ASSET CONTRIBUTION AND SALE AGREEMENT

BY AND BETWEEN

THE FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR VARIOUS FAILED FINANCIAL INSTITUTIONS LISTED ON SCHEDULE I HERETO

AND

WEST RADC VENTURE 2010-2, LLC

Dated as of December 7, 2010

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ASSET CONTRIBUTION AND SALE AGREEMENT

THIS ASSET CONTRIBUTION AND SALE AGREEMENT (as the same shall be amended or supplemented, this "**Agreement**") is made and entered into as of the 7th day of December, 2010 (the "**Closing Date**") by and between THE FEDERAL DEPOSIT INSURANCE CORPORATION (acting in any capacity, the "**FDIC**") AS RECEIVER FOR VARIOUS FAILED FINANCIAL INSTITUTIONS LISTED ON SCHEDULE I HERETO (including its successors and assigns thereto, the "**Initial Member**"), and WEST RADC VENTURE 2010-2, LLC, a Delaware limited liability company (the "**Company**"). Capitalized terms used in this Agreement shall have the meanings assigned to them in, or by reference in, that certain West RADC 2010-2 Structured Transaction-Agreement of Common Definitions, dated as of the Closing Date, among the Initial Member, the Debtor and others, with respect to the Transaction (the "**Agreement of Common Definitions**").

RECITALS

WHEREAS the FDIC has separately been appointed as receiver for each of the Failed Banks; and

WHEREAS the Initial Member owns the Assets described on the Asset Schedule attached to this Agreement as Attachment A (the "**Asset Schedule**"); and

WHEREAS the Initial Member has determined to liquidate the Assets; and

WHEREAS the Initial Member has formed the Company and holds the sole membership interest in the Company; and

WHEREAS the Initial Member desires to transfer the Assets to the Company, partly as a capital contribution and partly as a sale, in the manner and on the terms and conditions more fully set forth in this Agreement; and

WHEREAS the Initial Member and the Company desire that, in consideration of the transfer of the Assets to the Company to the extent such transfer constitutes a sale, the Company will issue, execute and deliver to the Initial Member the Purchase Money Note having a maturity date of December 7, 2017 in the principal amount of $32,207,386.00, which Purchase Money Note may be guaranteed by the FDIC pursuant to that certain Guaranty Agreement upon election by the Initial Member as the Noteholder; and

WHEREAS the Company will be obligated to reimburse the FDIC for any guaranty payments made pursuant to the Guaranty Agreement, and such reimbursement obligation will be secured by the Assets of the Company, all pursuant to the Reimbursement, Security and Guaranty Agreement and the Collateral Documents; and

WHEREAS pursuant to the Transferred LLC Interest Sale Agreement, the Initial Member has agreed to sell and transfer the Transferred LLC Interest to the Private Owner for the Transferred LLC Interest Sale Price; and

WHEREAS the Transferred LLC Interest Sale Price has been allocated among the Assets by the Private Owner (such allocated amount with respect to an Asset, the "**Asset Value**"), as set forth on Attachment B to this Agreement; and

WHEREAS the Initial Member and the Company desire to memorialize their agreement relating to the contribution and sale of the Assets to the Company and certain other matters as set forth in this Agreement;

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

Article I
Definitions and Construction

Section 1.1 **Definitions.** For purposes of this Agreement, certain terms used in this Agreement shall have the meanings and definitions set forth in the Agreement of Common Definitions. In addition, for purposes of this Agreement, the following terms shall have the meanings set forth below:

"**Accounting Records**" means the general ledger, supporting subsidiary ledgers and schedules, and loan servicing system records of the Initial Member.

"**Action**" means any claim, action, suit, arbitration or proceeding, whether at Law or in equity, before or by a Governmental Authority.

"**Adjusted Escrow Balance**" means, with respect to any Loan, the Escrow Balance adjusted higher or lower, as appropriate, to reflect the actual balance of the Escrow Account as reflected on the Accounting Records as of the Cut-Off Date and to correct errors reflected in the Escrow Balance due to (i) miscalculations, misapplied payments, unapplied payments, unrecorded disbursements or other accounting errors with respect to the period ending on the Cut-Off Date, (ii) the effect of any final court decree, unappealable regulatory enforcement order or other similar action of a legal or regulatory nature effective on or before the Cut-Off Date, (iii) a foreclosure sale that occurred on or before the Cut-Off Date, or (iv) the portion of any Dishonored Check that was applied to (and reflected in) the Escrow Balance.

"**Adjusted Unpaid Principal Balance**" means, with respect to any Asset, the Cut-Off Date Unpaid Principal Balance adjusted higher or lower, as appropriate, to reflect the actual Unpaid Principal Balance of the Asset as of the Cut-Off Date on the Accounting Records and to correct errors reflected in the Cut-Off Date Unpaid Principal Balance due to (i) miscalculations, misapplied payments, unapplied payments, unrecorded advances of principal or other

disbursements, or other accounting errors with respect to the period ending on the Cut-Off Date, (ii) the effect of any final court decree, unappealable regulatory enforcement order or other similar action of a legal or regulatory nature effective on or before the Cut-Off Date, (iii) a foreclosure sale that occurred on or before the Cut-Off Date, or (iv) the portion of any Dishonored Check that was applied to (and reflected in) the Cut-Off Date Unpaid Principal Balance.

"**Adjustment Percentage**" means, with respect to any Asset, the quotient (expressed as a decimal) of the Asset Value for such Asset divided by the Cut-Off Date Unpaid Principal Balance of such Asset.

"**Affected Asset**" has the meaning given that term in Section 4.5(d)(i).

"**Affidavit and Assignment of Claim**" means an Affidavit and Assignment of Claim in the form of Attachment D to this Agreement.

"**Agreement**" has the meaning given that term in the preamble to this Agreement and includes all exhibits, schedules and attachments to this Agreement.

"**Asset Value**" has the meaning given that term in the recitals.

"**Assignment and Acceptance of Limited Liability Company Interest**" means an Assignment and Acceptance of Limited Liability Company Interest in the form of Attachment I to this Agreement.

"**Assignment and Lost Instrument Affidavit**" means an Assignment and Lost Instrument Affidavit in the form of Attachment F to this Agreement.

"**Bankruptcy Rule**" means any of the rules set forth under the Federal Rules of Bankruptcy Procedure, as the same may be amended from time to time.

"**Cut-Off Date Unpaid Principal Balance**" means, with respect to any Asset, the estimate of the Unpaid Principal Balance of the Asset as of the Cut-Off Date as stated on the Asset Schedule.

"**Dishonored Check**" means any check or similar instrument that has been returned due to insufficient funds or a stop payment order.

"**Equity Asset Value**" means, with respect to any Asset, the product of the Asset Value of such Asset *multiplied* by 2.5.

"**Escrow Balance**" means, with respect to any Loan, the positive escrow balance (if any) in the Escrow Account with respect to that Loan, as reflected on the Asset Schedule.

"**Excess Damage Liability**" has the meaning given that term in Section 4.5(d)(i).

"**Excess Principal**" has the meaning given that term in Section 2.4(c).

"**Excluded Liabilities Litigation**" has the meaning given that term in Section 4.5(a)(i).

"**Foreign Jurisdiction**" means any jurisdiction other than the United States, and any subdivision of or in such other jurisdiction.

"**Foreign Asset**" means an Asset with respect to which the Borrower or any of the Collateral is located in any Foreign Jurisdiction.

"**Limited Power of Attorney**" means the Limited Power of Attorney in the form of Attachment J to this Agreement.

"**Obligations**" means (i) all obligations and commitments of the Initial Member relating to an Asset and arising or due or payable after the Cut-Off Date pursuant to and in accordance with any of the related Notes, Collateral Documents, Asset Documents or Related Agreements, including specifically all obligations and commitments of the Initial Member pursuant to any operating or similar agreement with respect to the Ownership Entities formed by the Receiver or any predecessor in interest; and (ii) any obligation to pay real estate Taxes, penalties, interest and other amounts relating to such Assets that are outstanding and/or delinquent as of the Cut-Off Date or become due after the Cut-Off Date in accordance with the LLC Operating Agreement, including without limitation the Servicing Standards.

"**Order**" has the meaning given that term in Section 6.1.

"**Principal Deficiency**" has the meaning given that term in Section 2.4(c).

"**Purchase Money Note Asset Value**" means, with respect to any Asset, the (i) product of (A) the original principal amount of the Purchase Money Note and (B) the quotient (expressed as a decimal) of the Asset Value of such Asset *divided* by the Transferred LLC Interest Sale Price *minus* (ii) the result when the Unpaid Principal Balance of the Asset as of the date of repurchase is *subtracted* from the Adjusted Unpaid Principal Balance of the Asset (which result may be a negative number).

"**Released Parties**" has the meaning given that term in Section 4.17(b).

"**Repurchase Price**" means, with respect to any Asset, an amount equal to the sum of (i) the Equity Asset Value of such Asset *plus* the Purchase Money Note Asset Value of such Asset *plus* (ii) unreimbursed Servicing Expenses that have been advanced by the Company with respect to such Asset (excluding any expenses described in Section 12.7(b) of the LLC Operating Agreement) as of the date of the repurchase *minus* (iii) the amount of any positive Escrow Balance with respect to such Asset as of the date of the repurchase that is not transferred to the Initial Member at the time of the repurchase.

