period following the Interim Servicing Period, with respect to each Mortgage Loan, to pay to the Manager an amount equal to the Management Fee;

(iv) fourth, to pay to the Purchase Money Note Guarantor the full amount of the Purchase Money Note Guaranty Fee together with any accrued interest thereon then due and payable;

(v) fifth, to pay any reimbursement amounts, together with any accrued interest thereon at the Purchase Money Note Interest Rate, due and payable as of the Determination Date for the applicable Due Period to the Purchase Money Note Guarantor pursuant to the Reimbursement and Security Agreement for previous payments made by it under the Purchase Money Note Guaranty;

(vi) sixth, to pay the aggregate amount of interest accrued through and including the Determination Date for the applicable Due Period and unpaid on the Purchase Money Note;

(vii) seventh, to fund the Liquidity Account established by the Company as and to the extent permitted by Section 3.7 of this Agreement; and

(viii) eighth, any amount remaining to the Initial Member and the Private Owner, *pro rata* based on their respective Percentage Interests.

(c) On each Distribution Date, the Paying Agent will distribute all Principal Proceeds in the Distribution Account in the following order of priority:

(i) first, if there are any outstanding amounts due and payable under items (b)(i) through (vii) above, then to such items in the order of priority set forth therein;

(ii) second, if any Performance Test is not satisfied on the Determination Date prior to such Distribution Date, all remaining Principal Proceeds shall be applied as a payment of principal on the Purchase Money Note until the first to occur of (a) both Performance Tests are satisfied or (b) the outstanding principal balance of the Purchase Money Note is reduced to zero; and

(iii) third, any Principal Proceeds remaining after the distributions in clauses (c)(i) and (ii) above, shall be distributed concurrently as follows:

1. 67% as payments of principal on the Purchase Money Note, until the outstanding principal balance of the Purchase Money Note is reduced to zero;
2. 33% (or 100% if the outstanding principal balance of the Purchase Money Note is equal to zero) to the Initial Member and the Private Owner, *pro rata* based on their respective Percentage Interests.

provided, however that if the outstanding principal balance of the Purchase Money Note is equal to zero, then 100% of the Principal Proceeds being distributed pursuant to this clause (iii) shall be distributed pursuant to clause (iii)(2).

Section 5.2 Notices of Payment Failure. The Paying Agent shall deliver prompt written notice to the Company, the Purchase Money Note Guarantor and the Collateral Agent in the event that it fails to receive in full the amount required to be paid by the Company pursuant to Article V of this Agreement, 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.

## ARTICLE VI CUSTODIAL DOCUMENTS

### Section 6.1 Delivery of Custodial Documents.

(a) Delivery. As soon as practical after the date hereof, the Company shall deliver or cause to be delivered the Custodial Documents to the Custodian at the office of the Custodian at Wells Fargo Document Custody, 751 Kasota Avenue, Minneapolis, Minnesota, 55414, Attention: [REDACTED] (the "Office").

(b) Collateral Certificate; Exceptions. The Custodian shall make available during normal business hours, and at such other hours as might be reasonable in the circumstances, to the Company (and representatives of the Company and, if the Company so determines, the Receiver) an office space at the Office that is sufficient to accommodate up to six (6) people to review the Custodial Documents with representatives of the Custodian for a period of not more than ten (10) days prior to the delivery of possession of the same to the Custodian. Within forty-five (45) days after delivery of the Custodial Documents to the Custodian, the Custodian shall execute and deliver to the Company, the Purchase Money Note Guarantor and

the Collateral Agent a certificate, substantially in the form annexed hereto as Exhibit E, to the effect that the Custodian has received and reviewed the Custodial Documents and including a Mortgage Loan Schedule and Exception List (“Collateral Certificate”). In reviewing the documents provided with respect to a Mortgage Loan, the Custodian shall examine the same in accordance with the procedures set forth on Exhibit F hereto and determine, with respect to each such document, whether it (i) appears regular on its face (*i.e.*, is not mutilated, damaged, torn, defaced or otherwise physically altered), (ii) relates to such Mortgage Loan, (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.

