

**REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT**

**BY AND AMONG**

**SOUTH CRE VENTURE 2010-2, LLC,**

**EACH OTHER GRANTOR FROM TIME TO TIME PARTY HERETO,**

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
IN ITS CORPORATE CAPACITY AS PURCHASE MONEY NOTES GUARANTOR,**

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER FOR VARIOUS FAILED FINANCIAL INSTITUTIONS LISTED ON  
SCHEDULE I HERETO,  
AS COLLATERAL AGENT,**

**AND**

**FEDERAL DEPOSIT INSURANCE CORPORATION,  
AS RECEIVER FOR VARIOUS FAILED FINANCIAL INSTITUTIONS LISTED ON  
SCHEDULE I HERETO,  
AS INITIAL MEMBER**

**Dated as of December 2, 2010**

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## REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT

THIS REIMBURSEMENT, SECURITY AND GUARANTY AGREEMENT, effective as of the 2nd day of December, 2010 (this "**Agreement**"), is entered into by and among SOUTH CRE VENTURE 2010-2, LLC, a Delaware limited liability company ("**Debtor**"), each of the other entities that becomes a party hereto pursuant to Section 8.12 (collectively, the "**Subsidiary Grantors**," and each individually, a "**Subsidiary Grantor**"; the Subsidiary Grantors together with Debtor, collectively, the "**Grantors**," and each individually, a "**Grantor**"), FEDERAL DEPOSIT INSURANCE CORPORATION (acting in any capacity, the "**FDIC**"), acting in its corporate capacity ("**Purchase Money Notes Guarantor**"), the FDIC, as Receiver for various failed financial institutions listed on Schedule I hereto (in such capacity, the "**Receiver**"), as Collateral Agent for the Secured Parties (in such capacity, together with any successor collateral agent, the "**Collateral Agent**"), and, solely for purposes of Sections 4.1(e), 4.1(j), 5.1(a)(vi) – (ix), 5.1(b), 5.1(c), 5.5, 11.1, 11.2 and 13.6 – 13.19, the FDIC, as Receiver, as Initial Member under the LLC Operating Agreement referred to below (in such capacity, the "**Initial Member**"). Capitalized terms used in this Agreement shall have the meanings assigned to them in, or by reference in, that certain South CRE 2010-2 Structured Transaction-Agreement of Common Definitions, dated as of the Closing Date, among the Initial Member, the Debtor and others.

WHEREAS, pursuant to that certain Contribution Agreement, the Receiver has transferred all of its right, title and interest in and to the Assets (as such term is defined below), including equity interests in the Ownership Entities and certain Acquired REO Property, to Debtor partly as a sale and partly as a capital contribution, and in consideration for the transfer of the Assets to the Debtor to the extent such transfer constitutes a sale, Debtor has issued to Receiver two Classes of Purchase Money Notes in the aggregate principal face amount of \$9,482,533, inclusive of the Purchase Money Notes Issuance/Guaranty Fee;

WHEREAS, to provide support for the payment and performance of Debtor's obligations under the Purchase Money Notes, the Purchase Money Notes Guarantor and the Receiver have entered into that certain Guaranty Agreement, pursuant to which, upon exercise by the Initial Member, as holder of the Purchase Money Notes, and delivery of the Guaranty Notice by the Initial Member to the Purchase Money Notes Guarantor, the obligations with respect to such Purchase Money Notes shall automatically, and without further action, become subject to the Guaranty Agreement;

WHEREAS, in connection with the foregoing, each Grantor has agreed to (a) provide the Collateral Agent, for the benefit of the Secured Parties, with the collateral identified in this Agreement and (b) guaranty payment of the Secured Obligations in order to induce the Purchase Money Notes Guarantor to enter into the Guaranty Agreement and to secure Debtor's obligation to reimburse the Purchase Money Notes Guarantor for any payments made by Purchase Money Notes Guarantor thereunder;

**NOW, THEREFORE**, in consideration of the promises contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Grantor, the Purchase Money Notes Guarantor, the Collateral Agent and the Initial Member agree as follows:

**ARTICLE I**  
**Definitions**

Section 1.1 Definitions.

(a) For purposes of this Agreement, including the prefatory paragraphs, certain terms used in this Agreement shall have the meaning and definitions set forth in the Agreement of Common Definitions (as such term is defined below). In addition, for purposes of this Agreement, the following terms shall have the meanings and definitions hereinafter respectively set forth:

“**Agreement**” means this Reimbursement, Security and Guaranty Agreement.

“**Allonge**” has the meaning given in Section 3.1 of this Agreement.

“**Controlling Party**” means the Purchase Money Notes Guarantor.

“**Debtor**” has the meaning given in the introductory paragraph to this Agreement.

“**Debtor Accounts**” means, collectively the Collection Account, the Distribution Account, the Defeasance Account and the Working Capital Reserve Account.

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

“**Event of Default**” means each of the “Events of Default” described in Section 4.1 of this Agreement.

“**Grantor**” and “**Grantors**” have the meanings set forth in the introductory paragraph of this Agreement.

“**Guaranty**” means, with respect to any particular indebtedness or other obligation, (i) any direct or indirect guaranty thereof by a Person other than the obligor with respect to such indebtedness or other obligation or any transaction or arrangement intended to have the effect of directly or indirectly guarantying such indebtedness or other obligation, including without limitation any agreement by a Person other than the obligor with respect to such indebtedness or other obligation (A) to pay or purchase such indebtedness or other obligation or to advance or supply funds for the payment or purchase of such indebtedness or other obligation, (B) to purchase, sell or lease (as lessee or lessor) property of, to purchase or sell services from or to, to supply funds to or in any other manner invest in, the obligor with respect to such indebtedness or other obligation (including any agreement to pay for property or services of the obligor irrespective of whether such property is received or such services are rendered), primarily for the purpose of enabling the obligor to make payment of such indebtedness or other obligation or to assure the holder or other obligee of such indebtedness or other obligation against loss, or (C) otherwise to assure the obligee of such indebtedness or other obligation

against loss with respect thereto, or (ii) any grant (or agreement in favor of the obligee of such indebtedness or other obligation to grant such obligee, under any circumstances) by a Person other than the obligor with respect to such indebtedness or other obligation of a security interest in, or other Lien on, any property or other interest of such Person, whether or not such other Person has not assumed or become liable for the payment of such indebtedness or other obligation.

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

**“Indemnified Losses”** has the meaning given in Section 13.5(a) of this Agreement.

**“Indemnified Parties”** has the meaning given in Section 13.5(a) of this Agreement.

**“Intellectual Property”** means all United States or foreign intellectual and similar property of every kind and nature, including, without limitation, inventions, designs, patents, copyrights, trademarks, trade secrets, confidential or proprietary and technical and business information, know-how, show-how or other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and any license of any of the foregoing, and all additions, improvements and accessions to, and books and records describing or used in connection with, any of the foregoing and all rights to sue at Law or in equity for any infringement or other violation thereof, including the right to receive all proceeds and damages therefrom.

**“NY UCC”** means the Uniform Commercial Code as in effect on the date hereof in the State of New York, as amended from time to time, and any successor statute.

**“Perfection Requirement”** has the meaning given in Section 7.1(e) of this Agreement.

**“Proceedings”** means any suit in equity, action at Law or other judicial or administrative proceeding.

**“Purchase Money Notes Issuance/Guaranty Fee”** has the meaning given in Section 8.19 of this Agreement.

**“Purchase Money Notes Reissuance Fee”** has the meaning given in Section 8.20 of this Agreement.

**“Purchase Money Notes Trigger Event”** means an event that shall be deemed to have occurred if, as of any time during the periods set forth below, (a) the total amount then on deposit in the Defeasance Account (without giving effect to any net losses thereon arising from the investment of such amounts in accordance with the Custodial and Paying Agency Agreement), plus the sum of the aggregate amount from the Defeasance Account previously paid by the Debtor (excluding any payments made under the Guaranty Agreement) to all Noteholders to repay any Purchase Money Notes and the aggregate amount previously paid to the Purchase Money Notes Guarantor to reimburse the Purchase Money Notes Guarantor for payments it has made under the Guaranty Agreement, divided by (b) the original aggregate principal amount of the Purchase Money Notes, as of the Closing Date is less than:

Fourth (4 <sup>th</sup> ) anniversary of the Closing Date (or any time thereafter before the fifth (5 <sup>th</sup> ) anniversary of the Closing Date):	50%
Fifth (5 <sup>th</sup> ) anniversary of the Closing Date (or any time thereafter before the sixth (6 <sup>th</sup> ) anniversary of the Closing Date):	67%
Sixth (6 <sup>th</sup> ) anniversary of the Closing Date (or any time thereafter before the seventh (7 <sup>th</sup> ) anniversary of the Closing Date):	83%
Seventh (7 <sup>th</sup> ) anniversary of the Closing Date.	100%

**“Related Entities”** has the meaning given in Section 13.5(a) of this Agreement.

**“REO Collateral Documents”** means, with respect to each Acquired REO Property, to the extent applicable, the following, (i) the REO Mortgage and (ii) a deed in lieu of foreclosure, a subordination agreement to subordinate the Lien of the Asset in favor of the Debtor to the Lien in favor of the Collateral Agent for the benefit of the Secured Parties, opinions of counsel, lender’s policies of title insurance (together with all endorsements thereto reasonably required by the Collateral Agent, including endorsements with respect to future advances), amendments to the Transaction Documents deemed necessary or advisable by the Collateral Agent to reflect the particular nature and characteristics of the Acquired REO Property in question and the requirements of local Law and such additional items as an institutional lender would customarily require in a construction or permanent, as applicable, loan transaction involving a property similar to such Acquired REO Property (all of the foregoing to be in form and substance satisfactory to the Collateral Agent).

**“REO Mortgage”** means, with respect to each Acquired REO Property, a mortgage, deed of trust, trust deed or deed to secure debt securing the Secured Obligations in form suitable for recording in the appropriate public records and otherwise substantially in the form attached to the REO Checklist attached hereto as Exhibit B (which REO Mortgage may, if the Mortgage on the applicable Acquired REO Property has not been discharged and if the



Collateral Agent agrees, consist of such Mortgage, as assigned to the Collateral Agent and including such modifications thereto as the Collateral Agent may require).

“**Sale**” has the meaning given in Section 5.3 of this Agreement.

“**Secured Obligations**” means the Guaranteed Obligations and all obligations of the Grantors pursuant to this Agreement (including specifically the obligations pursuant to Sections 2.1 and 8.9).

“**Secured Parties**” means, collectively, the Collateral Agent, each co-agent or sub-agent appointed by the Collateral Agent from time to time pursuant to this Agreement and the Purchase Money Notes Guarantor.

“**Secured Parties Collateral**” has the meaning given in Section 3.1 of this Agreement.

“**Secured Parties Collateral Documents**” means, collectively, this Agreement, the Account Control Agreements, the REO Collateral Documents, the Custodial and Paying Agency Agreement and each of the other agreements, instruments or documents that creates or purports to create a Lien or guaranty in favor of the Collateral Agent for the benefit of the Secured Parties.

“**Site Assessment**” has the meaning given in Section 3.2(b) of this Agreement.

“**Subsidiary Grantor**” and “**Subsidiary Grantors**” have the meanings given in the introductory paragraph to this Agreement.

“**Successor Servicer**” has the meaning given in Section 5.1(a)(vi) of this Agreement.

“**Third Party Claims**” has the meaning given in Section 13.5(a) of this Agreement.

“**Transfer**” has the meaning given in Section 9.1(a) of this Agreement.

“**Underlying Mortgage**” has the meaning given in Section 9.1(a) of this Agreement.

(b) **UCC Terms**. The following terms have the meanings given to them in the UCC and terms used herein without definition that are defined in the UCC have the meanings given to them in the UCC (such meanings to be equally applicable to both the singular and plural forms of the terms defined): “**account**”, “**chattel paper**”, “**commercial tort claim**”, “**deposit account**”, “**equipment**”, “**fixture**”, “**general intangible**”, “**goods**”, “**instruments**”, “**inventory**”, “**investment property**”, “**letter-of-credit right**”, “**proceeds**”, “**security**” and “**supporting obligation**”.

Section 1.2 Other Interpretive Provisions. With reference to this Agreement and each other Secured Parties Collateral Document, unless otherwise specified herein or in such other Secured Parties Collateral Document:

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

(b) The term “or” is not exclusive.

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

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

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

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

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

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

## **ARTICLE II**

### **Reimbursement**

Section 2.1 Reimbursement. In accordance with and subject to Section 8.9, Debtor agrees to pay to the Purchase Money Notes Guarantor (a) on the Distribution Date following any payment by the Purchase Money Notes Guarantor with respect to the Guaranteed Obligations, the amount of such payment (provided, however, that any such payment by the Purchase Money Notes Guarantor occurring after the Determination Date immediately preceding such

Distribution Date shall be payable on the second Distribution Date following such payment); and (b) for any day on which a Purchase Money Notes Trigger Event is continuing, interest on an amount equal to the lesser of (i) the amount, if any, necessary to be added to the Defeasance Account (without giving effect to any net losses thereon arising from the investment of such amounts in accordance with the Custodial and Paying Agency Agreement) to cure the Purchase Money Notes Trigger Event and (ii) any amount remaining unpaid by Debtor under clause (i) of this Section 2.1 for each day unpaid, from the occurrence of a Purchase Money Notes Trigger Event until the earlier of (I) the day such Purchase Money Notes Trigger Event is cured and (II) the day all amounts owing to the Purchase Money Notes Guarantor under clause (i) of this Section 2.1 are reimbursed in full (both before and after judgment), payable in accordance with Section 5.1 of the Custodial and Paying Agency Agreement at a rate per annum equal to the Reimbursement Interest Rate. All payments by the Debtor to the Purchase Money Notes Guarantor hereunder shall be made free and clear of set-off or counterclaim in lawful currency of the United States and in immediately available funds.