"**Transfer Documents**" means the endorsements and allonges to Notes, Assignment and Lost Instrument Affidavits (if applicable), Mortgage Assignments, deeds, assignment of leases, assignments of Ownership Entity interests and other documents of assignment, conveyance or transfer required pursuant to any applicable Law to evidence the transfer to the Company of the Assets, the Collateral and the Collateral Documents and the Initial Member's rights with respect

to the Assets and the Collateral. The form Allonge to be used in preparation of the Transfer Documents is attached to this Agreement as Attachment E, the form of Assignment and Lost Instrument Affidavit to be used in preparation of the Transfer Documents is attached to this Agreement as Attachment F, the forms of Assignment of Real Estate Mortgage and Assignment of Real Estate Deed of Trust to be used in the preparation of the Transfer Documents are attached to this Agreement as Attachments G-1 and G-2, respectively, the form of the Assignment of Assignment of Leases and Rents and Other Loan Documents to be used in the preparation of the Transfer Documents is attached to this Agreement as Attachment H and the form of the Assignment and Acceptance of Limited Liability Company Interest to be used in the preparation of the Transfer Documents is attached to this Agreement as Attachment I.

"**Transfer Taxes**" means any Taxes, assessments, levies, imposts, duties, deductions, fees, withholdings or other charges of whatever nature (other than any Taxes imposed on or measured by net income or any franchise Taxes), including interest and penalties thereon, required to be paid to any Taxing authority with respect to the transfer of the Assets, the Collateral and the Collateral Documents or the rights in the Collateral or the assignment and assumption of the Obligations thereunder.

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

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

(b) The term "or" is not exclusive.

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

(d) Accounting terms have the meanings assigned to them by GAAP applied on a consistent basis by the accounting entity to which they refer.

(e) References to any document, instrument or agreement (i) are deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in replacement thereof, and (ii) 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.

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

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

(h) The word "during," when used with respect to a period of time, is to be construed to mean commencing at the beginning of such period and continuing until the end of such period.

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

Article II
Contribution and Sale of Assets

Section 2.1 **Terms and Conditions.** The Initial Member hereby conveys to the Company, and the Company hereby acquires and accepts from the Initial Member, without recourse, as of the Closing Date, by way of a sale to the extent of the initial principal amount of the Purchase Money Note and otherwise as a capital contribution, all right, title and interest of the Initial Member in and to:

(a) the Assets (including all Receiver Acquired Property, equity and other interests in the Ownership Entities identified on Attachment C attached to this Agreement, Notes, the other Assets Documents and Related Agreements), including all future advances made with respect thereto, effective as of the Closing Date, and all rights in the Collateral pursuant to the Collateral Documents;

(b) all amounts payable to the Initial Member pursuant to the Asset Documents and all obligations owed to the Initial Member in connection with the Assets and the Asset Documents after the Closing Date;

(c) all claims, suits, causes of action and any other right of the Initial Member, whether known or unknown, against a Borrower or any Obligor or any of their respective Affiliates, agents, representatives, contractors, advisors or any other Person arising pursuant to 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 pursuant to or in connection with the Asset Documents or the transactions related thereto or contemplated thereby (including any Deficiency Judgment Claim of the Initial Member or Receiver), excluding, however, any and all claims, suits, causes or action and other rights retained by the Initial Member pursuant to Section 2.7;

(d) all cash, securities and other property received or applied by or for the account of the Initial Member under the Assets after the Closing Date, including all distributions received through redemption, consummation of a plan of reorganization, restructuring, liquidation or otherwise of a Borrower or Obligor pursuant to 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; and

(e) 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 thereof.

For the avoidance of doubt, notwithstanding anything to the contrary in this Agreement, the Initial Member does not convey, nor does the Company acquire, any right, title and interest the Initial Member, the Receiver or any predecessors-in-interest thereto may have with respect to any Deficiency Judgment Claim.

Section 2.2 **Liabilities Assumed by the Company**. The Company hereby assumes and agrees as of the Cut-Off Date to perform and pay all of the Obligations. The Initial Member and the Company agree that the conveyance contemplated by Section 2.1 and the other provisions of this Agreement is intended to be an absolute conveyance and transfer of ownership of the Assets in part by capital contribution and in part by sale. Notwithstanding anything to the contrary in this Agreement, however, it is understood and agreed that, except for the Obligations, the Initial Member shall not assign and the Company shall not assume or be liable for any of the following liabilities (the "**Excluded Liabilities**"):

(a) any monetary claim against or monetary liability of the FDIC in its capacity as receiver for a Failed Bank that, was, is or will be subject to or is required to be asserted through the receivership administrative claims process administered by the FDIC in its capacity as receiver for any Failed Banks pursuant to 12 U.S.C. §1821(d)(3) through (13); and

(b) any monetary claim against or monetary liability based on any alleged act or omission of a Failed Bank that is not provable or allowable, or is otherwise barred against FDIC as receiver for any Failed Bank under applicable Law, including claims and liabilities that are barred under 12 U.S.C. Sections 1821(c), (d), (e) (including §1821(e)(3)), (i), (j); 12 U.S.C. §1822; 12 U.S.C. §1823; or 12 U.S.C. §1825.

Section 2.3 **Allocation of Payments; Interim Servicing Expenses and Pre-Approved Charges.**

(a) All payments and other amounts received on account of any of the Assets or Collateral on or before the Cut-Off Date shall be retained by and shall belong to the Initial Member. Any and all Asset Proceeds received at any time after the Cut-Off Date shall be allocated and distributed to and shall belong to the Company.

(b) The Initial Member shall be paid or reimbursed as soon as practicable after each Servicing Transfer Date for Interim Servicing Expenses and Pre-Approved Charges that an Existing Servicer pays after the Cut-Off Date through the Servicing Transfer Date out of its own funds (rather than withdrawing such funds from the Collection Account or the Working Capital Reserve Account or otherwise using Asset Proceeds to pay for the respective Interim Servicing

Expenses or Pre-Approved Charges). Any such amounts for Interim Servicing Expenses or Pre-Approved Charges paid after the Cut-Off Date through the Servicing Transfer Date owed to but not reimbursed to the Initial Member on the Servicing Transfer Date for the respective Asset shall be reimbursed by the Company to the Initial Member on demand.

(c) The Initial Member shall be responsible for reimbursing each third-party Existing Servicer for any payments made by such third-party Existing Servicer to fund Interim Servicing Expenses or Pre-Approved Charges with respect to an Asset, as well as for any advances of principal or interest or any other advances with respect to an Asset made by such third-party Existing Servicer. The Initial Member also shall be responsible for paying any fee owing to an Existing Servicer in connection with the termination of any servicing agreement with such Existing Servicer.

Section 2.4 **Adjustments.**

(a) The Private Owner shall, and shall cause the Servicer to, cooperate with the Initial Member in reconciling the amounts of advances made with respect to each Asset prior to the Servicing Transfer Date for such Asset to fund Interim Servicing Expenses, Pre-Approved Charges or otherwise. As soon as practicable after the respective Servicing Transfer Date, the Initial Member shall provide the Company with a statement setting forth, for each Asset that is the subject of such Servicing Transfer Date, the amount of all advances made with respect to such Asset prior to the Servicing Transfer Date for such Asset and the amount of any reimbursement of advances that the Initial Member has received from the respective Borrower or other Obligor.

(b) As soon as practicable after each respective Servicing Transfer Date, the Initial Member shall provide the Company with a statement setting forth, for each Asset that is the subject of such Servicing Transfer Date, the Adjusted Unpaid Principal Balance, Adjusted Escrow Balance and the Unpaid Principal Balance as of the Servicing Transfer Date. Each such statement shall be accompanied by an explanation of the reasons for any adjustment to any Cut-Off Date Unpaid Principal Balance or Escrow Balance.

(c) If the Adjusted Unpaid Principal Balance of any Asset exceeds the Cut-Off Date Unpaid Principal Balance of such Asset (such excess, the "**Excess Principal**"), the Private Owner shall be liable to the Initial Member for an amount equal to the Adjustment Percentage multiplied by the Excess Principal. If the Cut-Off Date Unpaid Principal Balance of any Asset exceeds the Adjusted Unpaid Principal Balance of any Asset (such deficiency, the "**Principal Deficiency**"), the Initial Member shall be liable to the Private Owner for an amount equal to the Adjustment Percentage multiplied by the Principal Deficiency. No adjustment will be made for any miscalculation of interest on any Asset.

(d) As soon as practicable after each Servicing Transfer Date, the aggregate amount owed by the Private Owner to the Initial Member pursuant to Section 2.4(c) (excluding the amount of any Interim Servicing Expenses or Pre-Approved Charges due to the Initial Member) shall be subtracted from the aggregate amount owed to the Private Owner by the Initial Member pursuant to Section 2.4(c). If the resulting amount is a positive number, the Initial

Member shall pay such amount to the Private Owner, and if the resulting amount is a negative number, the Private Owner shall pay the absolute value of such amount to the Initial Member. In addition, an amount equal to the positive balance of any Escrow Accounts with respect to the relevant Group of Assets as of each Servicing Transfer Date shall be remitted to the Servicer (and shall not be considered to constitute Asset Proceeds pursuant to the LLC Operating Agreement or Custodial and Paying Agency Agreement). Any monies due to the Private Owner or the Initial Member pursuant to this Section with respect to a given Asset shall be paid on the respective Servicing Transfer Date. The Company shall adjust its records to reflect the Adjusted Unpaid Principal Balances, the Adjusted Escrow Balances and the Unpaid Principal Balances with respect to the Assets.