(c) Custodial Documents. For each Mortgage Loan and Acquired Property, to the extent applicable and available, the Custodial Documents shall include the following:

(i) the original Note bearing all intervening endorsements and endorsed “Pay to the order of Multibank 2010-1 SFR Venture, LLC, without recourse” and signed in the name of the Federal Deposit Insurance Corporation as Receiver, and an allonge 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; and in the event that the original Note is not available, a fully executed Assignment and Lost Instrument Affidavit in the form of Exhibit L to the Contribution Agreement:

(ii) the original 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 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) Acquired Property Files;

(v) except in the case of any MERS Designated Mortgage Loan, the original Mortgage Assignment in blank for each Mortgage Loan, in form and substance acceptable for recording and signed in the name of the Federal Deposit Insurance Corporation as Receiver for various failed financial institutions to the Company;

(vi) except in the case of any MERS Designated Mortgage Loan, the original Mortgage Assignment in blank for each Mortgage Loan, in form and substance acceptable for recording and signed in the name of the Company to the Collateral Agent;

(vii) except in the case of any MERS Designated Mortgage 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 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;

(viii) the original 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;

(ix) the originals of all Underlying Collateral Documents executed in connection with the Mortgage Loan, if available;

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

(xi) if the equity interests of any Ownership Entity are certificated, the certificate representing such equity interest;

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

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

(d) Supplemental Deliveries. The Company agrees that it shall deliver or cause to be delivered to the Custodian (i) any and all additional Custodial Documents with respect to a Mortgage Loan that is not Acquired Property within ten (10) days following the execution and delivery of any such instrument and (ii) any and all Custodial Documents with respect to any Acquired Property within ten (10) days following receipt of any such instrument. 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 (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 Mortgage Loan or Acquired Property with respect to which each such Custodial Document relates. After the receipt thereof, the Custodian shall (A) examine the additional Custodial Documents provided with respect to a Mortgage Loan or Acquired Property in accordance with the review procedures set forth on Exhibit F (the "Review Procedures") and, determine, with respect to each such document, whether it (i) appears regular on its face (*i.e.*, is not mutilated, damaged, torn, defaced or otherwise physically altered), (ii) relates to such Mortgage Loan or Acquired Property, (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 a Mortgage Loan or Acquired Property are placed in the file for the related Mortgage Loan. 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 (7) Business Days after the receipt of the additional Custodial Documents by the Custodian, the Custodian

shall provide the Company (with a copy to the Purchase Money Note Guarantor and the Collateral Agent) with a Collateral Certificate, to the effect that the Custodian has received and reviewed the additional Underlying Collateral Documents, and include a revised Mortgage Loan Schedule and Exception List.

(e) Mortgage Loan Schedules and Exception Lists; Review Procedures. Each Mortgage Loan 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 Mortgage Loan Schedule and Exception List delivered by the Custodian to the Company shall supersede and cancel the Mortgage Loan Schedule and Exception List previously delivered by the Custodian to the Company hereunder, and shall replace the then existing Mortgage Loan Schedule and Exception List to be attached to the Collateral Certificate. Notwithstanding anything to the contrary set forth herein, in the event that the Mortgage Loan Schedule and Exception List attached to the Collateral Certificate is different from the most recently delivered Mortgage Loan Schedule and Exception List, then the most recently delivered Mortgage Loan Schedule and Exception List shall control and be binding upon the parties hereto. The delivery of each Mortgage Loan Schedule and Exception List to the Company shall constitute the Custodian's representation that, other than the Exceptions listed as part of the last delivered Mortgage Loan Schedule and Exception List: (i) all documents required to be delivered in respect of a Mortgage Loan or Acquired Property 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 on Exhibit F and in this Agreement and appear on their face to be regular and to relate to such Mortgage Loan or Acquired Property and to satisfy (except in the case of a MERS Designated Mortgage Loan) the requirements set forth in Section 6.1(c) of this Agreement, (iii) subject to the provisions of Section 7.2(b), each Mortgage Loan (except in the case of a MERS Designated Mortgage Loan) or Acquired Property identified on such Mortgage Loan 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 Mortgage Loan is being held by MERS® as the nominee for the Company. In connection with a Mortgage Loan 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 Section 6.1(b) 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 Mortgage Loan or Acquired Property.

#### Section 6.2 Examination of Custodian Files; Copies.

(a) Upon reasonable prior written notice to the Custodian, the Company, the Collateral Agent and the Purchase Money Note Guarantor and their respective agents, accountants, attorneys and auditors, and any other Persons designated by the Company, the Collateral Agent or the Purchase Money Note Guarantor, 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, the Collateral Agent or the Purchase Money Note Guarantor, 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 hereunder, 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 herein 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) 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, (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) subject to the provisions of Section 7.2(b), 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.