Section 2.2 Obligations Absolute. The obligations of Debtor pursuant to this Agreement shall be absolute, unconditional and irrevocable, and shall be discharged strictly in accordance with the terms set forth herein, under all circumstances whatsoever, including, without limitation, the following circumstances:

(a) any lack of validity or enforceability of this Agreement, any Purchase Money Note, the Guaranty Agreement, or any other agreement or instrument relating thereto;

(b) any amendment or waiver of or any consent to departure from all or any of the provisions of this Agreement, any Purchase Money Notes or the Guaranty Agreement;

(c) the existence of any claim, setoff, defense or other right that Debtor may have at any time against the Purchase Money Notes Guarantor, Receiver or any other Person, whether in connection with this Agreement, any Purchase Money Note, or any unrelated transaction;

(d) payment by the Purchase Money Notes Guarantor pursuant to any Guaranty Agreement against demand of the Receiver that does not comply with the terms of the Guaranty Agreement; and

(e) any other act or omission to act or delay of any kind by the Purchase Money Notes Guarantor or any other Person or any other event or circumstance whatsoever that might, but for the provisions of this Section, constitute a legal or equitable discharge of or defense to Debtor's obligations hereunder.

### **ARTICLE III** **Security Interest**

Section 3.1 Granting of Security Interest. To secure Debtor's payment and performance of the Secured Obligations and each Subsidiary Grantor's guaranty of payment of the Secured Obligations, each Grantor hereby transfers, assigns, sets over, conveys, mortgages

and grants to the Secured Parties, subject to the terms of this Agreement and the Purchase Money Notes (and any substitute Purchase Money Notes that may be issued), a continuing security interest in, Lien on and right of setoff against all of its right, title and interest in and to all accounts, chattel paper, deposit accounts, documents (as defined in the UCC), equipment, fixtures, general intangibles, Intellectual Property, instruments, insurance, inventory, investment property, letter-of-credit rights, money (as defined in the UCC) and other personal property and any supporting obligations related thereto, in each case, whether now owned or hereafter acquired, regardless of whether such property is in the future subdivided into one or more groups to separately secure the Debtor's and each Subsidiary Grantor's obligations hereunder, including:

- (a) the Assets, including all future advances made with respect thereto;
- (b) the Asset Documents;
- (c) all amounts payable to such Grantor pursuant to the Asset Documents and all obligations owed to such Grantor in connection with the Assets and the Asset Documents;
- (d) all Collateral, including all Acquired Property;
- (e) all claims, suits, causes of action and any other right of such Grantor, whether known or unknown, against any Borrower, any Obligor or other obligor or any of their respective Affiliates, agents, representatives, contractors, advisors or any other Person arising under or in connection with the Assets or the Asset Documents or that is in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at Law or in equity arising under or in connection with the Asset Documents or the transactions related thereto or contemplated thereby;
- (f) all cash, securities and other property received or applied by or for the account of such Grantor under the Assets, including all distributions received through any redemption, consummation of a plan of reorganization, restructuring, liquidation or otherwise of any Borrower, Obligor or other obligor under or with respect to the Assets, and any securities, interest, dividends or other property that may be distributed or collected with respect to any of the foregoing;
- (g) the Debtor Accounts and any other accounts established by Debtor pursuant to the Custodial and Paying Agency Agreement, and all amounts on deposit therein; provided, however, that the security interest in, Lien on and right of setoff against the Defeasance Account and all amounts on deposit therein shall only secure the payment and performance of the Guaranteed Obligations;
- (h) the equity interests in all Ownership Entities;
- (i) all of such Grantor's right, title and interest in and to all insurance policies; and

(j) any and all distributions on, or proceeds or products of or with respect to, any of the foregoing, and the rights to receive such proceeds and products (all of the foregoing property described in this Section 3.1, the **“Secured Parties Collateral”**).

This grant of a security interest in the Secured Parties Collateral is expressly intended to remain in full force and effect from the Closing Date until the Secured Obligations, as such may be modified in connection with the amendment of this Agreement, the Guaranty Agreement or any Transaction Document, and have been satisfied in full.

All of the Notes and other Custodial Documents shall be held by the Custodian/Paying Agent as set forth in Section 8.4 (except and to the extent the same are permitted to be removed from the Custodian/Paying Agent’s possession as provided in the Custodial and Paying Agency Agreement). The Collateral Agent shall retain possession of the Notes and other Custodial Documents with respect to the Assets until such time as the Debtor retains the Custodian/Paying Agent pursuant to the provisions of Section 8.4 and, at such time, shall cause the Custodian/Paying Agent to take possession of the Notes and other Custodial Documents with respect to the Assets on behalf of Collateral Agent. The Debtor shall deliver to the Collateral Agent within sixty (60) days after the Closing Date, (x) for each Asset, an allonge, endorsed in blank, and executed by Debtor (an **“Allonge”**), and (y) for each Asset, a Mortgage Assignment, in blank, and executed by Debtor. Such Allonges and Mortgage Assignments shall be held by the Custodian/Paying Agent with the Notes and other Custodial Documents. Reasonable and customary expenses paid to third parties actually incurred by the Debtor in preparing and delivering such Allonges and Mortgage Assignments shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. The Collateral Agent may use the Allonge to effect the endorsement of a Note or the Mortgage Assignment to effect the assignment of a mortgage to the Collateral Agent at any time if an Event of Default occurs and is continuing. Notwithstanding anything in this Agreement to the contrary, if the Debtor (acting by and through the Manager in accordance with the applicable provisions of the LLC Operating Agreement) elects to remove any MERS Registered Mortgage from the MERS System in accordance with the LLC Operating Agreement and the Contribution Agreement, then the Debtor must execute and deliver to the Collateral Agent or the Custodian/Paying Agent, as the case might be, the Allonge and Mortgage Assignment described above in this Section 3.1 promptly after the removal of such MERS Registered Mortgage from the MERS System and take such other action so as to cause such MERS Registered Mortgage and all Collateral relating to such MERS Registered Mortgage to be and remain subject to the first priority security granted pursuant to this Agreement.

### Section 3.2 Asset Defaults; Acquisition of Collateral.

(a) Discretion of Debtor in Responding to Defaults of Borrower. Upon the occurrence of an event of default under any of the Asset Documents, but subject to the other terms and conditions of this Agreement, the Debtor shall cause to be determined the response to such default and course of action with respect to such default, including (i) the selection of attorneys to be used in connection with any action, whether judicial or otherwise, to protect the respective interests of the Debtor and the Collateral Agent in the applicable Asset and the Collateral, (ii) the declaration and recording of a notice of such default and the acceleration of the maturity of the Asset, (iii) the institution of proceedings to foreclose the Asset Documents

securing the Asset pursuant to the power of sale contained therein or through a judicial action, (iv) the institution of proceedings against any Obligor, (v) the acceptance of a deed in lieu of foreclosure, (vi) the purchase of the real property Collateral at a foreclosure sale or trustee's sale or the purchase of the personal property Collateral at a Uniform Commercial Code sale, and (vii) the institution or continuation of proceedings to obtain a deficiency judgment against such Borrower or any Obligor.

(b) Acquisition of Collateral. Nothing in this Section 3.2 or anything else in this Agreement shall be deemed to affirmatively require any Grantor to cause to be acquired all or any portion of any Collateral with respect to which there exists any Environmental Hazard. Except as otherwise directed by the Debtor, the Debtor shall not permit the Servicer or any Subservicer to acquire or otherwise cause the Debtor or any Subsidiary or other entity in which the Debtor owns any interest to acquire all or any portion of any Collateral having any actual or threatened Environmental Hazard known to the Debtor by foreclosure, deed in lieu of foreclosure, power of sale or sale pursuant to the UCC or otherwise. Prior to acquisition of title to any Collateral (whether by foreclosure, deed in lieu of foreclosure, by power of sale or by sale pursuant to the UCC, or otherwise), the Debtor shall cause to be commissioned with respect to such Collateral either (i) a transaction screen process consistent with ASTM Standard E 1528-06, by an environmental professional or (ii) such other site inspections and assessments by a Person who regularly conducts environmental audits using customary industry standards as would customarily be undertaken or obtained by a prudent lender in order to ascertain whether there are any actual or threatened Environmental Hazards (a "Site Assessment"), and the cost of such Site Assessment shall be reimbursable as if it were a Servicing Expense as long as the costs for such Site Assessment were not paid to any Affiliate of the Debtor, or any Affiliate of any Servicer or Subservicer. If title to any Collateral with respect to which there exists any Environmental Hazard is to be acquired by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the UCC, or otherwise, title to such Collateral shall be taken and held in the name of an Ownership Entity, whether already in existence or formed by the Debtor for such purpose, provided that each Ownership Entity may only hold title to a single property constituting Collateral with respect to which there exists any Environmental Hazard. The purposes of the Ownership Entity shall be to hold the Acquired Property pending sale, to complete construction of such Acquired Property and to operate the Acquired Property as efficiently as possible in order to minimize financial loss to the Debtor and the Collateral Agent and to sell the Acquired Property as promptly as practicable in a way designed to minimize financial loss to the Debtor and the Collateral Agent, in each case, in conformity with any applicable Business Plan.

(c) Acquired REO Property. If title to any Acquired REO Property is to be acquired by Debtor by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the UCC, or otherwise, title to such Acquired REO Property shall be taken and held in the name of one or more Ownership Entities, whether already in existence or formed by the Debtor for such purpose. The Debtor shall be the sole member of any Ownership Entity. The purposes of the Ownership Entity shall be to hold the Acquired REO Property pending sale, to complete construction of such Acquired REO Property, if applicable and solely in accordance with the provisions of the Transaction Documents and to operate the Acquired REO Property as efficiently as possible in order to minimize financial loss to the Debtor and the Collateral Agent

and to sell the Acquired REO Property as promptly as practicable in a way designed to minimize financial loss to the Debtor and the Collateral Agent, in each case, in conformity with any applicable Business Plan.

Section 3.3 Continuing Security Interest. This Agreement shall create a continuing security interest in any and all of the Secured Parties Collateral and shall remain in full force and effect until the termination of the Guaranty Agreement in accordance with their respective terms and the satisfaction and discharge of all Secured Obligations in full. It is the intent of each Grantor and the Collateral Agent to create a continuing, perfected first priority security interest in the Secured Parties Collateral for the benefit of the Secured Parties. The release of the security interest in any or all of the Secured Parties Collateral, the taking or acceptance of additional security, or the resort by the Collateral Agent to any security it may have in any order it may deem appropriate, shall not affect the liability of any Person on the Secured Obligations secured hereby or the security interest and Lien granted hereby (other than in respect of the released Secured Parties Collateral).

Section 3.4 Destruction of Secured Parties Collateral. No injury to, or loss or destruction of, the Secured Parties Collateral or any part thereof shall relieve any Grantor of any of its obligations hereunder or any of the Secured Obligations.

Section 3.5 Releases of Secured Parties Collateral. Each Grantor is authorized to cause the release or assignment of any Lien granted to or held by such Grantor on any Secured Parties Collateral, solely to the extent necessary, (a) upon a final, nonappealable order of a court of competent jurisdiction permitting or directing disposition thereof, (b) upon payment of any Asset in full and satisfaction in full of all of the secured obligations with respect to an Asset or upon receipt of a discounted payoff as payment in full of an Asset, (c) as is necessary in connection with the foreclosure on a Mortgaged Property, acceptance of a deed in lieu thereof or modification or restructuring of the terms thereof, (d) in connection with such Grantor's sale of an Asset or any Collateral or (e) in the case of condominium units, individual land parcels and similar portions of the Collateral, as are permitted in, and to the extent required by, the applicable Asset Documents; provided, however, that any such transaction is consistent with the Business Plan and the proceeds of such sale or disposition are applied in accordance with the Priority of Payments set forth in Section 5.1 of the Custodial and Paying Agency Agreement and the other terms thereof.

Section 3.6 Financing Statements. Each Grantor hereby irrevocably authorizes, and ratifies and retroactively authorizes any filing made on or prior to the Closing Date, the filing, at any time and from time to time, of any financing statements or continuation statements, and amendments to such financing statements or any similar document in such jurisdictions and with such filing offices as the Collateral Agent may determine are necessary or advisable to perfect the security interest granted to it hereunder. Such financing statements may indicate the Secured Parties Collateral as all assets of such Grantor or words of similar effect as being of any equal or lesser scope or with greater detail or in any other manner as the Collateral Agent may determine is necessary, advisable or prudent to ensure the perfection of the security interest in the Secured Parties Collateral granted to Collateral Agent herein pursuant to the terms hereof.

Section 3.7 Power of Attorney. Each Grantor hereby irrevocably appoints the Collateral Agent its lawful attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, and with full power of substitution in the premises (which power of attorney, being coupled with an interest, is irrevocable for so long as this Agreement shall be in effect), from time to time in the Collateral Agent's discretion, following a failure by Debtor to satisfy promptly its obligations pursuant to Section 3.1, Section 3.2, Section 4.10 or Section 4.11 of the Contribution Agreement as it relates to the preparing, furnishing, executing and/or recording of all relevant Transfer Documents and other documents as might be reasonably necessary to satisfy the transfer and recording obligations of the Debtor pursuant to Section 3.1, Section 3.2, Section 4.10 or Section 4.11, to execute, furnish and record all relevant Transfer Documents and other documents as might be reasonably necessary to satisfy such transfer and recording obligations of the Debtor.