Section 2.5 **Rebates and Refunds.** The Company is not entitled to any rebates or refunds from the Initial Member or any Failed Banks from any pre-computed interest Loan regardless of when the Note matures. Further, on pre-computed interest Loans, neither the Initial Member nor any Failed Banks will refund any unearned discount amounts to the Company.

Section 2.6 **Interest Conveyed.** In the event a foreclosure occurs after the Cut-Off Date, or occurred on or before the Cut-Off Date but the Redemption Period had not expired on or before the Cut-Off Date, the Initial Member shall convey to the Company the Deficiency Balance, if any, and any related Underlying Loan, together with the net proceeds, if any, of such foreclosure sale. If the Initial Member was the purchaser at such foreclosure sale, the Initial Member shall convey to the Company the Deficiency Balance, if any, and any related Underlying Loan, together with a special warranty deed to the Receiver Acquired Property purchased at such foreclosure sale (unless the Receiver Acquired Property was purchased by an Ownership Entity, in which case the Initial Member shall convey to the Company all equity interests in such Ownership Entity). The Company acknowledges and agrees that the Company shall not acquire (a) any Collateral that was foreclosed by the Initial Member or any of its predecessors-in-interest on or before the Cut-Off Date and for which the Redemption Period, if any, had expired on or before the Cut-Off Date and (b) any interest in or to any performance or completion bond or letter of credit or other assurance filed with any Governmental Authority with respect to any Asset for the purpose of ensuring that improvements constructed or to be constructed are completed in accordance with any governmental regulations or building requirements applicable to the proposed or completed improvement to the extent that any such performance or completion bond or letter of credit or other assurance constitutes a promise or obligation of the Initial Member or any Failed Bank to make any payment or otherwise provide any performance or satisfaction. For the avoidance of doubt, notwithstanding anything to the contrary in this Agreement, the Company and the Initial Member agree that the contribution and sale of the Assets pursuant to this Agreement will exclude the transfer to the Company of all right, title and interest the Initial Member, the Receiver or any predecessors-in-interest thereto may have with respect to any Deficiency Judgment Claim.

Section 2.7 **Retained Claims.** Notwithstanding anything to the contrary in this Agreement, the Company and the Initial Member agree that the contribution and sale of the Assets pursuant to this Agreement will exclude the transfer to the Company of any right, title and interest of the Initial Member, any Failed Bank and any predecessors-in-interest thereto in and to any and all claims of any nature whatsoever that now may exist or hereafter may arise, whether

known or unknown, that the Initial Member, any Failed Bank or predecessors-in-interest thereto have or had or that any may have or may have had, regardless of when any such claim is discovered, against any of the following: (a) officers, directors, employees, insiders, accountants, attorneys, other Persons employed by the Initial Member, any Failed Bank or any of its predecessors-in-interest, underwriters or any other similar Persons who may have caused a loss to the Initial Member, any Failed Bank or any of its predecessors-in-interest in connection with the initiation, origination, servicing or administration of an Asset; (b) any appraisers, accountants, auditors, attorneys, investment bankers or brokers, loan brokers, deposit brokers, securities dealers or other professional individuals or Persons who performed services for the Initial Member, any Failed Bank or any of its predecessors-in-interest relative to the initiation, origination, servicing or administration of an Asset; (c) any third parties for alleged fraud, misrepresentation or other misconduct in connection with the initiation, origination or servicing of an Asset; or (d) any appraiser or other Person with whom the Initial Member, any Failed Bank or any of their predecessors-in-interest or any servicing agent contracted for services or title insurance or closing protection coverage in connection with the initiation, origination, insuring or servicing of an Asset; provided, however, that claims under and pursuant to a title insurance policy shall not constitute excluded or retained claims pursuant to this Section 2.7.

Section 2.8 **Transfer Taxes.** Except as otherwise provided in this Agreement, the Company shall pay, indemnify and hold harmless the Initial Member from and against any Transfer Taxes and shall file timely any returns required to be filed with respect to such Transfer Taxes; provided, however, that the Initial Member shall pay (and shall not be entitled to be reimbursed for) any Transfer Taxes in the nature of mortgage recording Taxes and shall file timely any returns required to be filed with respect to such Transfer Taxes required to complete the conveyance of any mortgage under Section 2.1. Taxes paid by the Company pursuant to this Section shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement.

Section 2.9 **Assets Subject to Existing Agreements**. Notwithstanding any provision of this Agreement to the contrary, and as contemplated by the Company's assumption of the Obligations pursuant to Section 2.2, the Company acknowledges and agrees that each Asset is conveyed, contributed and sold to the Company subject to any and all contracts and agreements to which the Initial Member or any predecessor-in-interest is a party with respect to such Asset, as of the Closing Date, including any settlement agreements, restructuring agreements or sale and purchase agreements, all of which contracts and agreements the Company hereby assumes and agrees as of the Closing Date to perform.

Article III
Transfer of Assets, Collateral Documents and Interim Servicing

Section 3.1 **Delivery of Documents.** The Company and the Initial Member agree to execute and deliver to one another the following:

(a) On the Closing Date, such Transfer Documents executed by the Initial Member as the Initial Member elects to deliver to the Company.

(b) Subject to the provisions of the LLC Operating Agreement, the Initial Member shall deliver, at the expense of the Company, the Notes and other Custodial Documents and Collateral Documents for each Asset to the Custodian as soon as is practicable after the Closing Date and shall deliver the Asset Files for such Asset to either the Company or the Servicer (as directed by the Company), in either case on or within a reasonable period of time after the Servicing Transfer Date with respect to such Asset.

(c) (i) For any of the mortgages and/or other Collateral Documents securing the Assets that are registered on the MERS® System (collectively, the "**MERS Registered Mortgages**"), except as provided otherwise in this Section 3.1(c), the Company shall cause the MERS Registered Mortgages to be transferred on the MERS® System on or within a reasonable time after the Servicing Transfer Date with respect to the applicable Assets. To the extent the cost of transferring the MERS Registered Mortgages is a cost imposed by MERS on the transferor of an Asset, that cost shall be borne by the Initial Member. Otherwise, the costs imposed by MERS with respect to the transfer of the MERS Registered Mortgages shall be borne by the Company and all such costs shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement; provided, however, that any such expenses with respect to MERS Registered Mortgages as to which the Company has not initiated the transfer on the MERS® System (in cooperation with the applicable Existing Servicer during the period prior to the applicable Servicing Transfer Date) within six months of the Closing Date shall not constitute Pre-Approved Charges and such charges shall be borne by the Private Owner alone. The Company shall provide a report to the Initial Member and the Purchase Money Note Guarantor on the progress and status of the transfers on the MERS® System of the MERS Registered Mortgages on the first day of the seventh month following the Closing Date and again on the first anniversary of the Closing Date.

(ii) Notwithstanding any provision of this Agreement to the contrary, the Company (acting by and through the Manager in accordance with the applicable provisions of the LLC Operating Agreement) shall have the right to elect to remove any MERS Registered Mortgage from the MERS® System prior to the Servicing Transfer Date for such MERS Registered Mortgage, in which event the Company (A) must inform the Initial Member and the Existing Servicer of its decision to remove such MERS Registered Mortgage from the MERS® System at least two weeks prior to the Servicing Transfer Date for such MERS Registered Mortgage and (B) must satisfy all applicable requirements of the LLC Operating Agreement with respect to the removal of such MERS Registered Mortgage from the MERS® System (including specifically the requirements of Section 12.3(g) of the LLC Operating Agreement). If the Company has not notified the Initial Member and the Existing Servicer of its election to remove such MERS Registered Mortgage from the MERS® System at least two (2) weeks prior to the Servicing Transfer Date for such MERS Registered Mortgage, then such MERS Registered Mortgage must be transferred on the MERS® System in accordance with Section 3.1(c)(i) above.

(iii) Further notwithstanding any provision of this Agreement to the contrary, the Company (acting by and through the Manager in accordance with the applicable provisions of the LLC Operating Agreement) shall have the right to elect to remove any MERS Registered Mortgage from the MERS® System after the Servicing Transfer Date for such MERS Registered Mortgage and after such MERS Registered Mortgage has been transferred on the

MERS® System, in which event the Company must satisfy all applicable requirements of the LLC Operating Agreement with respect to the removal of such MERS Registered Mortgage from the MERS® System (including specifically the requirements of Section 12.3(g) of the LLC Operating Agreement).