(b) Pledge of Mortgage Loans to the Collateral Agent. Pursuant to the terms and conditions of the Reimbursement and Security Agreement, the Company has pledged all of its rights, title and interest in and to the Mortgage Loans, the Acquired Property and the Custodial Documents to the Collateral Agent for the benefit of the Purchase Money Note Guarantor and the other Secured Parties (as defined in the Reimbursement and Security Agreement) as security for certain obligations of the Company under the Purchase Money Note



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 Collateral Agent's benefit pursuant to Section 9-313(c) of the Uniform Commercial Code, and the Custodian shall mark its records to reflect the pledge of the Mortgage Loans, the Acquired Property and the Custodial Documents by the Company to the Collateral Agent. The Custodian's records shall reflect the pledge of the Mortgage Loans, the Acquired Property and the Custodial Documents by the Company to the Collateral Agent until such time as the Custodian receives written instructions in the form of Exhibit H from the Company, including a certification that it is entitled pursuant to the Reimbursement and Security Agreement to request the release of the Custodial Documents being requested for release and that the Mortgage Loans and the Acquired Property are no longer pledged by the Company to the Collateral Agent, at which time the Custodian shall change its records to reflect the release of the pledge of the Mortgage Loans, the Acquired Property and the Custodial Documents and that the Custodian is holding the Mortgage Loans, the Acquired Property and the Custodial Documents as custodian for, and for the benefit of, the Company; 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. The Custodian shall ensure that all Underlying Collateral Documents that are removed from the Custodian's possession are returned to the Custodian's possession within the time provided by the applicable Uniform Commercial Code to maintain the Collateral Agent's perfection.

(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 Under the Reimbursement and Security Agreement. Upon the Custodian's receipt from the Collateral Agent or the Purchase Money Note Guarantor of written notice at its Office that an Event of Default under the Reimbursement and Security Agreement (and as defined therein) has occurred and is continuing, the Custodian promptly shall notify the Collateral Agent in writing and seek instructions from (and take instructions only from) the Collateral Agent as to any action to be taken by the Custodian hereunder.

(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 of 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 Section 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 from an Authorized Representative of the Company stating that the Company has received all amounts due under a Mortgage Loan, or a discounted payoff as payment in full of such Mortgage Loan, 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 from an Authorized Representative of the Company that the Company, the Manager or the Servicer 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 or for any other authorized servicing activity, the Custodian shall release the related Custodial Documents to the Company, the Manager or the Servicer, as applicable, in accordance with the instructions provided in such notice.

(iv) If the Custodian has received notice in the form of Exhibit H from an Authorized Representative of the Company that the Company has agreed to sell a Mortgage Loan or the Underlying 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) [Intentionally Omitted].

(h) 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.

(i) 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.

(j) 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.

(k) 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 under this Agreement as are set forth on Exhibit J, which fees and expenses must be reasonable and customary. The Company shall pay such fees and expenses including, without limitation, the reasonable and customary attorneys' fees of the Bank. The provisions of this Section 8.1 shall survive any resignation or removal of the Bank as Custodian or Paying Agent or the termination or assignment of this Agreement.

## **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 Custodian and Paying Agent under this Agreement upon at least sixty (60) days' prior written notice to the Company, the Purchase Money Note Guarantor and the Collateral Agent. In the event the Bank resigns it must resign as both Custodian and Paying Agent. Promptly after receipt of notice of the Bank's resignation as Custodian and Paying Agent, subject to the provisions of the LLC Operating Agreement and the Reimbursement and Security 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 Custodian and Paying Agent within such sixty (60) 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, the Collateral Agent or the Purchase Money Note Guarantor may remove and discharge the Bank as Custodian and Paying Agent (or any successor custodian and paying agent thereafter appointed) without cause from the performance of its obligations under this Agreement upon at least thirty (30) days' prior written notice to the Bank. Promptly after the giving of notice of removal to the Bank as Custodian and Paying Agent, subject to the provisions of the LLC Operating Agreement and the Reimbursement and Security Agreement as they relate to the Company, the Company shall appoint, by written instrument, a successor Custodian and Paying Agent.