#### **ARTICLE IV** **Events of Default**

Section 4.1 Events of Default. Any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of Law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall constitute an "Event of Default" hereunder:

(a) the receipt by the Debtor or Private Owner or Manager, as applicable, from the Initial Member of notice of the occurrence and continuance beyond any applicable cure periods of an "Event of Default" (pursuant to and as set forth in the LLC Operating Agreement); or

(b) the occurrence of any Insolvency Event (without any cure period other than as may be provided for in the definition of Insolvency Event) (i) with respect to (A) the Debtor or (B) the Private Owner; or (ii) with respect to any Servicer (or any Subservicer); provided, that such Insolvency Event under this clause (ii) (that is not otherwise an Insolvency Event under clause (i) above) shall not be an Event of Default pursuant to this Agreement (but shall in all events be a default under the applicable Servicing Agreement or Subservicing Agreement) so long as the Manager shall have fully replaced (or caused the replacement of) such affected Servicer or Subservicer within thirty (30) days after the occurrence of such Insolvency Event; or

(c) the occurrence of any Dissolution Event with respect to the Private Owner; or

(d) any failure of the Debtor to pay any Servicing Expense when due, which failure continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to Debtor; or



(e) the failure of Debtor or the Manager to comply in any material respect with the provisions of the LLC Operating Agreement, which continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Debtor or the Manager (in any capacity); or

(f) the occurrence of either (i) a failure by the Servicer to perform in any material respect its obligations pursuant to the Servicing Agreement, which continues unremedied for a period of thirty (30) days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Initial Member or the Manager to the Servicer or by the Purchase Money Notes Guarantor or the Collateral Agent to the Debtor, or (ii) a failure by the Manager (in its individual capacity) to replace the Servicer upon the occurrence of either an Event of Default pursuant to this Agreement as a result of the Servicer's acts or omissions or a material breach of or event of default pursuant to the Servicing Agreement by the Servicer, in either case which continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Manager (in any capacity); or

(g) the failure of the Manager (in any capacity) to comply in any material respect with its obligations pursuant to the Servicing Agreement or the Debtor to comply in any material respect with its obligations pursuant to the Custodial and Paying Agency Agreement (including any failure to pay fees or expenses due thereunder) which, in either case, remains unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Manager (in any capacity) or the Debtor, as applicable; or

(h) there shall be a change in ownership of the Manager or the Private Owner, there shall occur a Change of Control with respect to the Manager or the Private Owner, or the Manager or the Private Owner sells or pledges (or engages in any transaction with a similar effect) any direct or indirect interest in the Private Owner or the Manager, as the case may be, in each of the foregoing cases without the consent of the Required Consenting Parties; or

(i) the failure of the Manager or the Private Owner to remit or cause to be remitted all Asset Proceeds to the Custodian/Paying Agent as and when required; or

(j) the failure at any time of the Private Owner to maintain in the Private Owner Pledged Account an amount equal to or exceeding the Private Owner Pledged Amount or, if applicable, any failure of the bank issuing the Qualifying Letter of Credit to comply with its terms; or

(k) any material breach of a representation or warranty made by the Debtor in this Agreement, which remains unremedied for a period of thirty (30) days or more after the date on which written notice of such breach requiring the same to be remedied shall have been given to the Debtor; or

(l) the failure of the Debtor or the Manager to cause the liquidation of the Assets in accordance with Section 11.2 upon the exercise of the rights of Initial Member and the Purchase Money Notes Guarantor in Section 11.1; or

(m) any failure by the Debtor or the Private Owner to pay or to cause the payment of any fees and expenses of the Custodian/Paying Agent when due, which failure continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Debtor or the Private Owner, as applicable; or

(n) any failure by the Debtor to cause any Discretionary Funding Advances to be repaid in full to the extent Asset Proceeds from the applicable Asset are available for such repayment; or

(o) the occurrence of a Purchase Money Notes Trigger Event unless such Purchase Money Notes Trigger Event is cured within ten (10) Business Days; or

(p) any other failure (other than those specified in any of subsections (a) through (o) above) on the part of the Debtor duly to observe or perform in any material respect any other covenants or agreements on the part of the Debtor contained in this Agreement (including any obligations imposed upon any Servicer or Subservicer but excluding any failure to pay any amount payable pursuant to Section 2.1), which continues unremedied for a period of thirty (30) days or more after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Debtor; provided, however, that in the case of a failure that cannot be cured within thirty (30) days, the cure period shall be extended for an additional thirty (30) days if the Debtor can demonstrate to the reasonable satisfaction of the Purchase Money Notes Guarantor that the Debtor is diligently pursuing remedial action.

## **ARTICLE V**

### **Remedies**

#### Section 5.1 Remedies.

(a) If an Event of Default shall have occurred and be continuing:

(i) The Purchase Money Notes Guarantor shall, upon the occurrence of such Event of Default, notify the Custodian/Paying Agent thereof, and Purchase Money Notes Guarantor may in its sole discretion cause the Noteholders to declare the applicable Class of Purchase Money Notes to be immediately due and payable, by a notice in writing to the Debtor and the Custodian/Paying Agent, and upon any such declaration the unpaid principal amount of such Class of Purchase Money Notes, together with all other accrued and unpaid amounts in respect thereof through the date of acceleration, shall become immediately due and payable; provided, however, that with respect to an Event of Default under Section 4.1(b)(i)(A), the unpaid principal amount of, and such amounts in respect of, each Purchase Money Note shall automatically become immediately due and payable;

(ii) The Purchase Money Notes Guarantor may institute Proceedings for the collection of all amounts then payable by the Debtor pursuant to Section 2.1 of this Agreement and the Collateral Agent may institute Proceedings for the collection of all other amounts then payable by the Debtor pursuant to this Agreement, whether by declaration or otherwise, enforce any judgment obtained, and collect from the Debtor moneys adjudged due;

(iii) The Collateral Agent may institute Proceedings from time to time for the complete or partial foreclosure of the Secured Parties Collateral or Collateral pursuant to any other Secured Parties Collateral Document;

(iv) The Collateral Agent may exercise any rights or remedies, upon the occurrence of an Event of Default pursuant to this Agreement and/or any one or more of the other Secured Parties Collateral Documents and/or any rights or remedies of a secured party under the NY UCC and take any other appropriate action to protect and enforce the rights and remedies of the Collateral Agent;

(v) The Collateral Agent may sell the Secured Parties Collateral or any portion thereof or rights or interest therein;

(vi) If an "Event of Default" pursuant to and as defined in the LLC Operating Agreement has occurred, the Controlling Party may direct the Initial Member to exercise its right, and the Initial Member shall exercise such right, pursuant to the LLC Operating Agreement to terminate the Servicer (and any Subservicers) and cause the Manager to enter into a new Servicing Agreement with a servicer (a "**Successor Servicer**") selected by the Initial Member (in its sole and absolute discretion);

(vii) If an "Event of Default" pursuant to and as defined in the LLC Operating Agreement has occurred, the Controlling Party may direct the Initial Member to exercise its right, and Initial Member shall exercise its right, pursuant to the LLC Operating Agreement to terminate the existing Manager and appoint a new Manager selected by the Initial Member (in its sole and absolute discretion);

(viii) The Initial Member may institute Proceedings from time to time for the complete or partial foreclosure of any equity interests in the Debtor that have been pledged to Initial Member pursuant to the LLC Operating Agreement to secure the Debtor's obligations thereunder;

(ix) If an "Event of Default" pursuant to and as defined in the LLC Operating Agreement has occurred, the Controlling Party may direct the Initial Member to exercise its right, and the Initial Member shall exercise its right, pursuant to the LLC Operating Agreement, to require the Private Owner to sell its equity interest of the Debtor to the Initial Member or its designee for fair market value in accordance with Section 3.14 of the LLC Operating Agreement;

(x) The Collateral Agent may institute Proceedings for the collection of all amounts then payable by any Subsidiary Grantor pursuant to Article VI of this Agreement

for the enforcement of any judgment and for the collection from such Subsidiary Grantor of any monies adjudged due;

(xi) If an “Event of Default” pursuant to and as defined in the LLC Operating Agreement has occurred, the Purchase Money Notes Guarantor may draw on the Qualifying Letter of Credit or exercise its rights to the Private Owner Pledged Account;

(xii) The Collateral Agent may institute Proceedings for the collection of all amounts then payable pursuant to the Guaranty Agreement for the enforcement of any judgment and for the collection of any monies adjudged due pursuant to the Purchase Money Notes;

(xiii) The Collateral Agent may institute Proceedings for the collection of all amounts then payable to the Noteholders for the enforcement of any judgment and for the collection of any monies adjudged due pursuant to any Purchase Money Note; and

(xiv) Each of the rights and remedies of the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member pursuant to this Section 5.1(a) of this Agreement shall be in addition to, and not in limitation or exclusion of, any other rights and remedies that they might have (whether by operation of Law, in equity, pursuant to contract or otherwise) and without prejudice and in addition to any right to which they are at any time entitled under the Transaction Documents.

Notwithstanding any provision in this Section 5.1 to the contrary, the Purchase Money Notes Guarantor shall have the right to exercise the rights and remedies of the Noteholders of the Purchase Money Notes so long as the Guaranty Agreement applies to any Purchase Money Notes or the reimbursement obligation to the Purchase Money Notes Guarantor on account of any Guaranty Payment.

(b) Appointment of Successor Servicer. If the Initial Member exercises its right to appoint a Successor Servicer pursuant to Section 5.1(a)(vi), the costs and expenses associated with such Successor Servicer (including any servicing fees) shall be borne by the Manager (and not the Initial Member or the Debtor), and no termination or other fee shall be due to Manager or the Servicer or any Subservicer in connection with or as a result of any such action. All authority and power of the Manager to act with respect to the terminated Servicer shall pass to and be vested in the Initial Member pursuant to this Article V and, without limitation, the Initial Member is hereby authorized and empowered, as attorney-in-fact or otherwise, to execute and deliver, on behalf of and at the expense of the Manager, any and all documents and other instruments and to do or take any and all acts necessary or appropriate to effect the termination of the Servicer and the replacement of the Servicer with a Successor Servicer.

(c) Cooperation to Facilitate Transfer. In any event, if a Servicer or Subservicer is terminated pursuant to the provisions of this Article V, Manager shall, and shall cause any Servicer (and any Subservicer) to, provide the Initial Member and the Purchase Money Notes Guarantor and any Successor Servicer in a timely manner with all documents, records and data (including electronic documents, records and data) requested by the Initial Member, the

Purchase Money Notes Guarantor or any Successor Servicer to enable it and any Successor Servicer to assume the responsibilities as servicer, and to cooperate with the Initial Member and the Purchase Money Notes Guarantor in effecting the termination of any Servicer (or Subservicer), including (i) the transfer within one (1) Business Day of all cash amounts that, at the time, shall be or should have been credited to the Collection Account or are thereafter received with respect to any Asset, (ii) the transfer of all lockbox accounts with respect to which payments or other amounts with respect to the Assets are directed or the redirection of all such payments and other amounts to such account as the Initial Member or the Purchase Money Notes Guarantor might specify, and (iii) the assignment to Collateral Agent of the right to access all such lockbox accounts, the Debtor Accounts and any other account into which Asset Proceeds or Borrower escrow or other payments are deposited or held; provided, however, that the documents, records and data delivered by the Servicer (and any Subservicer) to the Initial Member and the Purchase Money Notes Guarantor and any Successor Servicer pursuant to this Section 5.1(c) shall be limited to those documents in such Servicer's possession at the time of such transfer or which the Servicer acquires thereafter and shall not include or be deemed to include any documents, records or data in the possession of the Custodian/Paying Agent. The Manager shall be liable for all costs and expenses incurred by the Initial Member, the Purchase Money Notes Guarantor and the Collateral Agent (I) associated with the complete transfer of the servicing data, (II) associated with the completion, correction or manipulation of servicing data as may be required to correct errors or insufficiencies in the servicing data to enable the Collateral Agent and any Successor Servicer (and Subservicers) to service the Assets properly and effectively, and (III) to retain and maintain the services of a Successor Servicer (and any Subservicers). Within a reasonable time after receipt of a written request of the Manager for the same, the Initial Member, the Purchase Money Notes Guarantor and the Collateral Agent shall provide reasonable documentation evidencing such costs and expenses.

Section 5.2 Application of Proceeds. If the Collateral Agent collects any money or property pursuant to Section 5.1 of this Agreement, it shall pay out the money in the order set forth in Section 5.1 of the Custodial and Paying Agency Agreement, notwithstanding anything in any Purchase Money Note, the Guaranty Agreement, the Servicing Agreement or the Contribution Agreement to the contrary; provided, however, that if the Collateral Agent collects any money or property pursuant to Section 5.1 of this Agreement in respect of the Defeasance Account, it shall pay out the money pursuant to directions received from the Purchase Money Notes Guarantor.

Section 5.3 Sale of Secured Parties Collateral.

(a) The power to effect any sale or other disposition (a "Sale") of any portion of the Secured Parties Collateral shall not be exhausted by any one or more Sales as to any portion of the Secured Parties Collateral remaining unsold, but shall continue unimpaired until the entire Secured Parties Collateral shall have been sold or all Secured Obligations shall have been paid. The Collateral Agent from time to time may postpone any public Sale by public announcement made at the time and place of such Sale. The Collateral Agent hereby expressly waives its right to any amount fixed by Law as compensation for any Sale.

(b) In connection with a Sale of all or any portion of the Secured Parties Collateral:

(i) The Collateral Agent may bid for and purchase the property offered for Sale, and upon compliance with the terms of Sale may hold, retain and possess and dispose of such property, without further accountability;

(ii) The Collateral Agent may bid for and acquire the property offered for Sale in connection with any Sale thereof, and, subject to any requirements of, and to the extent permitted by, applicable Law in connection therewith, may purchase all or any portion of the Secured Parties Collateral in a private Sale, and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting the gross Sale price against the sum of (A) the amount which would be distributable to the Collateral Agent as a result of such Sale in accordance with Section 5.2 on the Distribution Date next succeeding the date of such Sale and (B) the expenses of the Sale and of any Proceedings in connection therewith which are reimbursable to it;

(iii) The Collateral Agent shall execute and deliver an appropriate instrument of conveyance prepared by the Servicer transferring its interest in any portion of the Secured Parties Collateral in connection with a Sale thereof;

(iv) The Collateral Agent is, pursuant to Section 13.1 of this Agreement, appointed the agent and attorney-in-fact of each Grantor to transfer and convey its interest in any portion of the Secured Parties Collateral in connection with a Sale thereof, and to take all action necessary to effect such Sale; and

(v) No purchaser or transferee at such a Sale shall be bound to ascertain the Collateral Agent's authority, inquire into the satisfaction of any conditions precedent or see to the application of any monies.

Section 5.4 No Impairment of Action. The Collateral Agent's right to seek and recover judgment pursuant to this Agreement shall not be affected by the seeking, obtaining or application of any other relief under or with respect to this Agreement. Neither the Lien of this Agreement nor any rights or remedies of the Collateral Agent shall be impaired by the recovery of any judgment by the Collateral Agent against any Grantor or by the levy of any execution under such judgment upon any portion of the Secured Parties Collateral or upon any of the assets of such Grantor. Any money or property collected by the Collateral Agent shall be applied in accordance with Section 5.2.