(d) (i) In the event that the Initial Member does not deliver all the Transfer Documents on the Closing Date, (A) the Company will prepare on behalf of the Initial Member, within the period specified in Section 3.1(d)(iii), all such Transfer Documents not delivered by the Initial Member to the Company on the Closing Date and (B) on or within a reasonable time following the Closing Date, the Initial Member will grant a Limited Power of Attorney to selected representatives of the Company for the purpose of executing on behalf of the Initial Member such Transfer Documents prepared by the Company pursuant to Section 3.1(d)(i)(A). The Limited Power of Attorney will be in the form attached to this Agreement as Attachment J. Reasonable and customary expenses paid to third parties actually incurred by the Company (or the Manager or the Servicer for the benefit of the Company) in complying with the obligations set forth in the preceding sentences shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement; provided, however, that any such expenses with respect to a Transfer Document that is not properly prepared and submitted for recordation or filing within six (6) months of the Closing Date (as such time period may be extended pursuant to the immediately following sentence) shall not constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement and shall be borne by the Private Owner alone. Such six-month period for the preparation and submission of a Transfer Document for recordation shall be extended if the delay is due to a matter noted as an Exception on the Collateral Certificate, provided that the Private Owner is working diligently to locate the missing information or otherwise take such steps as may be necessary or appropriate to complete and submit the Transfer Documents. All Transfer Documents prepared by the Company shall be in appropriate form suitable for filing or recording (if applicable) in the relevant jurisdiction and otherwise subject to the limitations set forth in this Agreement, and the Company shall be solely responsible for the preparation, contents and form of such documents. The Company hereby releases the Initial Member from any loss or damage incurred by the Company due to the contents or form of any documents prepared by the Company pursuant to this Section 3.1(d) (the form of which was not provided by the Initial Member as an attachment hereto) and the Private Owner shall indemnify, defend and hold harmless the Initial Member from and against any claim, action or cause of action asserted by any Person, including the Company, arising out of the contents or form of any Transfer Document (the form of which was not provided by the Initial Member as an attachment hereto), including any claim relating to the adequacy or inadequacy of any such document or instrument for the purposes thereof, and the use (or purported use) by the Company of the Limited Power of Attorney in any way not expressly permitted by its terms.

(ii) The Company shall use the forms set forth in Attachment D to Attachment I, inclusive, in preparing the Transfer Documents. All documents of assignment, conveyance or transfer (not including special warranty deeds to the Receiver Acquired Property, which shall contain the special warranty included therein but no other warranties or representations, but including all other Transfer Documents) shall contain the following

sentence: "This assignment is made without recourse, and without representation or warranty, express or implied, or by operation of Law of any kind and nature whatsoever by the Federal Deposit Insurance Corporation in its capacity as Receiver for [name of Failed Bank]."

(iii) The Company will complete all Transfer Documents, and record or file them if and as appropriate in accordance with Section 3.2, as soon as is practicable following the Closing Date but in any event within six months after the Closing, except if the delay is due to a matter noted as an "Exception" on the "Collateral Certificate" (as such terms are defined in the Custodial and Paying Agency Agreement), provided that the Private Owner is working diligently to locate the missing information or otherwise take such steps as may be necessary or appropriate to complete and submit the relevant documentation. The Company shall provide a report to the Initial Member and the Purchase Money Note Guarantor on the progress and status of the preparation, execution, recording and/or filing and delivery of the original documents to the Custodian as required by this Agreement promptly following a request therefor from the Initial Member and in any event upon the first day of the seventh (7^{th}) month following the Closing Date and again on the first (1^{st}) anniversary of the Closing Date.

(e) As to Foreign Assets (if any), the Company, at its own expense, must retain counsel licensed in the Foreign Jurisdictions involved with the Foreign Assets. Such foreign counsel must draft the documents necessary to assign the Foreign Assets to the Company. Reasonable and customary expenses paid to third parties and actually incurred by the Company (or the Manager or the Servicer for the benefit of the Company) in complying with the obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of this Agreement. Documents presented to the Initial Member to assign Foreign Assets to the Company must be accompanied by a letter on the foreign counsel's letterhead, signed by the foreign counsel preparing those documents, certifying that those documents conform to the Law of the Foreign Jurisdiction. Each such document and instrument shall be delivered to the Initial Member in the English language; provided, however, that any document required for its purposes to be executed by the Initial Member in a language other than the English language shall be delivered to the Initial Member in such language, accompanied by a translation thereof in the English language, certified as to its accuracy by an executive officer or general counsel of the Company and, if such executive officer or general counsel shall not be fluently bilingual, by the translator thereof.

(f) Nothing contained in this Section 3.1 or elsewhere in this Agreement shall require the Initial Member to make any agreement, representation or warranty or provide any indemnity in any such document or instrument or otherwise (except with respect to the special warranty contained in a special warranty deed to any Receiver Acquired Property), nor is the Initial Member obligated to obtain any consents or approval to the sale or transfer of the Assets or the related servicing rights, if any, or the assumption by the Company of the Obligations.

(g) The Initial Member agrees to execute any additional documents required by applicable Law or necessary to effectively transfer and assign all of the Initial Member's right, title and interest in and to any and all Assets to the Company (subject to the rights of the Initial Member pursuant to the LLC Operating Agreement). The Initial Member shall have no

obligation to provide, review or execute any such additional documents unless the same shall have been requested of the Initial Member within 365 calendar days after the Closing Date.

(h) Notwithstanding any provision of this Agreement to the contrary, the Initial Member grants to the Manager, acting only by and through a duly authorized officer of the Manager, the limited authority and agency to endorse to the Company any checks or the instruments made payable to the Initial Member or any Failed Bank if such checks or other instruments evidence or relate to amounts otherwise payable to the Company pursuant to this Agreement; provided, however, that any such endorsement must be made to the Company (as is provided elsewhere in this Agreement) without any representation, warranty or recourse of the Initial Member or any Failed Bank whatsoever in a form similar to the form set forth in Attachment E.

Section 3.2 **Recordation of Documents.**

(a) With respect to all recordable Transfer Documents prepared by the Company pursuant to Section 3.1(d), the Company shall promptly submit all such Transfer Documents for recordation or filing in the appropriate land, chattel, Uniform Commercial Code and other records of the appropriate county, state or other jurisdictions (including any Foreign Jurisdiction) to effect the transfer of the Assets to the Company. All Transfer Documents shall provide that all recorded documents be returned to the Custodian at its notice address set forth in Section 7.3, as such address may be modified in the manner provided in the Custodial and Paying Agency Agreement. The Company shall be responsible for diligently and promptly following up with respect to any non-conforming Transfer Documents that are returned and not recorded, gaps in the chain of title and the like to ensure that each and all of the Transfer Documents are properly filed or recorded as appropriate. The Company shall include in the reports described in and required pursuant to Section 3.1(d)(iii) all required information concerning the recording and/or filing and return of all recordable Transfer Documents.

(b) Reasonable and customary expenses paid to third parties and actually incurred by the Company (or the Manager or the Servicer for the benefit of the Company) in complying with the obligations set forth in this Section 3.2 shall constitute Pre-Approved Charges; provided, however, that any such expenses with respect to a Transfer Document that is not properly prepared and submitted for recordation or filing within six (6) months of the Closing Date shall not constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement and shall be borne by the Private Owner alone. Such six-month period for the preparation and submission of a Transfer Document for recordation shall be extended if the delay is due to a matter noted as an "Exception" on the "Collateral Certificate" (as such terms are defined in the Custodial and Paying Agency Agreement), provided that the Private Owner is working diligently to locate the missing information or otherwise take such steps as may be necessary or appropriate to complete and submit the Transfer Document(s). The Initial Member shall, if such is affirmatively required under the applicable Law of a relevant Foreign Jurisdiction, take such actions as are necessary in such Foreign Jurisdiction to effect the purposes of this Article III.

Section 3.3 **Transfer of Servicing.**

(a) The Assets are conveyed to the Company on a servicing-released basis as of the Closing Date. From and after the Closing Date, all rights, obligations, liabilities and responsibilities with respect to the servicing of the Assets shall inure to the benefit of and be assumed by the Company, and the Initial Member shall be discharged from all responsibility and liability therefore, including any liability arising from any interim servicing provided by the Initial Member pursuant to this Section 3.3. Without limiting the generality of the foregoing, the Company shall assume on and as of the Closing Date all obligations with respect to special servicing and asset management of the Assets, including any Funding Draws and any advances from the Working Capital Reserve Account; provided, however, that if the Company fails to provide to the Initial Member or any Existing Servicer necessary or appropriate direction with respect to any special servicing or asset management of the Assets, the Initial Member shall have the right to proceed in compliance with the Initial Member's usual and customary servicing and asset management standards and procedures, which servicing and asset management standards and procedures the Company consents to, acknowledges and accepts.