(c) Effectiveness. 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 under this Agreement, as if originally named Custodian and Paying Agent hereunder. One original counterpart of such instrument shall be delivered to each of the Company, 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 shall promptly transfer to the successor Custodian and Paying Agent, as directed, all Custodial Documents and funds deposited in the Accounts, 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 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.

## **ARTICLE X REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 10.1 Representations, Warranties and Covenants. The Bank as Custodian and Paying Agent and the Company, as applicable, represent and warrant to each other as follows:

(a) 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;

(b) 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;

(c) 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); and

(d) the Bank as Custodian and Paying Agent represents and warrants to the Company that the Bank (i) is a bank, trust company or title insurance company subject to supervision and examination by any federal or state regulatory authority, (ii) is experienced in providing services of the type required to be performed by the Bank as the Custodian and Paying Agent under this Agreement, (iii) is qualified and licensed to do business in each jurisdiction in which the Custodial Documents will be held to the extent required unless and to the extent the failure to be so qualified or licensed will not have a material adverse effect on the Custodian or its ability to perform its obligations hereunder, (iv) is not prohibited from exercising custodial powers in any jurisdiction in which the Custodial Documents are or will be held, (v) has combined capital and surplus of at least \$50,000,000 as reported in its most recent report of condition, (vi) has the facilities to safeguard the funds deposited in the Accounts, the Mortgage

Loan Documents and other Custodial Documents and (vii) is not an Affiliate of the Company or of any Servicer.

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 (a) fire and other casualty insurance, (b) fidelity insurance, (c) theft of documents insurance, (d) forgery insurance, and (e) 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 Receiver, the Purchase Money Note Guarantor and the Collateral Agent, 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 Mortgage Loans and Underlying Collateral (including the Accounts setting forth in reasonable detail the balances of and any investments in such Accounts as of such date and all deposits to and disbursements, including of all Mortgage Loan Proceeds or the Management Fee 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. 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.

(b) The Custodian and Paying Agent Report shall be based on information, upon which the Custodian and Paying Agent may conclusively rely, except to the extent that such information contains any irregularities or errors manifestly apparent on its face or actually known to the Custodial and Paying Agent, included in (i) the Manager’s Monthly Report for the applicable Due Period and certified by an Authorized Representative of the Manager, (ii) the Distribution Date 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.

### Section 11.2 Additional Reports.

(a) Within two (2) Business Days after receipt of a written request of the Company, the Collateral Agent or the Purchase Money Note Guarantor for a Custodial Report or an updated Mortgage Loan Schedule and Exception List, the Custodian and Paying Agent shall provide the requesting party with the Custodial Report or the updated Mortgage Loan 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, the Collateral Agent or the Purchase Money Note Guarantor in the case of any Account.

Section 11.3 Company and Servicer Distribution Date Accounting. For each Due Period no later than three Business Days prior to the Distribution Date, the Company shall prepare and deliver or cause the Manager to prepare and deliver to the Paying Agent, the Initial Member and the Purchase Money Note Guarantor a report which shall specify the amounts and recipients of all funds to be distributed by the Paying Agent on the relevant Distribution Date as determined as of the close of business on the applicable Determination Date and certified by an Authorized Representative (who shall be the chief financial officer (or an equivalent officer)) of the Company (the “Distribution Date Report”); provided, however, that (unless the Company and the Initial Member agree otherwise) the Initial Member will prepare and deliver to the Paying Agent and the Purchase Money Note Guarantor the Distribution Date Report for all Due Periods ending on or before April 1, 2010. The Distribution Date Report shall be a portion of the Monthly Report to be provided to the Paying Agent, the Initial Member and the Purchase Money Note Guarantor in accordance with the LLC Operating Agreement. The Distribution Date Report shall contain the following information:

(a) the aggregate amount of Mortgage Loan Proceeds as of the close of business on such Determination Date, after giving effect to Mortgage Loan Proceeds received with respect to the applicable Due Period;

(b) the amount of Mortgage Loan Proceeds received during the applicable Due Period;

(c) [Intentionally Omitted]

(d) 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) all Mortgage Loan Proceeds received in the applicable Due Period *plus* (B) funds transferred from the Liquidity Account *plus* (C) any Excess Liquidity Advances deposited in the Collection Account *plus* (D) the Interim Servicing Fee, the Interim Management Fee and the Management Fee received for the applicable Due Period *less* (E) the total amount of funds withdrawn from the Collection Account as permitted pursuant to Section 3.1 for the applicable Due Period; and