Section 5.5 Remedies Cumulative; Waiver. The rights of each of the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member pursuant to this Agreement shall be in addition to, and not in limitation or exclusion of, any other rights and remedies that it may have (whether by operation of Law, in equity, under contract or otherwise) and without prejudice and in addition to any right of setoff, recoupment, combination of accounts, Lien or other right to which it is at any time entitled. Each of the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member may enforce any of its remedies pursuant to this Agreement successively or concurrently in its sole discretion. No delay or failure on the part of

the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member to exercise any right or remedy to which it may become entitled hereunder upon an Event of Default shall constitute abandonment or waiver of any such right and the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member shall be entitled to exercise such right or remedy at any time during the continuance of a Event of Default.

Section 5.6 Waiver of Certain Rights and Remedies. To the extent permitted under applicable Law, each Grantor hereby waives all rights and remedies of a debtor or grantor under the NY UCC or other applicable Law, and all formalities prescribed by Law relative to the Sale or disposition of the Secured Parties Collateral (other than notice of Sale and any other formalities expressly provided in this Agreement), after the occurrence and during the continuation of an Event of Default and, except as otherwise set forth herein, all other rights and remedies of such Grantor with respect thereto.

## **ARTICLE VI**

### **Guaranty**

#### Section 6.1 Guaranty.

(a) Each Grantor hereby, jointly and severally, unconditionally and irrevocably, guaranties to the Collateral Agent, for the benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Debtor when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations.

(b) Anything in this Agreement or in any other Transaction Document to the contrary notwithstanding, the maximum liability of each Grantor hereunder and under the Transaction Documents shall in no event exceed the amount which can be validly guarantied by such Grantor, if any, under applicable federal and state Laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 6.2 of this Agreement).

(c) Each Grantor agrees that the Secured Obligations may at any time and from time to time exceed the amount of the liability of such Grantor hereunder without impairing the guaranty contained in this Section 6.1 or affecting the rights and remedies of the Secured Parties pursuant to this Agreement.

(d) The guaranty contained in this Section 6.1 shall remain in full force and effect until the termination of this Agreement, notwithstanding that from time to time prior thereto Debtor may be free from any Secured Obligations.

(e) No payment made by the Debtor, any Grantor, any other guarantor or any other Person or received or collected by the Secured Parties from the Debtor, any Grantor, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability

of any Grantor pursuant to this Agreement, which shall remain, notwithstanding any such payment (other than any payment made by such Grantor in respect of the Secured Obligations or any payment received or collected from such Grantor in respect of the Secured Obligations), liable for the Secured Obligations up to the maximum liability of such Grantor pursuant to this Agreement until the termination of this Agreement.

Section 6.2 Right of Contribution. Each Grantor hereby agrees that to the extent that a Grantor shall have paid more than its proportionate share of any payment made hereunder, such Grantor shall be entitled to seek and receive contribution from and against any other Grantor hereunder which has not paid its proportionate share of such payment. Each Grantor's right of contribution shall be subject to the terms and conditions of Section 6.3. The provisions of this Section 6.2 shall in no respect limit the obligations and liabilities of any Grantor to the Secured Parties and each Grantor shall remain liable to the Secured Parties for the full amount guaranteed by such Grantor pursuant to this Agreement.

Section 6.3 No Subrogation. Notwithstanding any payment made by any Grantor hereunder or any set-off or application of funds of any Grantor by the Secured Parties, no Grantor shall be entitled to be subrogated to any of the rights of the Secured Parties against Debtor or any other Grantor or any collateral security or guaranty or right of offset held by any Secured Party for the payment of the Secured Obligations, nor shall any Grantor seek or be entitled to seek any contribution or reimbursement from the Debtor or any other Grantor in respect of payments made by such Grantor hereunder, until the termination of this Agreement and the indefeasible satisfaction in full in cash of the Secured Obligations. If any amount shall be paid to any Grantor on account of such subrogation, contribution or reimbursement rights at any time when all of the Secured Obligations shall not have been paid in full, such amount shall constitute Asset Proceeds and shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor, and shall, immediately upon receipt by such Grantor, be deposited into the Collection Account, to be applied in accordance with the Priority of Payments.

Section 6.4 Amendments, etc. with Respect to the Secured Obligations. Each Grantor shall remain obligated pursuant to this Agreement notwithstanding that, without any reservation of rights against any Grantor and without notice to or further assent by any Grantor, any demand for payment of any of the Secured Obligations made by the Collateral Agent or the Purchase Money Notes Guarantor may be rescinded by such Person and any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guaranty therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Collateral Agent or the Purchase Money Notes Guarantor, and the Guaranty Agreement, any Purchase Money Notes and the other Transaction Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as the Collateral Agent or the Purchase Money Notes Guarantor may deem reasonably advisable from time to time, and any collateral security, guaranty or right of offset at any time held by the Collateral Agent for the payment of the Secured Obligations may be sold (in the case of any such collateral security), exchanged, waived, surrendered or released. The Collateral Agent shall not have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the



Secured Obligations or for the guaranty contained in this Article VI or any property subject thereto.

Section 6.5 Guaranty Absolute and Unconditional. Each Grantor waives any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by the Collateral Agent upon the guaranty contained in this Article VI or acceptance of the guaranty contained in this Article VI; the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended, modified or waived, in reliance upon the guaranty contained in this Article VI and the grant of the security interests pursuant to Section 3.1; and all dealings between the Debtor and any of the Grantors, on the one hand, and the Collateral Agent, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guaranty contained in this Article VI and the grant of the security interests pursuant to Section 3.1. Each Grantor waives diligence, presentment, protest, and demand for payment and notice of default or nonpayment to or upon Debtor or any of the Grantors with respect to the Secured Obligations. Each Grantor understands and agrees that the guaranty contained in this Article VI and the grant of the security interests pursuant to Section 3.1 shall be, and shall be construed to be, a continuing, absolute and unconditional guaranty of payment and performance without regard to (a) the validity or enforceability of the Guaranty Agreement, any Purchase Money Notes or any other Transaction Document, any of the Secured Obligations or any other collateral security therefor or guaranty or right of offset with respect thereto at any time or from time to time held by the Collateral Agent, for the benefit of the Secured Parties, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by Debtor or any other Person against the Collateral Agent, or (c) any other circumstance whatsoever (with or without notice to or knowledge of Debtor or such Grantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of Debtor for the Secured Obligations, or of such Grantor under the guaranty contained in this Article VI and the grant of the security interests pursuant to Section 3.1, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, the Collateral Agent may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against Debtor, any Grantor or any other Person or against any collateral security or guaranty for the Secured Obligations or any right of offset with respect thereto, and any failure by the Collateral Agent to make any such demand, to pursue such other rights or remedies or to collect any payments from Debtor, any Grantor or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release Debtor, any Grantor or any other Person or any such collateral security, guaranty or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of Law, of the Collateral Agent against any Grantor. For the purposes of this Agreement, "demand" shall include the commencement and continuance of any legal proceedings.

Section 6.6 Reinstatement. The guaranty contained in this Article VI shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Collateral Agent upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of

Debtor or any Grantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Debtor or any Grantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

Section 6.7 Payments. Each Grantor hereby guaranties that payments pursuant to this Article VI will constitute Asset Proceeds and will be deposited into the Collection Account, to be applied in accordance with the Priority of Payments.

Section 6.8 Information. Each Grantor assumes all responsibility for being and keeping itself reasonably informed of the Debtor's and each other Grantor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Secured Obligations and the nature, scope and extent of the risks that such Grantor assumes and incurs hereunder, and agrees that neither the Collateral Agent nor any other Secured Party will have any duty to advise such Grantor of information known to it or any of them regarding such circumstances or risks.

## **ARTICLE VII**

### **Representations And Warranties**

Section 7.1 Representations and Warranties. Each Grantor hereby represents and warrants to the Purchase Money Notes Guarantor and the Collateral Agent as of the date hereof and at all times while the Secured Obligations remain unsatisfied and undischarged in full, that:

(a) This Agreement has been duly executed by such Grantor and constitutes a legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity;

(b) There are no actions, suits, Proceedings, claims or disputes pending or, to the knowledge of the Manager or such Grantor, threatened in writing, at Law, in equity, in arbitration or before any Governmental Authority affecting such Grantor or any of its properties or revenues that may adversely affect the grant by such Grantor, or the perfection, of the security interest purported to be created hereby in the Secured Parties Collateral, or the exercise by the Collateral Agent or the Purchase Money Notes Guarantor of any of its rights or remedies hereunder;

(c) The Grantors are and will be at all times the sole and exclusive owners of or otherwise have and will have rights in, the Secured Parties Collateral free and clear of any Lien other than Liens in favor of the Collateral Agent and other Liens expressly permitted pursuant to the Transaction Documents. No effective financing statement or other instrument similar in effect covering all or any part of the Secured Parties Collateral (except in favor of the Collateral Agent) is on file in any recording or filing office;

(d) The transactions provided for in this Agreement (i) have been duly authorized by all requisite limited liability company action, and (ii) do not and will not (A) violate (1) any applicable provision of any Law or of the certificate of formation or operating

agreement of such Grantor, (2) any order of any Governmental Authority or arbitrator or (3) any material provision of any indenture or any agreement or other instrument to which such Grantor is a party or by which it or the Secured Parties Collateral is or may be bound, (B) be in conflict with, result in a breach of or constitute (alone or with notice or lapse of time or both) a default pursuant to any such indenture or agreement or other instrument, (C) result in the creation or imposition of any security interest in or Lien upon the Secured Parties Collateral (other than the security interest and Lien created thereon pursuant to this Agreement) or (D) require the consent of any party for the granting of the security interest created hereby;

(e) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other regulatory body, or any other Person, is required on the date hereof for (i) the due execution, delivery and performance by such Grantor of this Agreement, (ii) the grant by such Grantor of the security interest purported to be created hereby in the Secured Parties Collateral or (iii) the exercise by the Collateral Agent or the Purchase Money Notes Guarantor of any of its rights and remedies hereunder. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other regulatory body, or any other Person, is required for the perfection of the security interest purported to be created hereby in the Secured Parties Collateral, except for (A) the filing of a UCC-1 financing statement properly describing the Secured Parties Collateral and identifying such Grantor and Collateral Agent in the applicable jurisdiction required pursuant to the UCC, (B) execution and delivery of the Account Control Agreements pursuant to the UCC, (C) execution and delivery by the Custodian/Paying Agent of the Custodial and Paying Agency Agreement containing an acknowledgment by the Custodian/Paying Agent that it holds possession of the Custodial Documents for the Collateral Agent's benefit, and (D) the taking of any action required to maintain continuing perfection with respect to proceeds which cannot be perfected by the filing of financing statements under the UCC (subclauses (A), (B), (C) and (D)), each a "**Perfection Requirement**" and collectively, the "**Perfection Requirements**"; and

(f) This Agreement creates a legal, valid and enforceable security interest in favor of the Collateral Agent, for the benefit of the Secured Parties, in the Secured Parties Collateral, as security for the Secured Obligations. The compliance with the Perfection Requirements will result in the perfection of such security interests. After compliance with the Perfection Requirements, such security interests, including in the case of Secured Parties Collateral in which such Grantor obtains rights after the date hereof, will be perfected, first priority security interests. Such Perfection Requirements and all other action necessary or desirable to perfect and protect such security interest have been duly made or taken, except for the other filings and recordations and actions described in Section 7.1(e) above.

## **ARTICLE VIII**

### **Covenants**

Section 8.1 Debtor Accounts. The Debtor shall establish and maintain with the Custodian/Paying Agent the Debtor Accounts (excluding the Escrow Accounts, which shall be established and maintained by the Servicer).

Section 8.2 Grantor Status; Licensing. The Debtor shall, at all times, constitute a limited liability company organized under the Laws of the State of Delaware and a Single Purpose Entity. Each Subsidiary Grantor shall at all times be a Single Purpose Entity. As soon as reasonably practical after the Closing Date, Debtor (on its own behalf or, if applicable, on behalf of the Ownership Entities that hold Acquired REO Property) shall apply for and, thereafter, use its reasonable best efforts to obtain as quickly as possible, and maintain, all such licenses as are required to conduct its business, including qualifications to conduct business in jurisdictions other than Delaware and licenses to purchase, own or service the Assets and, if applicable, operate, manage, lease and dispose of Acquired REO Property, if the failure to so obtain such licenses would reasonably be expected to result in the imposition of fines, penalties or other liabilities on the Debtor, claims and defenses being asserted against the Debtor (including counterclaims and defense asserted by Borrowers), or materially adversely affect the Debtor or the Debtor's ability to foreclose on the Collateral securing or otherwise realize the full value of any Asset.

Section 8.3 LLC Operating Agreement. The Debtor (a) shall at all times have in effect and be subject to the LLC Operating Agreement, (b) except as is otherwise expressly permitted therein, shall not amend or modify in any material respect the LLC Operating Agreement without the prior written approval of the Purchase Money Notes Guarantor, and (c) shall not enter into or allow itself to become subject to any other constituent documents inconsistent with any terms of the LLC Operating Agreement.

Section 8.4 Custodian/Paying Agent. The Debtor shall retain the Custodian/Paying Agent and shall enter into and at all times be a party to a Custodial and Paying Agency Agreement with the Custodian/Paying Agent. The Custodian/Paying Agent at all times shall have custody and possession of the Notes and other Custodial Documents to the extent required pursuant to the Custodial and Paying Agency Agreement. At no time shall Debtor have more than one Custodian/Paying Agent. The fees and expenses paid to the Custodian/Paying Agent shall be no more than market rates and the Custodian/Paying Agent shall be terminable by the Controlling Party upon no more than thirty (30) days notice without cause thereunder. In the event that the Debtor (or any Servicer or Subservicer) removes any Notes or other Custodial Documents from the possession of the Custodian/Paying Agent (which shall be done only in accordance with the Custodial and Paying Agency Agreement), (a) any loss or destruction of or damage to such Notes or Custodial Documents shall be the liability of the Debtor (who, along with the Servicer and any Subservicer shall be responsible for safeguarding such Notes and Custodial Documents), and (b) such Notes shall be returned to the Custodian/Paying Agent within the time provided under the UCC to maintain the Collateral Agent's perfection thereof by possession. If any Notes or other Custodial Documents are removed in connection with the modification or restructuring of an Asset, the modified or restructured Notes and other Custodial Documents removed in connection therewith shall be returned to the Custodian/Paying Agent as soon as possible following the completion of the restructuring or modification (and, in any event, in accordance with clause (b) of the immediately preceding sentence). Debtor shall ensure that the Purchase Money Notes Guarantor receives a copy of each demand, notice or other communication given pursuant to the Custodial and Paying Agency Agreement at the time that such notice or other communication is given thereunder.