(b) To provide for the orderly transfer of the servicing to the Company, the Initial Member will (except with respect to the management of any Acquired Property which as provided in clause (h) of this section 3.3 will transfer immediately on the Closing Date) provide interim servicing of the Assets, or will maintain agreements with third-party Existing Servicers to provide interim servicing of the Assets, on the Company's behalf for such Asset during the Interim Servicing Period, including provisions requiring that the Existing Servicers continue: (i) to receive payments and post them to the system of record; (ii) to maintain records reflecting payments received; (iii) to provide the Company, on request, a schedule of payments processed; (iv) to make payments (whether from its own funds or otherwise) to fund Interim Servicing Expenses and Pre-Approved Charges; and (v) to provide payoff information to the Company and the Servicer regarding particular Assets, as applicable. The foregoing shall not limit the actions that the Initial Member may take with respect to any Asset prior to the respective Servicing Transfer Date, and absent necessary or appropriate direction from the Company with respect to the servicing of the Assets, the Initial Member may take such actions with respect to any Asset prior to the respective Servicing Transfer Date as is in compliance with the Initial Member's usual and customary servicing standards and procedures, which servicing standards and procedures the Company consents to, acknowledges and accepts. In addition, unless the Company and the Initial Member agree otherwise, the Initial Member shall prepare and deliver the Monthly Reports (including the Distribution Date Reports) in accordance with the LLC Operating Agreement and the Custodial and Paying Agency Agreement for all Due Periods ending on or before the last day of the calendar month in which the last Servicing Transfer Date occurs. The Initial Member may engage agents of the Initial Member's own choosing to perform such interim servicing. Each Existing Servicer shall be (and hereby is) authorized by the Company to use and withdraw funds from the Collection Account, the Working Capital Reserve Account and the Escrow Accounts and to request Excess Working Capital Advances (if necessary) in the performance of the interim servicing duties pursuant to this Section 3.3 during the Interim Servicing Period if it so chooses (including with respect to the payment and satisfaction of any Interim Servicing Expenses or Pre-Approved Charges in full if the amount of

Asset Proceeds it has collected and is retaining is insufficient to pay and satisfy such Interim Servicing Expenses or Pre-Approved Charges in full) for the same purposes that the Private Owner and the Servicer will be so permitted after the corresponding Servicing Transfer Date. Subject to the provisions of Section 4.5(a) and Section 4.6, the Initial Member's performance of this interim servicing shall cease with respect to each Group of Assets on the Servicing Transfer Date for such Group of Assets. For the Due Period in which the Servicing Transfer Date with respect to each Group of Assets occurs, the Initial Member will provide (or will cause the applicable Existing Servicer to provide) the Company with a statement setting forth for the period beginning on the first day of the Due Period and ending on the applicable Servicing Transfer Date (i) the amount of payments and other amounts received for each Asset to which such Servicing Transfer Date relates and (ii) the amount of payments made to fund Interim Servicing Expenses made but not reimbursed by the applicable Borrower or Obligor (including payments made from the applicable Existing Servicer's own funds), which amounts are to be reimbursed in accordance with Section 2.3(b). Each such statement also shall include any amounts to be paid to the Initial Member on the respective Servicing Transfer Date pursuant to Section 2.3 and Section 2.4. This statement will be provided as soon as is reasonably practicable after the Servicing Transfer Date, but in no event later than the due date for the regular Monthly Report for the month in which the Servicing Transfer Date occurs.

(c) To facilitate communication among the Company, the Initial Member and the Existing Servicers, on the Closing Date (i) the Company shall designate (and the Private Owner shall cause the Company to designate) a principal contact Person to whom the Initial Member and the Existing Servicers will be authorized to contact with inquiries and requests for guidance or direction concerning the Initial Member's and the Existing Servicers' interim servicing responsibilities and (ii) the Initial Member shall designate one or more principal contact Persons whom the Company and the Servicer will be authorized to contact with inquiries, guidance or directions concerning the Initial Member's and the Existing Servicers' interim servicing responsibilities.

(d) The Initial Member shall cause all Asset Proceeds received during or after the Interim Servicing Period with respect to any Group of Assets for which the Servicing Transfer Date has not occurred (including any recoveries of advances) and remaining after reimbursement or payment of Interim Servicing Expenses and Pre-Approved Charges to be remitted to the Collection Account on a monthly basis not later than two (2) Business Days prior to the Distribution Date for such month. The Existing Servicers shall be (and hereby are) authorized by the Company to use Asset Proceeds with respect to any Group of Assets for which the Servicing Transfer Date has not occurred, prior to the time Asset Proceeds are required to be remitted to the Collection Account for payment or reimbursement of Interim Servicing Expenses and Pre-Approved Charges (including for the reimbursement of any advances that the Initial Member may make during the Interim Servicing Period for payment of Servicing Expenses and Pre-Approved Charges).

(e) In consideration of the services provided by the Initial Member with respect to each Group of Assets pursuant to this Section 3.3, the Company shall pay the Interim Servicing Fee to the Initial Member for each Due Period in which the Initial Member provides interim servicing with respect to such Group of Assets (including the Due Period in which the

Servicing Transfer Date with respect to such Group of Assets occurs) in the manner described in the Custodial and Paying Agency Agreement. The Interim Servicing Fee with respect to each Group of Assets will be calculated, earned and due as of the first day of each Due Period in which the Initial Member provides interim servicing with respect to such Group of Assets and will be payable on each Distribution Date pursuant to the provisions of the Custodial and Paying Agency Agreement. For the avoidance of doubt, any such Interim Servicing Fee payable prior to the last Servicing Transfer Date shall be net of any servicing fees payable to Existing Servicers and offset by them against Asset Proceeds.

(f) The Company hereby ratifies any and all actions taken by the Initial Member in performance of interim servicing activities and functions prior to the Closing Date, including any oversight of the Existing Servicers and in connection with its role of Existing Servicer with respect to a Group of Assets. The Company acknowledges and agrees that the Initial Member is performing interim servicing functions for the Company as an accommodation to the Company and that the Initial Member shall not have any liability for any acts or omissions taken in connection therewith (other than to correct calculation, allocation or distribution errors). Except for amounts for which the Company may be reimbursed as provided in the LLC Operating Agreement and the Custodial and Paying Agency Agreement, the Company hereby releases and forever discharges the Initial Member, the FDIC, any Failed Bank and their predecessors-in-interest and all of their respective officers, directors, employees, agents, attorneys, contractors and representatives and all of their respective successors, assigns and Affiliates, from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Company had, has or may have in the future, whether known or unknown, that are related in any manner whatsoever to the servicing of the Assets at any time prior to the last Servicing Transfer Date.

(g) The Initial Member and the Private Owner shall cooperate in their efforts to cause all Servicing Transfer Dates to occur prior to January 31, 2011 to the extent reasonably practicable, unless a later date is consented to by the Initial Member.

(h) Notwithstanding the interim servicing provisions set forth above in this Section 3.3, the Company will assume full responsibility for property management of any Receiver Acquired Property immediately on the Closing Date. With respect to such property management, the Servicing Transfer Date shall, in all cases, be the Closing Date.

Section 3.4 **Grant of Power of Attorney by Company**. The Company hereby irrevocably appoints the Initial Member its lawful attorney-in-fact, with full authority in the place and stead of the Company and in the name of the Company, the Initial Member 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 the Company is in existence), from time to time in the Initial Member's discretion, following a failure by the Company to satisfy promptly its obligations pursuant to Section 3.1, Section 3.2, Section 4.10, Section 4.11 or Section 4.12 as they relate to the preparing, furnishing, executing and/or recording of any of the Transfer Documents or any other relevant matter set forth in any such provision to prepare, furnish, execute and/or record all relevant Transfer Documents and other documents as may be

reasonably necessary to satisfy the transfer and recording obligations of the Company pursuant to Section 3.1, Section 3.2, Section 4.10, Section 4.11 or Section 4.12.

Article IV
Covenants, Duties and Obligations of the Company

Section 4.1 **Servicing of Assets.** From and after the Servicing Transfer Date, the Company shall service the Assets in compliance with the LLC Operating Agreement.

Section 4.2 **Collection Agency/Contingency Fee Agreements.** The Company acknowledges and agrees that it accepts and acquires the Assets subject to any agreements with collection agencies or contingency fee agreements with attorneys (in either case that are outstanding and in effect as of the Servicing Transfer Date) that relate only to the Assets (or any of them) and are assignable, and assumes and agrees to fulfill all Obligations of the Initial Member and any Failed Bank thereunder.

Section 4.3 **Insured or Guaranteed Assets.** If any Assets being transferred pursuant to this Agreement are insured or guaranteed by any Governmental Authority, and such insurance or guaranty is not being specifically terminated by the Initial Member, the Company acknowledges and agrees that such Assets must be serviced by a servicer, lender or mortgagee approved by such Governmental Authority, if such approval is required. The Company further acknowledges and agrees that, upon assumption of the Obligations with respect to the Assets, it assumes full responsibility for determining whether or not any such insurance or guarantees are in effect on the date of this Agreement and, with respect to those Assets with respect to which any such insurance or guarantee is in effect on the date of this Agreement, the Company acknowledges and agrees that, upon assumption of the Obligations with respect to the Assets, it assumes full responsibility for taking any and all actions as may be necessary to insure such insurance or guarantees remain in full force and effect. The Company acknowledges and agrees that, upon assumption of the Obligations with respect to the Assets, it assumes and agrees to fulfill all of the Initial Member's and any Failed Banks' Obligations under the contracts of insurance or guaranty. Any out-of-pocket fees due to any insurer or guarantor incurred by the Company (or the Manager or the Servicer for the benefit of the Company) to fulfill its obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement.

Section 4.4 **Reporting to or for the Applicable Taxing Authorities.** With respect to each Asset, the Initial Member shall be responsible for submitting all Tax information returns with all applicable Governmental Authorities for all applicable periods prior to the respective Servicing Transfer Date, and the Company shall be responsible for submitting all Tax information returns with all applicable Governmental Authorities for all applicable periods commencing with the respective Servicing Transfer Date. Information returns include reports on Internal Revenue Service Forms 1098 and 1099. The Company shall be responsible for submitting all information returns required under applicable Law of any Foreign Jurisdiction, to the extent such information returns are required to be filed by the Company or the Initial Member under such Law, relating to the Assets, for the calendar or Tax year in which the Closing Date falls and thereafter.