(ii) the amounts payable from the Collection Account (through a transfer to the Distribution Account) pursuant to the Priority of Payments, specifically including:

(A) The amount of fees and expenses, including any indemnification payments, payable to the Custodian and Paying Agent,

(B) For any Due Period during the Interim Servicing Period, the amount of the Interim Service Fee payable to the Initial Member and the Interim

Management Fee payable to the Manager; and for any Due Period thereafter, the amount of the Management Fee payable to the Manager,

(C) The amount to be reimbursed to the Manager for Excess Liquidity Advances,

(D) The amount of the Purchase Money Note Guaranty Fee and any accrued interest thereon payable to the Purchase Money Note Guarantor,

(E) The reimbursement amounts and any accrued interest thereon payable to the Purchase Money Note Guarantor for previous payments made by it under the Purchase Money Note Guaranty,

(F) The amount to be deposited in the Special Reserve Account,

(G) The amount of Interest Proceeds to be deposited in the Liquidity Account,

(H) The amount of Principal Proceeds to be deposited in the Liquidity Account,

(I) The amount of Interest Proceeds payable as distributions to the Initial Member and to the Private Owner,

(J) The amount of Principal Proceeds payable as distributions to the Initial Member and to the Private Owner, and

(K) Any other amounts or calculations required pursuant to Section 5.1.

Section 11.4 Distribution Date Instructions. Each Distribution Date Report shall contain instructions to the Paying Agent to withdraw on the related Distribution Date from the Distribution Account and pay or transfer the amounts set forth in such report in the manner specified, and in accordance with the priorities established, in Section 5.1 of this Agreement.

Section 11.5 Books and Records. The Paying Agent shall maintain all such accounts, books and records as may be necessary to properly record all transactions carried out by it with respect to the Accounts, including the disbursement of all Mortgage Loan Proceeds. The Paying Agent also shall maintain a complete and accurate set of files, books and records regarding the Mortgage Loans and the Underlying 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 Mortgage Loans and the Underlying Collateral, including all Custodial Documents. The Paying Agent shall permit the Company, the Purchase Money Note Guarantor and the Collateral Agent to examine such accounts, books and records that relate to any Account, provided 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 it currently holds, and during the term of this Agreement shall hold, no adverse interest, by way of security or otherwise, in any Mortgage Loan, and hereby waives and releases any such interest which it may have in any Mortgage Loan as of the date hereof. The Mortgage Loans shall not be subject to any security interest, lien or right to set-off by the Bank or any third party claiming through the Bank, and the Bank shall not pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any third party interest in, any of the Mortgage Loans.

**ARTICLE XIII**  
**LIABILITY AND INDEMNIFICATION**

Section 13.1 Liability; Indemnification.

(a) 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 against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable attorney's fees and litigation costs, 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 liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements 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 hereunder, 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) In the event that the Custodian fails to produce a Custodial Document that was not identified as an Exception in the then controlling Mortgage Loan Schedule and Exception List within two (2) 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 (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 (3) Business Days, the Custodian promptly shall deliver to the Company upon request a Lost Instrument Affidavit in the form attached 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 Mortgage Loan, including a missing Note, (A) the Custodian shall indemnify the Company, the Purchase Money Note Guarantor and the Collateral Agent in accordance with Section 13.1(c) 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, Inc., the Custodian shall obtain and maintain an insurance bond naming the Company, the Purchase



Money Note Guarantor and the Collateral Agent, and their 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 Mortgage Loan or such lesser amount requested by the Company in the Company's sole discretion.

(c) The Custodian and Paying Agent hereby indemnifies and holds harmless the Company, the Purchase Money Note Guarantor and the Collateral Agent and their respective directors, officers, employees, agents and designees, against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever, including reasonable attorneys' fees and litigation costs, 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 herein; provided 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 hereunder or under any Mortgage Loan Document that the Custodian and Paying Agent believes in good faith (i) to have been signed or presented by an Authorized Representative 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 Mortgage Loan 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 Collateral Agent, If the Custodian and Paying Agent requests instructions from the Company 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, the Collateral Agent, the Purchase Money Note Guarantor 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 Company (or the Collateral Agent, as the case may be).