Section 8.5 Compliance with Law. Each Grantor shall, at all times, comply with applicable Law in connection with the performance of its obligations pursuant to this Agreement.

Section 8.6 Servicer. Debtor shall at all times cause the Servicing Obligations to be performed by a Servicer or a Subservicer, each of which shall be a Qualified Servicer.

Section 8.7 Certain Restrictions. Debtor shall not:

(a) at any time, without limiting its obligation to constitute a Single Purpose Entity, incur any Indebtedness (other than the Excess Working Capital Advances, Discretionary Funding Advances and Indebtedness evidenced by the Purchase Money Notes and pursuant to this Agreement);

(b) dissolve or liquidate at any time prior to such time as the Debtor makes the Final Distribution and this Agreement is terminated;

(c) (i) file a voluntary petition for bankruptcy, (ii) file a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law, (iii) make an assignment for the benefit of creditors, (iv) seek, consent or acquiesce in the appointment of a trustee, receiver or liquidator or of all or any substantial part of its properties, (v) file an answer or other pleading admitting or failing to contest the material allegations of (A) a petition filed against it in any proceeding described in clause (i) through (iv), or (B) any order adjudging it a bankrupt or insolvent or for relief against it in any bankruptcy or insolvency proceeding, or (vi) allow itself to become unable to pay its obligations as they become due or allow the sum of its debts to be greater than all of its property, at a fair valuation; or

(d) place or permit (voluntarily or involuntarily) any Lien to be placed on any of the Secured Parties Collateral (other than the security interest granted to Collateral Agent hereunder and Liens expressly permitted pursuant to the Transaction Documents), and shall not take any action to interfere with Collateral Agent's rights as a secured party with respect to the Secured Parties Collateral.

Section 8.8 Change in Jurisdiction, Name, Location or Identity. Each Grantor agrees to provide the Collateral Agent with not less than ten (10) days' prior written notice of any change (a) in the jurisdiction in which it is organized, (b) in its company name, (c) in the location of its principal place of business, or (d) in its federal taxpayer identification number. Each Grantor agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the UCC or otherwise that are required in order for the Collateral Agent to continue following such change to have a valid, legal and perfected first priority security interest in the Secured Parties Collateral to the extent a security interest therein may be perfected by filing pursuant to the UCC.

Section 8.9 Payment of Principal on Purchase Money Notes; Reimbursement of Collateral Agent. The Debtor will duly and punctually pay, or cause the Custodian/Paying Agent to pay, the principal of the Purchase Money Notes in accordance with the terms of the Purchase Money Notes, this Agreement and the Custodial and Paying Agency Agreement and from

moneys on deposit in the Defeasance Account. On each Distribution Date, Debtor will direct the Custodian/Paying Agent to distribute amounts on deposit in the Distribution Account to Collateral Agent in payment of any amounts owed by Debtor to Purchase Money Notes Guarantor or Collateral Agent pursuant to this Agreement, subject to the priority of payments set forth in Section 5.1 of the Custodial and Paying Agency Agreement and the other terms thereof.

Section 8.10 Protection of Secured Parties Collateral; Further Assurances. From time to time, at its cost and expense, each Grantor promptly shall execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that Collateral Agent may reasonably request, in order to perfect, to ensure the continued perfection of, and to protect the assignment and security interest granted or intended to be granted hereby or to enable Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Secured Parties Collateral.

Section 8.11 Guaranties and Mortgages. If any Ownership Entity acquires any Acquired REO Property, then, the Debtor shall comply with the requirements set forth in the South CRE Venture 2010-2 Structured Transaction Checklist for Acquired Properties attached hereto as Exhibit B (the "**REO Checklist**") and within fifteen (15) Business Days after the (i) the foreclosure, conveyance in lieu of foreclosure or other event that resulted in such property becoming Acquired REO Property or (ii) for Company Acquired Property, the Closing Date, the Debtor promptly shall cause such Ownership Entity to execute and deliver to the Collateral Agent or its designee (in addition to the Joinder Agreement provided for in Section 8.12) an REO Mortgage substantially in the form attached as Tab 1 or Tab 2 to the REO Checklist, as applicable, and an Assignment of Leases and Rents substantially as Tab 3 to the REO Checklist, each with respect to such Acquired REO Property in favor of the Collateral Agent or its designee for the benefit of the Secured Parties (which REO Mortgage shall (a) secure all of the Secured Obligations (or, in jurisdictions with a mortgage recording Tax that would be payable on the full amount of the Secured Obligations, an amount equal to 105% of the Total Asset Valuation of the Asset to which such Acquired REO Property relates), or, (b) provide for a Release Price (or, in the case of Acquired REO Property consisting of condominiums or cooperative units or separate land parcels, release prices for individual units or parcels) based on the Business Plan or otherwise satisfactory to the Collateral Agent and (c) shall contain such other provisions (in addition to those included in the Asset Documents) as the Collateral Agent shall require in light of the particular nature or characteristics of such Acquired REO Property). Such REO Mortgage shall be accompanied by such related documentation and deliveries as the Collateral Agent reasonably may request, each in form and substance satisfactory to the Collateral Agent, including, without limitation, the REO Collateral Documents. Such REO Mortgage shall be duly recorded or filed in such manner and in such places as are required by applicable Law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent granted pursuant to such REO Mortgage, and all Taxes, fees and other charges payable in connection therewith shall be paid in full. The cost of preparing, negotiating and recording such REO Mortgage (including mortgage recording Taxes) and the costs associated with such additional documentation and deliverables shall be Servicing Expenses. The Collateral Agent hereby reserves its right to amend, modify, or otherwise change the form REO Mortgage and the Collateral Agent hereby reserves the right to approve any amendments, modifications or changes to the REO Mortgage proposed (in the Collateral Agent's sole and absolute discretion) prior to

the execution of such REO Mortgage delivered pursuant to this Section 8.11. Notwithstanding anything to the contrary contained in the foregoing, with respect to Acquired REO Property (I) acquired on the Closing Date, the Debtor shall deliver (and/or shall cause the applicable Ownership Entity to deliver) to the Collateral Agent or its designee the REO Collateral Documents and other items required to be delivered pursuant to this Section 8.11 within thirty (30) days after the Closing Date, or (II) acquired on any date after the Closing Date, the Debtor shall deliver (and/or shall cause the applicable Ownership Entity to deliver) to the Collateral Agent or its designee the REO Collateral Documents and other items required to be delivered pursuant to this Section 8.11 (x) within ten (10) days following the execution and delivery of such instrument or (y) within ten (10) days following receipt of such instrument, as the case might be.

Section 8.12 Additional Grantors. If Debtor shall form, acquire or otherwise have any Subsidiary, Debtor shall cause such Subsidiary to become a Subsidiary Grantor pursuant to this Agreement, such Subsidiary shall execute and deliver to Collateral Agent a Joinder Agreement substantially in the form of Exhibit A, which Joinder Agreement will be enforceable against such Subsidiary whether or not formally acknowledged or accepted by the Purchase Money Notes Guarantor, the Collateral Agent or the Initial Member, and shall thereafter for all purposes be a party hereto and have the same rights, benefits and obligations as a Grantor party hereto on the Closing Date. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of the Collateral Agent not to cause any Subsidiary of the Debtor to become a Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

Section 8.13 Transaction with Affiliates. No Grantor shall enter into any transaction with any Affiliate, except as expressly permitted pursuant to Section 3.5 of the LLC Operating Agreement, without the prior written consent of the Collateral Agent.

Section 8.14 Books and Records; Reports; Certifications; Audits.

(a) Maintenance of Books and Records. The Debtor shall cause to be kept and maintained (including by the Servicer and any Ownership Entity and including records transferred by the Receiver to the Debtor in connection with its conveyance of the Assets to the Debtor pursuant to the Contribution Agreement), at all times, at the Debtor's chief executive office, a complete and accurate set of files, books and records regarding the Collateral, the Secured Parties Collateral and the Assets and the Debtor's, any Ownership Entity's and the Collateral Agent's interests in the Collateral, the Secured Parties Collateral and the Assets, including records relating to the Debtor Accounts and the disbursement of all Asset Proceeds. This obligation to maintain a complete and accurate set of records shall encompass all files in the Debtor's custody, possession or control pertaining to the Collateral, the Secured Parties Collateral and the Assets, including (except as required to be held by the Custodian/Paying agent pursuant to the Custodial and Paying Agency Agreement) all original and other documentation pertaining to the Collateral, the Secured Parties Collateral and the Assets, all documentation relating to items of income and expense pertaining to the Collateral, the Secured Parties

Collateral and the Assets, and all of Debtor's (and the Servicer's and each Subservicer's) internal memoranda pertaining thereto. The books of account shall be maintained in a manner that provides sufficient assurance that: (i) transactions of Debtor are executed in accordance with the general or specific authorization of the Manager consistent with the provisions of the LLC Operating Agreement and the other Transaction Documents; and (ii) transactions of the Debtor are recorded in such form and manner as will (A) permit preparation of federal, state and local income and franchise Tax returns and information returns in accordance with the LLC Operating Agreement and the other Transaction Documents and as required by Law; (B) permit preparation of the Debtor's financial statements in accordance with GAAP and as otherwise set forth in the LLC Operating Agreement and the other Transaction Documents; and (C) maintain accountability for the Debtor's assets.

(b) Retention of Books and Records. The Debtor shall cause all such books and records to be maintained and retained until the date that is the later of ten (10) years after the Closing Date or three (3) years after the date on which the Final Distribution is made. All such books and records shall be available during such period for inspection by the Collateral Agent or the Purchase Money Notes Guarantor or their respective representatives (including any Governmental Authority) and agents at the chief executive office of Debtor at all reasonable times during business hours on any Business Day (or, in the case of any such inspection after the term hereof, at such other location as is provided by notice to the Collateral Agent and the Purchase Money Notes Guarantor), in each instance upon not less than two (2) Business Days' prior notice to the Debtor unless an Event of Default shall have occurred and be continuing. Upon request by the Collateral Agent or the Purchase Money Notes Guarantor, the Debtor, at the sole cost and expense of the Collateral Agent or the Purchase Money Notes Guarantor, as the case might be, promptly shall send copies (the number of copies of which shall be reasonable) of such books and records to the Collateral Agent or the Purchase Money Notes Guarantor. The Debtor shall provide the Collateral Agent and the Purchase Money Notes Guarantor with reasonable advance notice of the Debtor's intention to destroy or dispose of any documents or files relating to the Assets and, upon the request of the Collateral Agent or the Purchase Money Notes Guarantor, shall allow such Person, at its own expense, to recover the same from the Debtor.

(c) Reporting.

(i) As soon as practicable following, but no later than ninety (90) days immediately after, the end of each Fiscal Year (commencing with respect to the 2011 Fiscal Year), Debtor shall deliver, subject to the provisions of subsection (h) below, to each of the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor an audited consolidated balance sheet of the Debtor and its Subsidiaries as at the end of such Fiscal Year, and audited consolidated statements of operations and cash flow of the Debtor and its Subsidiaries for such Fiscal Year, each prepared in accordance with GAAP and accompanied by the Accountants' report thereon, which shall be certified in the customary manner by the Accountants.

(ii) As soon as practicable following, but no later than forty-five (45) days immediately after the end of each quarter of each Fiscal Year (other than the last quarter of such Fiscal Year, and commencing with the calendar quarter ending on or about March 31,



2011), Debtor shall deliver, subject to the provisions of subsection (h) below, to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor an unaudited consolidated balance sheet of Debtor and its Subsidiaries as at the end of such calendar quarter and an unaudited consolidated statements of operations and cash flow of Debtor and its Subsidiaries for such calendar quarter (and, for the first such report, also covering the period from the Closing Date through the end of such calendar quarter), each prepared in accordance with GAAP.

(iii) The Debtor shall cause to be delivered, subject to the provisions of subsection (h) below, to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor such information as is specified in Exhibit B of the LLC Operating Agreement and such other information relating to the Assets, the Secured Parties Collateral, the Debtor, the Servicers and any Subservicers as the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor may reasonably request from time to time and, in any case, shall ensure that the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor are promptly advised, in writing, of any matter of which the Manager, any Servicer or any Subservicer becomes aware relating to the Assets, the Secured Parties Collateral, the Collection Account, the Escrow Accounts, the Working Capital Reserve Account, the Defeasance Account, or any Borrower or Obligor that materially and adversely affects the interests of the Initial Member, the Collateral Agent, the Purchase Money Notes Guarantor or of any Secured Party pursuant to this Agreement. In addition to such other reports as are required to be provided under this Agreement, the Debtor (x) shall cause to be delivered to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor such information relating to compliance by the Private Owner with the requirements of clause (v) of Section 10.1(a) of the LLC Operating Agreement, as the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor may reasonably request from time to time and, (y) in any case, shall (in good faith) immediately advise, in writing, the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor of (i) any capital contribution to the Private Owner under a Qualifying Letter of Credit or Private Owner Control Account or (ii) any failure or cessation of the Private Owner to satisfy the requirements of clause (v) of Section 10.1(a) of the LLC Operating Agreement, provided that any failure of the Debtor to so provide such immediate notice under this clause (y) shall not be deemed a breach of this Agreement so long as the relevant information with respect thereto is included in the applicable Monthly Report for the period including the date on which such capital contribution or failure occurred (so long as such Monthly Report is timely delivered in accordance herewith).

(d) Monthly Reports. The Debtor shall cause to be furnished to each of the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor on or prior to the fifteenth (15th) day of each month (or if the fifteenth (15th) day is not a Business Day, then the first Business Day thereafter), commencing on the fifteenth (15th) day of the first month following the calendar month in which the Initial Servicing Transfer Date occurs (and with respect to each Asset, including relevant information with respect thereto for all periods from and after the Servicing Transfer Date for such Asset), the Monthly Report with respect to the relevant Due Period and (ii) the related Distribution Date Report with respect to such Due Period, which report shall specify the amounts and recipients of all funds to be distributed by the Paying Agent on the relevant Distribution Date. Each of the Monthly Report and the

Distribution Date Report shall be certified by the chief financial officer (or an equivalent officer) of the Manager. The Monthly Report also shall include a certification of the Manager that all withdrawals by the Manager from the Collection Account during such Due Period were made in accordance with the terms of this Agreement and the Custodial and Paying Agency Agreement. For the Distribution Date immediately preceding the Maturity Date for each Class of Purchase Money Notes, the Debtor shall also deliver to the Initial Member and the Purchase Money Notes Guarantor, and the Debtor shall also cause to be furnished to each of the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor, the Custodian and Paying Agent Report in accordance with the terms of the Custodial and Paying Agency Agreement.