Section 4.5 **Assets in Litigation.**

(a) (i) With respect to any Asset that is the subject of any type of pending litigation as of the Closing Date that consists solely of claims or actions based upon, arising out or involving Excluded Liabilities ("**Excluded Liabilities Litigation**"), the Company shall have no obligation to substitute its counsel to represent the Company's interests in the Excluded Liabilities Litigation. In such case, the Initial Member shall retain all rights and obligations, and shall remain the real party-in-interest, with respect to and shall retain control over the Excluded Liabilities Litigation. With respect to any Asset that is the subject of any type of pending litigation that consists of both Excluded Liabilities Litigation and other claims or actions, that portion of any litigation that consists of Excluded Liabilities Litigation shall be bifurcated from such other claims or actions, with the Initial Member retaining all rights and obligations, and remaining the real party-in-interest, with respect to and shall retain control over the Excluded Liabilities Litigation and the Company substituting itself as the real party in interest and taking control of the remaining claims in the litigation as is provided otherwise in this Section 4.5. The Initial Member shall pay all of the costs and expenses incurred by it in connection with any such Excluded Liabilities Litigation, including all legal fees and expenses and court costs. The Initial Member's determination whether or not pending litigation consists of Excluded Liabilities Litigation and the extent to which pending litigation consists of both Excluded Liabilities Litigation and other claims or actions shall be conclusive and binding for all purposes with respect to this Agreement.

(ii) With respect to any Asset that is the subject of any type of pending litigation as of the Closing Date other than pending litigation that consists entirely of Excluded Liabilities Litigation, the Company shall notify the FDIC's Regional Counsel, 1601 Bryan Street, Dallas, Texas 75201-4586, within fifteen (15) Business Days before the respective Servicing Transfer Date or such other date as is agreed to by the Initial Member and the Company, of the name of the attorney selected by the Company to represent the Company's interests in the litigation. Before such date, the Company shall notify the clerk of the court or other appropriate official and all counsel of record that ownership of the Asset was transferred from the Initial Member to the Company. Subject to the provisions of Sections 4.5(c) and 4.5(d), the Company shall have its attorney file appropriate pleadings and other documents and instruments with the court or other appropriate body before the respective Servicing Transfer Date, substituting the Company's attorney for the Initial Member's attorney, removing the Initial Member and the applicable Failed Bank as a party to the litigation and substituting the Company as the real party-in-interest. Nothing contained in this Agreement shall preclude the Company from retaining the same attorney retained by the Initial Member (or the applicable Failed Bank) to handle such litigation with respect to the Assets, provided that, with respect to litigation referred to in Section 4.5(c), the Company shall not retain the same counsel that represents the Initial Member in connection with such litigation unless the FDIC's Regional Counsel (referred to above) agrees in writing to such dual representation. Subject to the provisions of Section 4.5(b) (and the Company's compliance with its obligations therein) and Section 4.5(d), in the event the Company fails, prior to the respective Servicing Transfer Date, to remove the Initial Member and the applicable Failed Bank as parties to the litigation and substitute the Company as the real party-in-interest, (i) the Initial Member may, but shall have no obligation to, continue to

pursue or defend such litigation on behalf of the Company and (ii) in the event the Initial Member does continue to pursue or defend such litigation, the Company shall be liable for and hereby agrees to pay all costs and expenses incurred by the Initial Member in connection therewith, which expenses shall constitute Servicing Expenses.

(b) If the Company is unable, as a matter of applicable Law or due to delays in court procedures and practices outside the control of the Company, to cause the Initial Member and the applicable Failed Bank to be replaced by the Company as party-in-interest in any pending litigation as required by Section 4.5(a), the Company shall so notify the FDIC's Regional Counsel, at the address specified above, no less than five (5) Business Days before the respective Servicing Transfer Date and shall provide such evidence to such effect and stating the reasons for such failure. In any such event, (i) the Company shall cause its attorney to conduct such litigation at the Company's expense, which expense shall constitute Servicing Expenses; (ii) the Company shall cause the removal of the Initial Member and the applicable Failed Bank and substitution of the Company as party-in-interest in such litigation at the earliest time possible under applicable Law; (iii) the Company shall use commercially reasonable efforts to cause such litigation to be resolved by judgment or settlement in as reasonably efficient a manner as practical; (iv) the Initial Member shall cooperate with the Company and the Company's attorney as reasonably required in the Initial Member's sole judgment to bring such litigation or any settlement relating thereto to a reasonable and prompt conclusion; and (v) no settlement shall be agreed upon by the Company or its agents or counsel without the express prior written consent of the Initial Member, unless such settlement includes an irrevocable and complete waiver and release of any and all potential claims against the Initial Member and the applicable Failed Bank (and any predecessor thereto) in relation to such litigation or the subject Assets or Obligations by any Person asserting any claim in the litigation and any Borrower, and any and all losses, liabilities, claims, causes of action, damages, demands, Taxes, fees, costs and expenses relating thereto shall be paid by the Company without recourse of any kind to the Initial Member or the applicable Failed Bank (other than to the extent the same constitute Servicing Expenses). The Company shall provide to the Initial Member no later than twenty (20) Business Days following the Closing Date a report showing the status of each pending litigation with respect to the replacement of the Company as the party-in-interest. The Company shall pay all of the costs and expenses incurred by it in connection with the actions required to be taken by it pursuant to Section 4.5(a) and this Section 4.5(b) (which expenses shall constitute Servicing Expenses), including all legal fees and expenses and court costs (which expenses shall constitute Servicing Expenses), and shall reimburse the Initial Member, upon demand, for all legal expenses the Initial Member incurs on or after the Cut-Off Date with respect to any such litigation, including costs incurred with the dismissal thereof or withdrawal therefrom (which costs incurred by the Initial Member shall constitute Servicing Expenses for purposes of the Custodial and Paying Agency Agreement).

(c) In the event that there exists or is asserted against the Company after the Closing Date any Excluded Liability (and such claim or action is not based upon and does not arise out of any act or omission of or on behalf of the Company, the Private Owner or the Servicer), (i) the Company shall (A) notify the Initial Member, in writing in accordance with the notice provisions of Article VII, of such claim or action and (B) subject to the rights of the Initial

Member set forth below, be responsible for and control and assume the investigation and/or defense of such claim or action on behalf of the Company and the Company's interest in the Assets, at the Company's expense and with counsel appointed by the Company; and (ii) the Initial Member shall be responsible for and control and assume any investigation and/or defense of the Initial Member and the applicable Failed Bank, at the Initial Member's own expense and with Initial Member's own counsel. The Initial Member's determination whether or not any claim or liability in any such litigation is an Excluded Liability and the extent to which any such litigation relates to both Excluded Liabilities and other claims or liabilities shall be conclusive and binding for all purposes with respect to this Agreement. The Company and the Initial Member shall cooperate in the defense of any such claim or action to the extent their interests are not in conflict and shall use commercially reasonable efforts to work together to resolve or settle such claims or action in a manner that is mutually agreeable and in their respective best interests. The Company shall obtain the prior written approval of the Initial Member before ceasing to defend against any such claims or action. Notwithstanding the foregoing, the Initial Member may at any time assume and control the defense of the Company in connection with any such claim or action at the Initial Member's expense. Subject to the provisions of Sections 4.5(d)(i) and (ii) below, the costs and expenses incurred by the Company in connection with its defense of any claim or action described in this Section 4.5(c), including (I) reasonable attorneys' fees and expenses incurred to defend against (or investigate) the same or pursue counterclaims or cross-claims against other parties, (II) awards or judgments assessed against the Company with respect to any such claim or action, or (III) the costs of any settlements described in Section 4.5(d)(ii) below of such claim or action, shall constitute Servicing Expenses for purposes of the Custodial and Paying Agency Agreement.

(d) If, as a result of any claim or action subject to the provisions of Section 4.5(c) above:

(i) there is entered against the Company either (A) a final, non-appealable monetary judgment holding the Company liable for damages in excess of an amount equal to the Total Asset Valuation of the Asset relating to or that is the subject of such claim (such Asset, the "**Affected Asset**") (such excess amount, the "**Excess Damage Liability**"), or (B) a final monetary judgment that is appealable, which the Initial Member agrees in writing need not be appealed further by the Company, and that imposes an Excess Damage Liability on the Company, or

(ii) the Company enters into a final settlement agreement with the consent of the Initial Member (such consent not to be unreasonably withheld), pursuant to which the Company is obligated to pay an Excess Damage Liability,

then, in any such case described in Clause (i) or (ii) above, the Initial Member shall reimburse the Company for the Excess Damage Liability and the Initial Member shall be entitled, at its option, to repurchase the Affected Asset at its Repurchase Price in accordance with the repurchase provisions of Article VI; provided, however, that the Initial Member shall not be liable pursuant to this sentence for any liability imposed upon the Company that arises as a result of any act or omission of the Company or the Private Owner.

(e) The provisions of Sections 4.5(a), 4.5(b), 4.5(c) and 4.5(d)(i) are subject to the right of the Initial Member to retain claims pursuant to Section 2.7 of this Agreement, including any such claims as may have been asserted in litigation pending as of the Closing Date, and (ii) do not modify in any manner the limitations on liabilities assumed by the Company pursuant to Section 2.2 or the definition of Excluded Liabilities. At the Initial Member's discretion, litigation involving any such claims shall be bifurcated, with the Initial Member remaining the real party in interest and retaining control over (and being responsible for pursuing and bearing the related costs to pursue) claims retained by it pursuant to Section 2.7 and the Company substituting itself as the real party in interest and taking control of (and being responsible for pursuing and bearing the cost of pursuing) the remainder of the litigation. The Initial Member's determination whether or not litigation consists of any such claims and the extent to which litigation consists of any such claims shall be conclusive and binding for all purposes with respect to this Agreement.