(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 hereunder 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 hereunder, 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 or any Servicer, shall be the successor of the Custodian and Paying Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding; provided 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 (10) days after the consummation of any such transaction. At no time shall an Affiliate of the Company or any Servicer be the Custodian and Paying Agent under 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 under this Section 15.2 shall survive the termination of the other provisions of this Agreement.

## **ARTICLE XVI TERM**

Section 16.1 Term. This Agreement shall terminate upon (a) the first to occur of (i) the final payment or other liquidation of all of the Mortgage Loans and (ii) disposition of all Underlying Collateral (including any Acquired Property), and (b) the release and delivery to the Company of all Custodial Documents held by or in the possession of the Custodian in accordance with the terms of this Agreement. Notwithstanding anything to the contrary herein, this Agreement may be terminated without cause upon at least thirty (30) days' prior written notice to the Custodian and Paying Agent, by any of the Company, the Purchase Money Note Guarantor and the Collateral 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 hereunder, is set forth on Exhibit M. From time to time, any Person may, by delivering to the other parties hereto a revised copy of Exhibit M, change such Person's Authorized Representative (and amend this Agreement to so provide), but until a new Exhibit M with the information regarding the successor Authorized Representative is delivered to a party in accordance with this Agreement, that party shall be entitled to rely conclusively on the Exhibit M last delivered hereunder.

## **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 (4) 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.

**If to the Bank:**

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

Wells Fargo Bank, NA  
9062 Old Annapolis Road  
Columbia, Maryland 21045  
Attn: Client Services Manager  
Ref: Multibank 2010-1 SFR Venture LLC

**For purposes of cancellation and presentment of Purchase Money Notes:**

Wells Fargo Bank, NA  
6<sup>th</sup> Street & Marquette Avenue  
Minneapolis, Minnesota 55479  
Attn: Corporate Trust Services Bondholder Communications  
Ref: Multibank 2010-1 SFR Venture LLC

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

Wells Fargo Bank, NA  
6<sup>th</sup> Street & Marquette Avenue  
Minneapolis, Minnesota 55479  
Attn: Corporate Trust Services Transfer Agent Department  
Ref: Multibank 2010-1 SFR Venture LLC

**If to the Company:**

Multibank 2010-1 SFR Venture, LLC  
5032 Parkway Plaza Blvd  
Charlotte, NC 28217  
Attention: Shaun Ahmad  
E-Mail Address: Shaun.Ahmad@roundpointmortgage.com

with a copy to:  
Multibank 2010-1 SFR Venture, LLC  
5032 Parkway Plaza Blvd  
Charlotte, NC 28217  
Attention: Peter Schancupp  
E-Mail Address: Peter.Schancupp@roundpointmortgage.com

**If to the Purchase Money Note Guarantor or the Collateral Agent:**

Manager, Capital Markets & Resolutions  
Federal Deposit Insurance Corporation

550 17th Street, N.W.  
Room F-7014  
Washington, D.C. 20429  
Attention: Ralph Malami  
E-Mail Address: [RMalami@fdic.gov](mailto:RMalami@fdic.gov)

with a copy to:

Senior Counsel  
FDIC Legal Division  
Litigation and Resolutions Branch, Receivership Section  
Special Issues Unit  
3501 Fairfax Drive (Room E-7056)  
Arlington, VA 22226  
Attention: David Gearin  
E-Mail Address: [DGearin@fdic.gov](mailto:DGearin@fdic.gov)

with a copy by email to:

Thomas Raburn  
E-Mail Address: [TRaburn@fdic.gov](mailto:TRaburn@fdic.gov)

with a copy of notices or communications to Collateral Agent only to:

James Hammett  
Resolutions & Receivership Specialist  
Federal Deposit Insurance Corporation  
1601 Bryan Street  
Dallas, TX 75201  
[JHammett@fdic.gov](mailto:JHammett@fdic.gov)

## **ARTICLE XIX MISCELLANEOUS**

Section 19.1 Governing Law. This Agreement shall be governed by and construed in accordance with federal law, but if federal law does not provide a rule of decision, it shall be governed by and construed in accordance with the law of the State of New York, excluding any conflict of laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction. Nothing in this Agreement shall require any unlawful action or inaction by any party hereto.