(e) Annual Compliance Certificates. The Debtor shall, and shall cause the Servicer and any Subservicer to deliver to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor on or before March 15 of each year, commencing in the year 2011, an officer's certificate stating, as to the signer thereof, that (i) a review of such party's activities during the preceding calendar year (or portion thereof) and of its performance pursuant to this Agreement (or, as applicable, the Servicing Agreement or any Subservicing Agreement) has been made under such officer's supervision, and (ii) to the best of such officer's knowledge and belief, based on such review, such party has fulfilled all of its obligations pursuant to this Agreement (or, as applicable, the Servicing Agreement or any Subservicing Agreement) in all material respects throughout such year or portion thereof or, if there has been a failure to fulfill any such obligation in any material respect, specifying each such failure and the nature and status thereof. The first such officer's certificate shall cover, with respect to any Asset, the period commencing on the Closing Date (and with respect to each Asset, including relevant information with respect thereto for the period commencing on the Servicing Transfer Date for such Asset) and continuing through the end of the 2011 calendar year. In the event the Servicer or any Subservicer was terminated, resigned or otherwise performed in such capacity for only part of a year, such party shall provide an officer's certificate pursuant to this Section 8.14(e) with respect to such portion of the year.

(f) Annual Compliance Report. On or before March 15 of each year, commencing in the year 2011, the Debtor shall cause the Servicer and any Subservicer, at its own expense or the expense of the Manager, to provide to the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor the annual reports (including the independent accountant report) for the prior Fiscal Year (or other applicable period as set forth below) required under Section 1122 of Regulation AB (regardless of whether any such requirements apply, by their terms, only to companies registered or required to file reports with the Securities and Exchange Commission) with respect to the relevant servicing criteria provisions of Section 1122 (d)(1) of Regulation AB that are applicable to the servicing being conducted under the LLC Operating Agreement (and the Servicing Agreement). The first such reports shall cover the period commencing on the Closing Date (and for each Asset, covering the period from the applicable Servicing Transfer Date) and continuing through the end of the 2011 Fiscal Year.

(g) Audits. Until the later of the date that is ten (10) years after the Closing Date or the date that is three (3) years after the Final Distribution, the Debtor shall, and shall cause the Servicer and any Subservicer to (i) provide any representative of the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor (including any Governmental Authority), during normal business hours and on reasonable notice, with access to all of the

books of account, reports and records relating to the Secured Parties Collateral, the Collateral, the Servicing Obligations, the Debtor Accounts, or any other matters relating to this Agreement or the rights or obligations hereunder or under the Transaction Documents, (ii) permit such representatives to make copies of and extracts from the same, (iii) allow the Initial Member, the Collateral Agent and the Purchase Money Notes Guarantor to cause such books to be audited by accountants selected by the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor and (iv) allow representatives of the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor to discuss Debtor's and the Servicer's or Subservicer's affairs, finances and accounts, as they relate to the Secured Parties Collateral, the Assets, the Collateral, the Servicing Obligations, the Debtor Accounts or any other matters relating to this Agreement, the Secured Obligations or the rights or obligations hereunder, with its officers, directors, employees, accountants (and by this provision Debtor hereby authorizes such accountants to discuss such affairs, finances and accounts with such representatives), the Servicer, any Subservicer, and attorneys. Any expense incurred by the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor and any reasonable out-of-pocket expense incurred by Debtor in connection with the exercise by the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor of its rights in this Section 8.14(g) shall be borne by such party; provided, however, that any expense incident to the exercise by the Initial Member, the Collateral Agent or the Purchase Money Notes Guarantor of its rights pursuant to this Section 8.14(g) as a result of or during the continuance of an Event of Default shall be borne in all cases by the Private Owner (except to the extent such Event of Default is attributable exclusively to a Manager having been appointed by the Initial Member following removal of the Private Owner in such capacity, or to any applicable Servicer (and any Subservicers) having been engaged by the Initial Member, the Debtor or the applicable replacement Manager following such removal of the Private Owner as the Manager, in each case that is not an Affiliate of the Private Owner).

(h) No Duplicate Reports. Notwithstanding any provision in subsections (c) through (f) above to the contrary, the Debtor (i) shall not be required to deliver duplicate copies of the reports as described in such subsections to the Receiver, so long as the Receiver is acting in its capacity as the Collateral Agent and the Initial Member and (ii) shall only be required to deliver one copy of each such reports addressed to the Receiver with a notation on the envelope that such report is being delivered to the Receiver in its dual capacities as both the Initial Member and the Collateral Agent.

#### Section 8.15 Insurance.

(a) The Debtor shall cause insurance coverage to be maintained for the Collateral and Acquired Property from an insurer (unless provided for in the then-applicable Business Plan) reasonably acceptable to the Purchase Money Notes Guarantor for any Asset with respect to which the Borrower has failed to maintain required fire, hurricane, flood and hazard insurance with extended coverage as is customary in the area in which the Collateral or Acquired Property is located and in such amounts and with such deductibles as, from time to time, are approved by the Purchase Money Notes Guarantor (unless provided for in the then-applicable Business Plan).

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days

after receipt by the Collateral Agent of written notice thereof, (ii) with respect to any policy insuring a Grantor or Collateral, name the Collateral Agent as additional insured on behalf of the Secured Parties (in the case of liability insurance) or loss payee (in the case of property insurance).

Section 8.16 Recovery of Expenses; Interest. The Debtor shall cause commercially reasonable efforts to be used to recover from Borrowers and Obligors those Servicing Expenses that such Borrowers or Obligors are obligated to pay. No Servicing Expenses shall bear interest chargeable in any way to the Collateral Agent or the Purchase Money Notes Guarantor.

Section 8.17 Debtor's Duty To Advise Collateral Agent and Purchase Money Notes Guarantor; Delivery of Certain Notices. In addition to such other reports and access to records and reports as are required to be provided to the Collateral Agent and the Purchase Money Notes Guarantor, the Debtor shall cause to be delivered to the Collateral Agent or the Purchase Money Notes Guarantor such information relating to the Assets, the Collateral, the Secured Parties Collateral, Debtor and the Servicer and any Subservicer as the Collateral Agent or the Purchase Money Notes Guarantor may reasonably request from time to time and, in any case, shall ensure that the Collateral Agent and the Purchase Money Notes Guarantor are promptly advised, in writing, of any matter of which Debtor, the Servicer or any Subservicer becomes aware relating to the Assets, the Secured Parties Collateral, the Collateral, the Debtor Accounts or any Borrower or Obligor that materially and adversely affects the interests of the Collateral Agent or the Purchase Money Notes Guarantor hereunder. Without limiting the generality of the foregoing, the Debtor shall cause to be delivered to the Collateral Agent and the Purchase Money Notes Guarantor information indicating any possible Environmental Hazards with respect to any Collateral or the Secured Parties Collateral and any notice or report provided to the Debtor or the Manager pursuant to Section 5.5 of the Servicing Agreement as in effect on the Closing Date. To the extent the Collateral Agent requests information that is dependent upon obtaining such information from an Borrower, Obligor or other third party, the Debtor shall cause to be made commercially reasonable efforts to obtain such information but it shall not be a breach by the Debtor of this Agreement if the Debtor fails to cause such information to be provided to Collateral Agent because an Borrower, Obligor or other Person (other than the Servicer or any Subservicer) has failed to provide such information after such efforts have been made.

Section 8.18 Administration of Acquired REO Properties. Notwithstanding any other provision of this Agreement to the contrary, in operating, managing, leasing or disposing of any Acquired REO Property, the Debtor and the Manager shall act in the best interests of the Debtor and the Members and creditors of the Debtor (including the FDIC in its various capacities) in accordance with the Servicing Standards pursuant to the LLC Operating Agreement, in accordance with the specific provisions of the LLC Operating Agreement relating to REO Properties and in general conformance with the Business Plan. The Debtor shall furnish to the Collateral Agent such reports regarding the operation, management, leasing or disposition of any Acquired REO Property as the Collateral Agent reasonably shall request.

Section 8.19 Payment of Purchase Money Notes Issuance/Guaranty Fee.

(a) In consideration of the Purchase Money Notes Guarantor agreeing to act as the agent of the Noteholders of the Purchase Money Notes and to guaranty certain obligations

of Debtor pursuant to the Purchase Money Notes in accordance with the Guaranty Agreement, the Receiver, for and on behalf of Debtor, shall pay to the Purchase Money Notes Guarantor on the Closing Date a fee equal to 3.5% of the aggregate original principal amount of the Purchase Money Notes (the "**Purchase Money Notes Issuance/Guaranty Fee**"). To effect reimbursement and repayment of the Purchase Money Notes Issuance/Guaranty Fee to the Receiver, the Purchase Money Notes Issuance/Guaranty Fee will be added to the aggregate principal amount of the Purchase Money Note.

(b) Notwithstanding any provision of this Agreement or in the other Transactions Documents, no additional Purchase Money Notes Issuance/Guaranty Fee or Purchase Money Notes Reissuance Fee shall be due upon the implementation of the guaranty pursuant to the Guaranty Agreement.

Section 8.20 **Purchase Money Notes Reissuance Fee**. In consideration of the Purchase Money Notes Guarantor agreeing to continue its guaranty of certain obligations of the Debtor following reissuance of any Purchase Money Note, including any Reissued Purchase Money Note, the Purchase Money Notes Guarantor will receive (in the manner specified in the following sentence) a reissuance fee from the Debtor in an amount equal to 0.50% of the principal amount of the Reissued Purchase Money Notes (the "**Purchase Money Notes Reissuance Fee**"), which Purchase Money Notes Reissuance Fee is to be based on the then principal amount of the Maturing Purchase Money Notes without taking into account the increase in the amount due to the Purchase Money Notes Reissuance Fee. To effect payment of the Purchase Money Notes Reissuance Fee to the Purchase Money Notes Guarantor, the Purchase Money Notes Reissuance Fee will be added to the principal balance of the Reissued Purchase Money Notes.

## ARTICLE IX

### **Required Consent; Limits Liability**

Section 9.1 **Required Consents; Limits Liability**. Notwithstanding anything to the contrary contained in this Agreement (other than the last sentence of this Section 9.1), the Debtor shall not permit to be taken any action enumerated in Section 6.1 of the Servicing Agreement, any action described in the LLC Operating Agreement as requiring the consent of the Required Consenting Parties, including but not limited to the actions enumerated in Sections 3.4 and Section 8.1 of the LLC Operating Agreement) or any action enumerated below without the prior written consent of the Required Consenting Parties, which consent may be withheld or conditioned in the Collateral Agent's sole and absolute discretion:

(a) any sale, assignment, transfer, pledge, hypothecation or other encumbrance or disposition, either directly or indirectly (each a "**Transfer**") of the Private Owner Interest; provided that any such Transfer must be of all (and not less than all) of the Private Owner Interest;

(b) any financing of any Sale or Transfer with respect to any of the Assets;

(c) any Transfer of any Asset that provides for any recourse against the Initial Member, the Purchase Money Notes Guarantor or the Receiver;

(d) any disbursement of amounts from the Working Capital Reserve Account other than to fund Working Capital Expenses;

(e) any disbursement of any funds in the Collection Account or the Distribution Account, except as expressly contemplated by the Transaction Documents;

(f) any reimbursement for any expense or cost incurred (or paid) to any Affiliate of the Private Owner, the Debtor, the Servicer or any Subservicer, except as permitted pursuant to the Transaction Documents;

(g) any amendment or modification to, or waiver of, any terms of the LLC Operating Agreement that relate to the manner in which the Servicer services the Assets, including, without limitation, the Servicing Obligations and the Servicing Standard;

(h) the replacement of the Servicer;

(i) the payment of any fees to, or entering into any transaction with, any Affiliate of Debtor or Private Owner or Servicer or any Subservicer, except as expressly contemplated by the Transaction Documents;

(j) any amendment, modification to or change in any material respect, or material waiver of any provision of, the Organization Documents of Debtor;

(k) any Change of Control;

(l) the incursion, creation or assumption of any Indebtedness other than in respect of the Purchase Money Notes, this Agreement, the Discretionary Funding Advances and Excess Working Capital Advances.

Notwithstanding the foregoing, the Debtor may permit to be taken any action enumerated in Section 6.1(g) of the Servicing Agreement without the approval of the Initial Member, the Purchase Money Notes Guarantor or the Collateral Agent, as applicable.

## Section 9.2 Limitation of Liability.

(c) Liability Generally. Neither the Collateral Agent, the Purchase Money Notes Guarantor nor any other Secured Party nor any of their respective Affiliates, nor any of their respective officers, directors, employees, partners, principals or agents, including the Servicer and any Subservicer, shall be liable for any action taken or omitted to be taken by them or any one of them under this Agreement or in connection with any Secured Parties Collateral or any portion thereof, except for any act or omission constituting gross negligence, bad faith or willful misconduct (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law). In the event the Collateral Agent, the Purchase Money Notes Guarantor or any Secured Party exercises its rights pursuant to Article V of this Agreement, none

of the Collateral Agent, the Purchase Money Notes Guarantor or any Secured Party, nor any of their respective Affiliates, nor any of their respective officers, directors, employees, partners, principals or agents, including the Servicer and any Subservicer when acting as an agent of any of the foregoing, shall be liable for any action taken or omitted to be taken by them or any one of them pursuant to this Agreement or in connection with any Collateral or any portion thereof, except for any act or omission constituting willful misconduct.

(d) Reliance on Notices, etc. Neither Debtor nor the Collateral Agent or the Purchase Money Notes Guarantor shall incur any liability to the other by acting in good faith upon any notice, consent, certificate or other instrument or writing (including telegram, cable, telex or telecopy) that is reasonably believed by Debtor or the Collateral Agent or the Purchase Money Notes Guarantor as applicable, to be genuine and to have been signed or sent by the proper party and that on its face is properly executed.