(f) Notwithstanding any provision to the contrary in this Agreement, any payments by the Company of Servicing Expenses pursuant to Section 4.5(c) shall be subject to the obligation of the Private Owner to reimburse the Initial Member pursuant to Section 4.6 of the LLC Operating Agreement.

(g) Further notwithstanding any provision to the contrary in this Agreement, in the event that there is instituted any litigation challenging the repudiation of any obligation with respect to any Asset by the Initial Member and asserting that the Company has any liability arising from such repudiation, the Initial Member shall control and defend such litigation (including any claims or actions against the Company) and pay all costs and expense in respect thereof.

Section 4.6 **Assets in Bankruptcy.** In accordance with Bankruptcy Rules 3001 and 3002, the Company shall take all actions necessary to file, prior to the respective Servicing Transfer Dates (i) proofs of claims in pending bankruptcy cases involving any Assets for which the Initial Member or any Failed Bank has not already filed a proof of claim, and (ii) all documents required by Rule 3001 of the Federal Rules of Bankruptcy Procedure and to take all such similar actions as may be required in any relevant jurisdiction in any pending bankruptcy or insolvency case or proceeding in such jurisdiction involving any Asset in order to evidence and assert the Company's rights. The Company shall prepare and provide to the Initial Member, on or prior to the respective Servicing Transfer Date, an Affidavit and Assignment of Claim in the form attached to this Agreement as Attachment D or any similar forms as may be required in any relevant Foreign Jurisdiction and shall be acceptable to the Initial Member, for each Asset where a Borrower or an Obligor with respect to such Asset is in bankruptcy as of the Closing Date. The Company hereby releases the Initial Member, the FDIC and any Failed Bank from any claim, demand, suit or cause of action the Company may have as a result of any action or inaction on the part of the Initial Member, the FDIC or any Failed Bank with respect to such Asset. In the event the Company fails, prior to the respective Servicing Transfer Date, to take the actions required by this Section 4.6, (a) the Initial Member may, but shall have no obligation to, file proofs of claim or other documents as the Initial Member determines to be necessary or appropriate to evidence and assert the Company's rights and, (b) in the event the Initial Member does take any such actions, the Company shall be liable for and hereby agrees to pay all costs

and expenses incurred by the Initial Member in connection therewith (which costs incurred by the Initial Member shall constitute Servicing Expenses for purposes of the Custodial and Paying Agency Agreement). The provisions of this Section are subject to the right of the Initial Member to retain claims pursuant to Section 2.7 of this Agreement, including any such claims as may have been asserted in litigation pending as of the Closing Date. At the Initial Member's discretion, litigation involving any such claims shall be bifurcated, with the Initial Member remaining the real party-in-interest and retaining control over (and being responsible for pursuing and bearing the related costs to pursue) claims retained by it pursuant to Section 2.7 and the Company substituting itself as the real party-in-interest and taking control of (and being responsible for pursuing and bearing the cost of pursuing) the remaining claims in the litigation.

Section 4.7 **Asset-Related Insurance.** On the Closing Date, (a) the Initial Member shall cause to be assigned, to the extent assignable, all existing insurance policies in respect of any Asset or the Collateral for any Asset; (b) the Company shall be responsible for having itself substituted as loss payee or named as an additional insured, as applicable, on all Asset-related insurance in which any Failed Bank or the Initial Member is currently listed as a loss payee or named as an additional insured, as applicable; and (c) the Company shall cause to be put into place such insurance for the Assets and the Collateral for the Assets with respect to which the Borrower has failed to maintain required insurance, fire, hurricane, flood and hazard insurance with extended coverage as is customary in the area in which the Assets or the Collateral is located and in such amounts and with such deductibles as, in the reasonable judgment of the Company, are prudent. Upon the cancellation after the Closing Date of any insurance policy maintained by the Initial Member or any Failed Bank with respect to any Asset and the receipt by the Company or the Initial Member of any refund of any premiums previously paid with respect thereto, such refunded amount shall inure to the benefit of the Borrowers with respect to the affected Assets, and such refunded amount shall be remitted to (or retained by) the Company and applied as appropriate to adjust the Escrow Accounts, if any, or other records with respect to such affected Assets.

Section 4.8 **Loans with Escrow Accounts**. Amounts or balances related to the Loans on deposit in Escrow Accounts held or controlled by the Initial Member or an Existing Servicer shall be transferred to the Company on the respective Servicing Transfer Date. On such date, any positive escrow balances held in the Escrow Accounts, without offset against any negative escrow balances, shall be transferred to the Company. The Company agrees to assume, undertake and discharge any and all Obligations of the holder of the Loans with respect to any Escrow Account and the maintenance of such Escrow Account and the Escrow Payments paid by or on account of the related Borrower.

Section 4.9 **Initial Member as Lead Lender in Loan Participations.** The Initial Member hereby assigns and the Company hereby assumes the role of lead lender for any Loan Participations in which a portion of an Asset was participated to one or more Persons and in which the Initial Member or any of its predecessors-in-interest was the lead lender as of the Closing Date. The Company hereby agrees to accept any such Loan Participations subject to all participants' right, title and interest in such Loan Participations.

Section 4.10 **Contracts for Deed.** The Company agrees to comply with all Obligations set forth in any Contract for Deed contained in any Asset subject to this Agreement. Pursuant to the provisions of Section 3.1 hereof, the Initial Member may require the Company to prepare and furnish special warranty deeds for the Initial Member's approval, conveying the real property subject to any such contract to the Company. The costs and expenses of the Company (or the Manager or the Servicer for the benefit of the Company) for any title curative work, if required, shall constitute Pre-Approved Charges.

Section 4.11 **Acquired Property.** The Company agrees to comply with all Obligations set forth in any Collateral Document relating to Acquired Property unless, in the opinion of the Company, complying with the Obligations pursuant to such Collateral Documents would not be in the best interest (in terms of maximizing the value of the Asset) of the Company and the Initial Member. Pursuant to the provisions of Section 3.1 hereof, the Initial Member may require the Company to prepare and furnish special warranty deeds and other applicable Transfer Documents, for the Initial Member's approval, to convey the Receiver Acquired Property to the Company.

Section 4.12 **Leases.** The Company agrees to comply with all Obligations set forth in any lease related to any Asset unless, in the opinion of the Company, complying with the Obligations pursuant to such lease would not be in the best interests (in terms of maximizing the value of the Asset) of the Company and the Initial Member. Pursuant to the provisions of Section 3.1 hereof, the Initial Member may require the Company to prepare and furnish applicable Transfer Documents for the Initial Member's approval and execution.

Section 4.13 **Notice to Borrowers.** The Company shall, on a timely basis in accordance with and to the extent (if any) required by any applicable Laws, and pursuant to the Limited Powers of Attorney granted to it pursuant to Section 3.1(d)(i), prepare and transmit to each Borrower a joint "hello" and "goodbye" letter, at the Company's expense, which letter shall be subject to the review and reasonable approval of the Initial Member.

Section 4.14 **Notice of Claims.** The Company shall immediately notify the Initial Member, in accordance with the notice provisions of Section 7.4, of any claim, threatened claim or litigation against the Initial Member or any Failed Bank arising out of any Asset.

Section 4.15 **Use of the FDIC's Name and Reservation of Statutory Powers.** The Company shall not use or permit the use by its agents, successors or assigns of any name or combination of letters that is similar to "FDIC" or "Federal Deposit Insurance Corporation." The Company will not represent or imply that it is affiliated with, authorized by or in any way related to the FDIC except that, for so long as the FDIC is a member of the Company, the Company may represent that fact. The Company shall be entitled to assert (and claim the benefit of) the statute of limitations established under 12 U.S.C. §1821(d)(14). The Company acknowledges and agrees, however, that the assignment of any Asset, Asset Document or Collateral Document pursuant to the terms of this Agreement shall not constitute the assignment of any other rights, powers or privileges granted to the Initial Member pursuant to the provisions the Federal Deposit Insurance Act, including those granted pursuant to 12 U.S.C. §1821(d), 12 U.S.C. §1823(e) and 12 U.S.C. §1825, all such rights and powers being expressly reserved by

the Initial Member; nor shall the Company assert or attempt to assert any such right, power or privilege in any pending or future litigation involving any Asset transferred or purchased pursuant to this Agreement.

Section 4.16 **Prior Servicer Information.** The Company acknowledges and agrees that the Initial Member may not have access to information from servicers of an Asset prior to the appointment of the FDIC as receiver of the applicable Failed Bank and that the Initial Member has not requested any information not in the possession of the Initial Member or its servicing contractor from any prior servicer of an Asset. The Company acknowledges and agrees that the Initial Member will not be required under the terms of this Agreement to request any information from any prior servicer.