Section 19.2 Waiver of Jury Trial. EACH OF THE COMPANY, THE PURCHASE MONEY NOTE GUARANTOR, THE COLLATERAL 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 the Company and the Bank, for itself and its Affiliates, hereby irrevocably and unconditionally:

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

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

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

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

(ii) consents to the jurisdiction of the Supreme Court of the State of New York for any suit, action or proceeding against it or any of its Affiliates commenced by the Purchase Money Note Guarantor or the Collateral Agent arising out of, relating to, or in connection with this Agreement or any Ancillary Document (other than the LLC Operating Agreement), and waives any right to:

(A) remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Purchase Money Note Guarantor or the Collateral Agent, 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 the Company, the Bank, or its Affiliate against the Purchase Money Note Guarantor or the Collateral Agent in only either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Purchase Money Note Guarantor or the Collateral Agent, as applicable, and agrees to consent thereafter to transfer of the suit, action or proceeding to either the United States District Court for

the Southern District of New York or the United States District Court for the District of Columbia at the option of the Purchase Money Note Guarantor or the Collateral Agent, 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 Purchase Money Note Guarantor or the Collateral Agent, as applicable.

(b) Each of the Company 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 Company and the Bank, on behalf of itself and its Affiliates, and each of the Purchase Money Note Guarantor and the Collateral 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, 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 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 (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Agreement and 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 (1) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 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 Purchase Money Note Guarantor, the Collateral Agent and the Custodian 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. 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 no other Person or Persons shall have any rights or remedies under or by reason of this Agreement.

Section 19.9 Rights Cumulative. The rights, powers and remedies of the Custodian and Paying Agent, the Purchase Money Note Guarantor, the Collateral Agent and the Company under this Agreement shall be in addition to all rights, powers and remedies given to the Custodian and Paying Agent, the Purchase Money Note Guarantor, the Collateral Agent 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

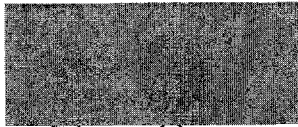


written agreement signed by the Company, the Purchase Money Note Guarantor, the Collateral Agent and the Custodian and Paying Agent.

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.

IN WITNESS WHEREOF, the Bank, the Purchase Money Note Guarantor, the Collateral Agent and the Company have each caused this Agreement to be executed as of the date first written above.

**WELLS FARGO BANK, N.A.**, as Custodian and  
Paying Agent

By:   
Name: Amy Doyle  
Title: Vice President

**FEDERAL DEPOSIT INSURANCE  
CORPORATION**, in its corporate capacity, as  
Purchase Money Note Guarantor

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

**FEDERAL DEPOSIT INSURANCE  
CORPORATION**, in its separate capacities as  
receiver for each of the Failed Banks, as Collateral  
Agent

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

**MULTIBANK 2010-1 SFR VENTURE, LLC**

By: RoundPoint Ventures I, LLC, as Manager

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Bank, the Purchase Money Note Guarantor, the Collateral Agent and the Company have each caused this Agreement to be executed as of the date first written above.

**WELLS FARGO BANK, N.A.**, as Custodian and  
Paying Agent

By: \_\_\_\_\_  
Name:  
Title:

**FEDERAL DEPOSIT INSURANCE  
CORPORATION**, in its corporate capacity, as  
Purchase Money Note Guarantor

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

**FEDERAL DEPOSIT INSURANCE  
CORPORATION**, in its separate capacities as  
receiver for each of the Failed Banks, as Collateral  
Agent

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

**MULTIBANK 2010-1 SFR VENTURE, LLC**

By: RoundPoint Ventures I, LLC, as Manager

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Bank, the Purchase Money Note Guarantor, the Collateral Agent and the Company have each caused this Agreement to be executed as of the date first written above.

**WELLS FARGO BANK, N.A.**, as Custodian and  
Paying Agent

By: \_\_\_\_\_  
Name:  
Title:

**FEDERAL DEPOSIT INSURANCE  
CORPORATION**, in its corporate capacity, as  
Purchase Money Note Guarantor

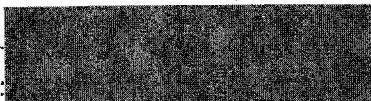
By: \_\_\_\_\_  
Name: Ralph Malami  
Title: Attorney-in-Fact

**FEDERAL DEPOSIT INSURANCE  
CORPORATION**, in its separate capacities as  
receiver for each of the Failed Banks, as Collateral  
Agent

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

**MULTIBANK 2010-1 SFR VENTURE, LLC**

By: RoundPoint Ventures I, LLC, as Manager

By:   
Name: Shaun Ahmad  
Title: Vice President