(e) No Consequential Damages. Regardless of the legal theory upon which any claim by or against the Debtor or the Collateral Agent or the Purchase Money Notes Guarantor is based, including any claim based on contract, tort, strict liability, or fraud, none of the Collateral Agent or the Purchase Money Notes Guarantor or the Debtor shall be liable for, or may recover from the other, any amounts other than actual losses, costs and expenses (including reasonable attorneys' fees and litigation and similar costs to pursue such recovery) incurred by the party asserting the claim. Without limiting the foregoing, neither party shall be liable for, or entitled to recover from the other party, any consequential, special, indirect, punitive, treble, nominal or exemplary damages, business interruption costs or expenses, or damages for lost profits, operating losses or lost investment opportunity (regardless of whether any such damages are characterized as direct or indirect), each of which is and all of which are hereby excluded by agreement of the Collateral Agent, the Purchase Money Notes Guarantor and the Debtor, regardless of whether the party against whom such damages may be claimed has been advised of the possibility of any such damages, unless (in each case) such losses are incurred by the party asserting the claim as a direct result of a claim asserted against such party by a third party. For purposes of this Section 9.2, the following claims shall not constitute claims asserted by a third party: (i) with respect to the Debtor, any claims asserted by (A) the Servicer or any Subservicer, (B) any Affiliate of the Debtor or the Servicer or any Subservicer, and (C) any officer, director, employee, partner, principal or agent of the Debtor or the Servicer or any Subservicer, or any Affiliate of the Debtor or the Servicer or any Subservicer; and (ii) with respect to Collateral Agent, any claims asserted by any Affiliate or officer, director, employee, partner, principal or agent of the Collateral Agent, the Purchase Money Notes Guarantor or any Affiliate of any of them.

## ARTICLE X

### Release of Secured Parties Collateral

Section 10.1 Release of Secured Parties Collateral. The Purchase Money Notes Guarantor hereby authorizes the Collateral Agent to, and Collateral Agent agrees that it shall, release its Lien on any Secured Parties Collateral, solely to the extent necessary, (a) upon a final, nonappealable order of a court of competent jurisdiction permitting or directing disposition thereof, (b) upon payment of any Asset in full and satisfaction in full of all of the secured

obligations with respect to an Asset or upon receipt of a discounted payoff as payment in full of an Asset, (c) as is necessary in connection with the foreclosure on a Mortgaged Property, acceptance of a deed in lieu thereof or modification or restructuring of the terms thereof, or (d) in connection with the Debtor's sale of an Asset or any Collateral to the extent permitted under the Transaction Documents, provided, that the proceeds of such sale or disposition are applied in accordance with the priority of payments set forth in Section 5.1 of the Custodial and Paying Agency Agreement and the other terms thereof.

## **ARTICLE XI**

### **Liquidation of Assets**

Section 11.1 Rights to Liquidate Assets and Secured Parties Collateral. Each of the Initial Member and, so long as any Purchase Money Note is outstanding and not fully discharged, the Purchase Money Notes Guarantor shall have the right, exercisable in its sole and absolute discretion, to require the liquidation and sale, for cash consideration, of any remaining Assets or other Secured Parties Collateral held by Debtor or any Ownership Entity at any time after the earlier to occur of (a) the seventh anniversary of the Closing Date or (b) the date on which the then Unpaid Principal Balance is ten percent (10%) or less of the Unpaid Principal Balance as of the Cut-Off Date as set forth on the Asset Schedule.

Section 11.2 Exercise of Rights to Liquidate Assets and Secured Parties Collateral. In order to exercise its rights under Section 11.1, the Initial Member or, (a) if the Guaranty Notice is provided as set forth in the Guaranty Agreement, then until the repayment in full of and the discharge of the Purchase Money Notes (and the satisfaction of the reimbursement obligation to the Purchase Money Notes Guarantor on account of any Guaranty Payment), the Receiver or (b) if the Guaranty Notice is not provided as set forth in the Guaranty Agreement or after the repayment in full of and the discharge of the Purchase Money Notes (and the satisfaction of the reimbursement obligations to the Purchase Money Notes Guarantor), the Purchase Money Notes Guarantor acting on behalf of the Noteholders shall give notice in writing to the Collateral Agent, the Custodian/Paying Agent and the Debtor (with copies thereof to the Initial Member or the Purchase Money Notes Guarantor, as applicable), setting forth the date by which the remaining Assets or other Secured Parties Collateral are to be liquidated by the Collateral Agent. Debtor shall, and shall cause the Custodian/Paying Agent to, cooperate and assist the Collateral Agent with any and all aspects of the liquidation of the remaining Assets and other Secured Parties Collateral to the extent reasonably requested by the Collateral Agent. In the event the Debtor or any Affiliate thereof desires to bid to acquire the remaining Assets or other Secured Parties Collateral, then the Collateral Agent shall be entitled to liquidate the remaining Assets and other Secured Parties Collateral in its discretion. In the event the Collateral Agent undertakes to liquidate the remaining Assets and other Secured Parties Collateral pursuant to this Section 11.2, the proceeds thereof shall be applied on the Distribution Date following any such liquidation in accordance with the priority of payments set forth in Section 5.1 of the Custodial and Paying Agency Agreement and the other terms thereof; provided, however, that, notwithstanding such priority of payments, no portion of such proceeds shall be paid pursuant to Section 5.1(b)(vii) of the Custodial and Paying Agency Agreement until the Secured Obligations have been repaid in full.



## **ARTICLE XII**

### **Collateral Agent**

Section 12.1 Appointment and Authorization of Collateral Agent. The Purchase Money Notes Guarantor hereby irrevocably appoints, designates and authorizes the Receiver to act as the Collateral Agent pursuant to this Agreement to act as the agent of (and to hold any security interest to the Secured Parties Collateral Documents for and on behalf of or on trust for) the Purchase Money Notes Guarantor and each other Secured Party for purposes of acquiring, holding and enforcing any and all Liens on the Secured Parties Collateral granted by any Grantor to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. In this capacity, the Collateral Agent (and any co-agents, sub-agents and attorneys-in-fact appointed by the Collateral Agent for purposes of holding or enforcing any Lien on the Secured Parties Collateral (or any portion thereof) granted pursuant to the Secured Parties Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Collateral Agent), shall be entitled to the benefits of all provisions of this Article XII as though such co-agents, sub-agents and attorneys-in-fact were the Collateral Agent hereunder. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Transaction Document, the Collateral Agent shall have no duties or responsibilities, except those expressly set forth herein, nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with any Secured Party or participant of a Secured Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Transaction Document or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Transaction Documents with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 12.2 Delegation of Duties. The Collateral Agent may execute any of its duties under this Agreement or any other Secured Parties Collateral Document (including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Secured Parties Collateral Documents or of exercising any rights and remedies thereunder) by or through agents, sub-agents, employees or attorneys-in-fact as shall be deemed necessary by the Collateral Agent and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. The Collateral Agent shall not be responsible for the negligence or misconduct of any agent or sub-agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct (as determined in the final judgment of a court of competent jurisdiction).

Section 12.3 Liability of Collateral Agent. Neither the Collateral Agent, nor any of its Affiliates or officers, directors, employees, agents, sub-agents or attorneys-in-fact of any of them shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Transaction Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, in connection with its duties expressly

set forth herein); or (b) be responsible in any manner to any Secured Party for any recital, statement, representation or warranty made by any Grantor or any officer thereof, contained herein or in any other Transaction Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Agreement or any other Transaction Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Transaction Document, or the perfection or priority of any Lien or security interest created or purported to be created under the Secured Parties Collateral Documents, or for any failure of any Grantor or any other party to any Transaction Document to perform its obligations pursuant to this Agreement or any other Transaction Document.

#### Section 12.4 Reliance by Collateral Agent.

(a) The Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Debtor), independent accountants and other experts selected by the Collateral Agent. The Collateral Agent shall be fully justified in failing or refusing to take any action under any Secured Parties Collateral Document unless it shall first receive such advice or concurrence of the Controlling Party as it deems appropriate. The Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Secured Parties Collateral Document in accordance with a request or consent of the Controlling Party and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Parties.

(b) Each of the Purchase Money Notes Guarantor and the Receiver, by its execution of this Agreement, shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required to be consented to or approved by or acceptable or satisfactory to the Collateral Agent unless the Collateral Agent shall have received notice from the Purchase Money Notes Guarantor prior to the proposed Closing Date specifying its objection thereto.

Section 12.5 Liability of Collateral Agent. The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent shall have received written notice from a Grantor or any Secured Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." The Collateral Agent will notify the Purchase Money Notes Guarantor of its receipt of any such notice. The Collateral Agent shall take such action with respect to any Event of Default as may be directed by the Controlling Party in accordance with Article V; provided, however, that unless and until the Collateral Agent has received any such direction, the Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Secured Parties.

#### Section 12.6 Successor Collateral Agent.

The Collateral Agent may resign as the Collateral Agent upon thirty (30) days' notice to the Purchase Money Notes Guarantor and Debtor; provided, however, that the prior written consent of the Purchase Money Notes Guarantor and this Debtor will be required prior to the effectiveness of any such resignation. If the Collateral Agent resigns under this Agreement, the Controlling Party, with the written consent of the Debtor, shall appoint a successor collateral agent for the Secured Parties. If no successor collateral agent is appointed prior to the effective date of the resignation of the Collateral Agent, the retiring Collateral Agent may appoint, after consulting with the Purchase Money Notes Guarantor and Debtor, a successor collateral agent. Upon the acceptance of its appointment as successor collateral agent hereunder, the Person acting as such successor agent shall succeed to all the rights, powers and duties of the retiring Collateral Agent and the term "Collateral Agent" shall mean such successor collateral agent, and the retiring Collateral Agent's appointment, powers and duties as the Collateral Agent shall be terminated.

### **ARTICLE XIII** **Miscellaneous**

Section 13.1 Attorney-in-Fact. Each Grantor hereby constitutes and appoints the Collateral Agent the true and lawful attorney-in-fact of such Grantor, with full power and authority in the place and stead of such Grantor and in the name of such Grantor, Collateral Agent or otherwise, subject to the terms of this Agreement and applicable Law, to enforce all rights, interests and remedies of such Grantor with respect to the Secured Parties Collateral; provided, however, that the Collateral Agent shall not exercise any of the aforementioned rights unless an Event of Default has occurred and is continuing. This power of attorney is a power coupled with an interest and shall be irrevocable until the termination of this Agreement in accordance with the terms hereof; provided, however, that nothing in this Agreement shall prevent such Grantor from, prior to the exercise by the Collateral Agent of any of the aforementioned rights, utilizing the Secured Parties Collateral to transact Grantor ordinary course business operations.

Section 13.2 No Petition. Each of the Collateral Agent and the Purchase Money Notes Guarantor hereby covenants and agrees that it will not at any time institute against the Debtor, or join in any institution against the Debtor of, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or other proceedings under any United States federal or state bankruptcy or similar Law in connection with any obligation relating to any Purchase Money Note, the Guaranty Agreement or this Agreement.

Section 13.3 Reimbursement of Expenses. Except as prohibited by Law, if at any time the Collateral Agent or the Purchase Money Notes Guarantor employs counsel in connection with the creation, perfection, preservation, or release of the security interest of the Collateral Agent in the Secured Parties Collateral or the enforcement of any of the Collateral Agent's, or the Purchase Money Notes Guarantor's rights or remedies hereunder, all of the Collateral Agent's and the Purchase Money Notes Guarantor's attorneys' fees arising from such services and all other expenses, costs, or charges relating thereto shall become part of the Secured Obligations secured hereby and be paid by the Debtor on demand.

Section 13.4 Termination of Security Interest. Upon the indefeasible satisfaction and discharge in full of the Secured Obligations, the security interest and all other rights granted hereby shall terminate and all rights to the Secured Parties Collateral shall revert to the Debtor. Upon any such indefeasible satisfaction, and discharge of the Secured Obligations, the Collateral Agent (a) upon the written request of the Debtor shall promptly execute and deliver all such documentation, UCC termination statements and instruments as are necessary to release the Liens created pursuant to this Agreement and to terminate this Agreement, and (b) agrees, at the reasonable request of the Debtor, to furnish, execute and deliver such documents, instruments, certificates, notices or further assurances as the Debtor may reasonably request as necessary or desirable to effect such termination and release, all at the Debtor's sole cost and expense.

Section 13.5 Indemnification.

(a) Each Grantor shall indemnify, defend and hold harmless the Collateral Agent, the Purchase Money Notes Guarantor and each of their respective Affiliates, and their respective officers, directors, employees, partners, principals, agents and contractors (the "**Indemnified Parties**"), from and against any losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating, defending, asserting or preparing the defense or assertion of any of the foregoing), deficiencies, claims, interest, awards, judgments, penalties and fines (collectively, "**Indemnified Losses**") arising out of or resulting from (i) any breach by any Grantor or any of its Affiliates or any of their respective officers, directors, employees, partners, principals, agents or contractors (including the Servicer and any Subservicer) (collectively, "**Related Entities**") of any of their respective obligations under or covenants or agreements contained in this Agreement, the Secured Parties Collateral Documents or the Servicing Agreement (including any claim asserted by the Collateral Agent, the Purchase Money Notes Guarantor against Debtor to enforce its rights pursuant to Article V), or any third-party allegation or claim based upon facts alleged that, if true, would constitute such a breach, or (ii) any gross negligence, bad faith or willful misconduct of any of the Related Entities (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law). Such indemnity shall survive the termination of this Agreement. In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving an Indemnified Loss or a claim or demand made by any Person against the Indemnified Party (a "**Third Party Claim**"), such Indemnified Party shall deliver notice thereof to Debtor promptly after receipt by such Indemnified Party of written notice of the Third Party Claim, describing in reasonable detail the facts giving rise to any claim for indemnification hereunder, the amount of such claim (if known) and such other information with respect thereto as is available to the Indemnified Party and as Debtor may reasonably request. The failure or delay to provide such notice, however, shall not release any Grantor from any of its obligations under this Section 13.5 except to the extent that it is materially prejudiced by such failure or delay.

(b) If for any reason the indemnification provided for herein is unavailable or insufficient to hold harmless the Indemnified Parties, Debtor shall contribute to the amount paid or payable by the Indemnified Parties as a result of the Indemnified Losses of the Indemnified Parties in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties, on the one hand, and the Debtor or any Subsidiary Grantor (including the Servicer and

any Subservicer), on the other hand in connection with a breach of the Debtor's or any Subsidiary Grantor's obligations under this Agreement.

(c) If the Debtor confirms in writing to the Indemnified Party within fifteen (15) days after receipt of a Third Party Claim the Debtor's responsibility to indemnify and hold harmless the Indemnified Party therefor, Debtor may elect to assume control over the compromise or defense of such Third Party Claim at Debtor's own expense and by Debtor's own counsel, which counsel must be reasonably satisfactory to the Indemnified Party; provided, however, that (i) the Indemnified Party may, if such Indemnified Party so desires, employ counsel at such Indemnified Party's own expense to assist in the handling (but not control the defense) of any Third Party Claim; (ii) Debtor shall keep the Indemnified Party advised of all material events with respect to any Third Party Claim; (iii) Debtor shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any Third Party Claim or entering into any settlement, adjustment or compromise of such Third Party Claim involving injunctive or similar equitable relief being imposed upon any Indemnified Party or any of its or his Affiliates; and (iv) no Grantor will, without the prior written consent of each Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened action in respect of which indemnification may be sought hereunder (whether or not any such Indemnified Party is a party to such action), unless such settlement, compromise or consent by its terms obligates such Grantor to satisfy the full amount of the liability in connection with such Third Party Claim and includes an unconditional release of the Indemnified Party from all liability arising out of such Third Party Claim.

(d) Notwithstanding anything contained in this Agreement to the contrary, the Debtor shall not be entitled to control (and if the Indemnified Party so desires, it shall have sole control over) the defense, settlement, adjustment or compromise of (but the Debtor shall nevertheless be required to pay all Indemnified Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise): (i) any Third Party Claim that seeks an order, injunction or other equitable relief against the Indemnified Party or any of its Affiliates; (ii) any action in which both the Debtor or any Subsidiary Grantor (or any Affiliate) and the Indemnified Party are named as parties and either the Debtor or such Subsidiary Grantor (or such Affiliate) or the Indemnified Party determines with advice of counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the other party or that a conflict of interest between such parties may exist in respect of such action; and (iii) any matter that raises or implicates any issue relating to any power, right or obligation of the FDIC under any Law. If the Debtor elects not to assume the compromise or defense against the asserted liability, fails to timely and properly notify the Indemnified Party of its election as herein provided, or, at any time after assuming such defense, fails to diligently defend against such Third Party Claim in good faith, the Indemnified Party may pay, compromise or defend against such asserted liability (but the Debtor shall nevertheless be required to pay all Indemnified Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise). In connection with any defense of a Third Party Claim (whether by Debtor, a Subsidiary Grantor or the Indemnified Party), all of the parties hereto shall, and shall cause their respective Affiliates to, cooperate in the defense or prosecution thereof and to in good faith retain and furnish such records, information and

testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested by a party hereto in connection therewith.

Section 13.6 Governing Law. EACH PARTY TO THIS AGREEMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION, AND EACH PARTY TO THIS AGREEMENT UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 13.6, HOWEVER, (a) THE UNIFORM COMMERCIAL CODE AS IN EFFECT FROM TIME TO TIME IN THE JURISDICTION WHERE EACH GRANTOR IS LOCATED IS TO GOVERN THE PERFECTION OR NON-PERFECTION AND THE PRIORITY OF ANY SECURITY INTERESTS GRANTED BY SUCH GRANTOR TO THE SECURED PARTIES PURSUANT TO THIS AGREEMENT AND (b) THE APPLICABLE LAWS IN EFFECT FROM TIME TO TIME IN THE JURISDICTION WHERE ANY ACQUIRED REO PROPERTY IS LOCATED ARE TO GOVERN THE CREATION, PERFECTION OR NON-PERFECTION, PRIORITY AND ENFORCEMENT OF ANY SECURITY INTERESTS GRANTED BY THE APPLICABLE GRANTOR TO THE SECURED PARTIES PURSUANT TO THIS AGREEMENT IN AND TO SUCH ACQUIRED REO PROPERTY. NOTHING IN THIS AGREEMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS AGREEMENT.

Section 13.7 Jurisdiction, Venue and Service.

(a) Each Grantor, 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 Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member arising out of, relating to, or in connection with this Agreement or any other Transaction Document, and waives any right to:

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

(B) assert that venue is improper in 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 Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member arising out of, relating to, or in connection with this Agreement or any other Transaction Document (other than the LLC Operating Agreement), and waives any right to:

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

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

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

(iii) agrees to bring any suit, action or proceeding by any Grantor or its Affiliates against the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member arising out of, relating to, or in connection with this Agreement or any Transaction Document in only either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member, 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 Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member, 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 13.7(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 Collateral Agent, the Purchase Money Notes Guarantor or the Initial Member, as applicable.

(b) Each Grantor, 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 13.7(a) may be enforced in any court of competent jurisdiction;

(c) Subject to the provisions of Section 13.7(d), each Grantor, on behalf of itself and its Affiliates, Collateral Agent, Purchase Money Notes Guarantor and Initial Member hereby irrevocably and unconditionally agrees that service of all writs, process and summonses

in any suit, action or proceeding pursuant to Section 13.7(a) or Section 13.7(b) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 13.9 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 13.7(c) shall affect the right of any party to serve process in any other manner permitted by Law;

(d) Nothing in this Section 13.7 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Section 13.7(a)(iii) and Section 13.7(a)(iv), or in any way limit the FDIC's right to remove, transfer, seek to dismiss, or otherwise respond to any suit, action, or proceeding against it in any forum.

Section 13.8 Waiver of Jury. EACH GRANTOR (ON BEHALF OF ITSELF AND IT AFFILIATES), THE COLLATERAL AGENT, THE PURCHASE MONEY NOTES GUARANTOR AND THE INITIAL MEMBER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

Section 13.9 Notices. All notices, requests, demands, and other communications required or permitted to be given or delivered under or by reason of the provisions of this 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 or electronic mail address as shall be designated by such party in a notice to the other parties. All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt (or refusal thereof) by the relevant party hereto and (ii) (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.

Address for notices or communications to Debtor and any Subsidiary Grantor:

South CRE Venture 2010-2, LLC  
c/o Hudson Realty Capital LLC  
250 Park Avenue South, Third Floor  
New York, NY 10003  
Attention: Andrew J. Bloom  
Direct & General Counsel  
Email Address: [REDACTED]



with a copy to:

Hudson Realty Capital LLC  
250 Park Avenue South, Third Floor  
New York, NY 10003  
Attention: Renee Lewis  
Email Address: [REDACTED]

Address for notices or communications to any of the Collateral Agent, the Initial Member and the Purchase Money Notes Guarantor:

Assistant Director for Structured Transactions – Resolutions and Receiverships  
c/o Federal Deposit Insurance Corporation  
550 17th Street, NW (Room F-7014)  
Washington, D.C. 20429-0002  
Attention: Ralph Malami  
Email Address: 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, Virginia 22226  
Attention: David Gearin  
Email Address: DGearin@fdic.gov

Section 13.10 Assignment. This Agreement shall inure to the benefit of and be binding on and enforceable against each Grantor, the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member; provided, however, that no Grantor shall assign its rights hereunder in whole or in part without the prior written consent of the Collateral Agent and the Purchase Money Notes Guarantor.

Section 13.11 Entire Agreement. This Agreement contains the entire agreement among the Grantors, the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member with respect to the subject matter hereof and supersedes any and all other prior agreements, whether oral or written, provided that any Confidentiality Agreement between the FDIC and the Private Owner or any Affiliates of the Private Owner (including by way of joinder) with respect to the transaction that is the subject of this Agreement and the other Transaction Documents shall remain in full force and effect to the extent provided therein, except that the Debtor's rights under Article VI of the Contribution Agreement shall not be deemed a repurchase option for purposes of Section 2 of any such Confidentiality Agreement.

Section 13.12 Amendments and Waivers. No provision of this Agreement may be amended or waived except in writing executed by all of the parties to this Agreement, except for

Article II, any provision of which may be amended and waived in writing executed by the Debtor and the Purchase Money Notes Guarantor.

Section 13.13 Confidentiality. Each Grantor shall keep confidential and shall not divulge to any Persons, without the prior written consent of the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member, any information pertaining to this Agreement and the other Transaction Documents except as reasonably necessary to carryout the intent of this Agreement and except to the extent that it is necessary and appropriate for such Grantor to do so in working with legal counsel, auditors, Taxing authorities, regulatory authorities or any other Governmental Authority; provided, however, that, to the extent that disclosure should be required by Law, rule, regulation (including any securities listing requirements or the requirements of any self-regulatory organization), subpoena, arbitration or other dispute resolution process or in connection with any legal or regulatory proceeding (including in connection with or pursuant to any action, suit, subpoena, arbitration or other dispute resolution process or other legal proceedings, whether civil or criminal, and including before any court or administrative or legislative body), such Grantor will use all reasonable efforts to maintain confidentiality and will (unless otherwise prohibited by Law) notify the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member within one (1) Business Day after its knowledge of such legally required disclosure so that the Collateral Agent, the Purchase Money Notes Guarantor and/or the Initial Member may seek an appropriate protective order. Notice shall be by telephone, by email and in writing. In the absence of a protective order or waiver, such Grantor may make such required disclosure if, in the written opinion of its outside counsel (which opinion shall be provided to the Collateral Agent, the Purchase Money Notes Guarantor and the Initial Member prior to disclosure pursuant to this Section 13.13), failure to make such disclosure would subject such Grantor to liability for contempt, censure or other legal penalty or liability.

Section 13.14 Reinstatement. This Agreement shall continue to be effective or be automatically reinstated, as the case may be, if at any time payment pursuant to this Agreement is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, reorganization, liquidation of any Grantor or upon the dissolution of, or appointment of any intervenor or conservator or, or trustee or similar official for, any Grantor or any substantial part of any Grantor's assets, or otherwise, all as though such payments had not been made, and Debtor shall pay the Collateral Agent or the Purchase Money Notes Guarantor on demand all reasonable costs and expenses (including reasonable fees of counsel) incurred by the Collateral Agent or the Purchase Money Notes Guarantor in connection with such rescission or restoration.

Section 13.15 Interpretation; No Presumption. Headings are intended solely for convenience of reference and shall not affect the meaning or interpretation of the provisions of this Agreement. This Agreement shall be construed fairly as to each party to this Agreement and if at any time any such term or condition is desired or required to be interpreted or construed, no consideration shall be given to the issue of who actually prepared, drafted or requested any term or condition of this Agreement or any agreement or instrument subject to this Agreement.

Section 13.16 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (a) if such provision is prohibited or unenforceable in such jurisdiction only as to a

particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (b) without limitation of clause (a), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (c) without limitation of clauses (a) or (b), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (p) modify such provision (including without limitation, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (q) enforce such provision, as so modified pursuant to clause (p), in such proceeding. Nothing in this Section 13.16 is intended to, or shall, limit (x) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (y) the intended effect of Section 13.6.

Section 13.17 Survival. All obligations made herein shall survive the execution and delivery of this Agreement. Except as otherwise provided in this Agreement or implied by applicable Law, the obligations of each Grantor set forth in this Agreement shall terminate only upon the satisfaction and discharge in full of the Secured Obligations.

Section 13.18 No Third Party Beneficiaries. This Agreement is made for the sole benefit of the Collateral Agent, the Purchase Money Notes Guarantor, the Secured Parties and the Grantors and their respective successors and permitted assigns, and no other Person or Persons (including Borrowers or any co-lender or other Person with any interest in or liability under any of the Assets) shall have any rights or remedies under or by reason of this Agreement.

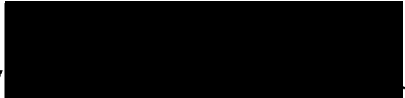
Section 13.19 Counterparts; Facsimile Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Agreement and any amendments to this Agreement, to the extent signed 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.

**[Remainder of Page Intentionally Left Blank]**

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

**SOUTH CRE VENTURE 2010-2, LLC**

By: HRC SVC SOUTH 2010 LLC, as Manager

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

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

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

**FEDERAL DEPOSIT INSURANCE CORPORATION**, in its capacity as Receiver for various failed financial institutions listed on Schedule I hereto, as Collateral Agent

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

[Signature Page to Reimbursement Security Guaranty Agreement]

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

**SOUTH CRE VENTURE 2010-2, LLC**

By: HRC SVC SOUTH 2010 LLC, as Manager

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

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


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

**FEDERAL DEPOSIT INSURANCE CORPORATION**, in its capacity as Receiver for various failed financial institutions listed on Schedule I hereto, as Collateral Agent

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

[Signature Page to Reimbursement Security Guaranty Agreement]

**FEDERAL DEPOSIT INSURANCE CORPORATION**, as receiver for various failed financial institutions listed on Schedule I hereto, as Initial Member, solely for purposes of Sections 4.1(a), 4.1(e), 4.1(f), 4.1(k), 4.1(l), 5.1(a)(vi) – (ix), 5.1(b), 5.1(c), 5.5, 8.14(c)-(h), 9.1, 11.1, 11.2 and 13.6 – 13.19

By:   
Name: Heidi Silverberg  
Title: Attorney-in-Fact

[Signature Page to Reimbursement Security Guaranty Agreement]

**SCHEDULE I**

**List of Various Failed Financial Institutions  
Multibank Structured Transaction South CRE Venture 2010-2**

<b><u>Bank Name</u></b>	<b><u>City</u></b>	<b><u>State</u></b>	<b><u>Fund</u></b>	<b><u>Closing Date</u></b>
Irwin Union Bank & Trust Company	Columbus	IN	10120	9/18/2009
Hillcrest Bank of Florida	Naples	FL	10131	10/23/2009
Republic Federal Bank, N.A.	Miami	FL	10158	12/11/2009
Rockbridge Commercial Bank	Atlanta	GA	10164	12/18/2009
Florida Community Bank	Immokalee	FL	10181	1/29/2010
Broadway Bank	Chicago	IL	10219	4/23/2010
The Bank of Bonifay	Bonifay	FL	10234	5/07/2010