Section 4.17 **Release of Initial Member, FDIC and Failed Banks.**

(a) Except as otherwise specifically provided in Article VI of this Agreement or in the LLC Operating Agreement or any other Transaction Document, the Company hereby releases and forever discharges the Initial Member, the FDIC, any Failed Bank and all of their respective officers, directors, employees, agents, attorneys, contractors and representatives, and all of their respective successors, assigns (other than the Company) and Affiliates, from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Company had, has or may have in the future, whether known or unknown, which are related in any manner whatsoever to the Assets, the servicing of the Assets (before or after the Cut-Off Date) by (i) the Initial Member, any Failed Bank or their predecessors-in-interest, (ii) the FDIC or (iii) any Person acting on behalf of the Initial Member, the FDIC or any Failed Bank or their predecessors-in-interest, or the acquisition of the Assets (other than gross negligence or willful misconduct); provided, however, that nothing contained in this Section 4.17(a) shall constitute or be interpreted as a waiver of any express right that the Company has under this Agreement or any of the Transaction Documents.

(b) The Company agrees that it will not renew, extend, renegotiate, compromise, settle or release any Note or Asset or any right of the Company founded upon or growing out of this Agreement, except upon payment in full thereof, unless the Borrower and all Obligors on said Note or Asset first shall release and discharge the FDIC, the Initial Member and the applicable Failed Bank with respect to such Asset, and their respective agents and assigns, other than the Company (the "**Released Parties**"), from all claims, demands and causes of action that any such Borrower may have against any such Released Party arising out of or resulting from any act or omission occurring prior to the date of such release.

Article V
Assets Sold "As Is" and Without Recourse

Section 5.1 **Assets Conveyed "As Is".** THE ASSETS (INCLUDING ANY INTERESTS IN OWNERSHIP ENTITIES AND RECEIVER ACQUIRED PROPERTY) ARE CONVEYED AND ASSIGNED TO THE COMPANY "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION; WARRANTY OR GUARANTY WHATSOEVER,

INCLUDING AS TO COLLECTABILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE, WHETHER EXPRESS OR IMPLIED OR BY OPERATION OF LAW, BY ANY PERSON, INCLUDING THE INITIAL MEMBER, THE FAILED BANKS OR THE FDIC, OR ANY PREDECESSORS-IN-INTEREST OR AFFILIATES OF THE INITIAL MEMBER, THE FAILED BANKS OR THE FDIC, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS. THE INITIAL MEMBER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE ASSETS, THE COLLATERAL OR THE COLLATERAL DOCUMENTS, OR WITH RESPECT TO THE LEGALITY, VALIDITY, EFFECTIVENESS, ADEQUACY OR ENFORCEABILITY OF ANY SWAP AGREEMENT OR ANY DOCUMENTS RELATING THERETO OR TO THE CONDITION, FINANCIAL OR OTHERWISE, OF THE PARTIES TO ANY SWAP AGREEMENT OR ANY OTHER PERSON OR FOR THE PERFORMANCE AND OBSERVANCE BY THE PARTIES TO ANY SWAP AGREEMENT OR ANY OTHER PERSON OF ANY OF ITS OBLIGATIONS PURSUANT TO ANY SWAP AGREEMENT OR ANY DOCUMENTS RELATING THERETO OR WITH RESPECT TO ANY OTHER MATTER WHATSOEVER RELATING TO ANY SWAP AGREEMENT.

Section 5.2 **No Warranties or Representations with Respect to Escrow Accounts.** Without limiting the generality of Section 5.1, the Initial Member makes no warranties or representations of any kind or nature as to the sufficiency of funds held in any Escrow Account to discharge any obligations related in any manner to an escrow obligation, as to the accuracy of the amount of any monies held in any Escrow Account or as to the propriety of any previous disbursements or payments from any Escrow Account.

Section 5.3 **No Warranties or Representations as to Amounts of Unfunded Principal.** Without limiting the generality of Section 5.1, the Initial Member makes no warranties or representations of any kind or nature as to the amount of any additional or future advances of principal the Company may be obligated to make pursuant to the Asset Documents.

Section 5.4 **Disclaimer Regarding Calculation or Adjustment of Interest on any Asset.** Without limiting the generality of Section 5.1, the Initial Member makes no warranties or representations of any kind or nature as to the accuracy of any calculation or adjustment of interest on any Loan, including any adjustable rate Loan, whether such calculation or adjustment is made by the FDIC, a Failed Bank, the Initial Member or any Affiliate, agent or contractor of any of the foregoing, or any predecessor-in-interest of the Initial Member or any other party.

Section 5.5 **No Warranties or Representations With Regard to Information.** The Initial Member makes no warranties or representations of any kind or nature as to the completeness or accuracy of any information provided with respect to any Asset. The Company acknowledges that, for example, and not by way of limitation, some Asset Files may be missing forms or notices, or may contain incomplete or inaccurate forms or notices, that may be required by one or more federal or state consumer protection statutes. The Company's exclusive remedies with respect to any inaccurate or incomplete information provided by the Initial

Member are an adjustment in accordance with Section 2.4 or an option to repurchase pursuant to Article VI, and such exclusive remedies are available only if all other conditions theretofore expressed in this Agreement have been met.

Section 5.6 **Intervening or Missing Assignments.** The Company acknowledges and agrees that the Initial Member shall have no obligation to secure or obtain any missing intervening Mortgage Assignment or other assignment to the Initial Member or any Failed Bank that is not contained in the Asset File or among the Collateral Documents. Neither the absence of any intervening Mortgage Assignment or any Mortgage Assignment to the Initial Member, the FDIC or any Failed Bank, nor the existence of any Lien on the Asset or its Collateral, nor any defect in the Lien or priority of the Initial Member's or the applicable Failed Bank's security interest in the Collateral shall give rise to any claim for purchase under Article VI. The Company shall bear all responsibility and expense of securing from the appropriate source any intervening Mortgage Assignment or any other assignment to the Initial Member, the FDIC or any Failed Bank that may be missing from the Collateral Documents, but the costs thereof incurred by the Company (or the Manager or the Servicer for the benefit of the Company) shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agent Agreement.

Section 5.7 **No Warranties or Representations as to Documents.** The Initial Member makes no warranties or representations of any kind or nature as to the effectiveness or enforceability in any Foreign Jurisdiction of this Agreement or any other document or instrument delivered or prepared in connection herewith, whether or not prepared and executed in the forms provided herewith, all of such forms being provided for reference only.

Section 5.8 **No Warranties or Representations as to Real Estate Taxes or Other Potential Liens Affecting Collateral.** Without limiting the generality of Section 5.1, the Initial Member makes no warranties or representations of any kind or nature as to the existence or amount of any unpaid back real estate Taxes, penalties, interest or other amounts due or overdue and payable or to become due and payable with respect to any Asset or Collateral or related Liens against any Asset or Collateral which amounts may be subject to payment by the Company in accordance with the terms of the Transaction Documents. The Initial Member retains no obligations with respect to payment or discharge of any real estate Taxes, penalties, interest or other amounts or any Liens or other encumbrances resulting from the nonpayment thereof without regard to when such Taxes, penalties, interest or other amounts became due and without regard to when such Liens or other encumbrances arose.

Article VI
Repurchase by Initial Member at Company's Option

Section 6.1 **Repurchases at Company's Option.** The Company, at its option, and upon satisfaction of the procedures and other requirements set forth below, may require the Initial Member to repurchase an Asset, if, and only if, (x) prior to the Closing Date, one of the events described in Section 6.1(a) through (h) has occurred or (y) after the Closing Date, there is issued by a court of competent jurisdiction with respect to such Asset a final, non-appealable order or judgment unless the Initial Member has agreed in writing that no appeal need be taken or there is entered into, with the consent of the Initial Member, a final settlement of any claim,

action or litigation (the "**Order**") that requires the assignment and transfer of such Asset back to the Initial Member (unless the Initial Member has agreed in writing that no appeal need be taken).

(a) If the Asset is a Loan, the Borrower had been discharged in a no asset bankruptcy proceeding, there is no Collateral securing such Loan and out of which such Loan may be satisfied, and all other Obligors with respect to the Note, if any, or the obligations contained therein, have similarly been discharged in no asset bankruptcies.

(b) If the Asset is a Loan, a court of competent jurisdiction had entered a final, non-appealable judgment or order (unless the Initial Member has agreed in writing that no appeal need be taken other than a bankruptcy decree or judicial foreclosure order) holding that neither the Borrower nor any other Obligors, owe an enforceable obligation to pay the holder of the Note or its assignees.

(c) If the Asset is a Loan, the Initial Member or the applicable Failed Bank had executed and delivered to the Borrower a release of liability from all obligations under the Note.

(d) A title defect exists in connection with the property that is the subject of a Contract for Deed, which title defect requires a prior order or judgment of a court to enable the Company to convey title to such property in accordance with the terms and conditions set forth in the Contract for Deed.

(e) The Initial Member is not the owner of the Asset (or, in the case of a Loan Participation, the Initial Member is not the owner of the *pro rata* interest in such Loan Participation set forth on the Asset Schedule) and such is not curable by the Initial Member so as to permit ownership of the Asset to be transferred to the Company.

(f) There exists Environmental Hazards, in which case the Company's recourse with respect to this Section 6.1(f) shall be conditioned upon: (i) the presence of Environmental Hazards not being disclosed in the Asset File or other material provided by the FDIC to the Private Owner prior to submission of the Bid; (ii) such Asset having an Adjusted Unpaid Principal Balance greater than $250,000.00; and (iii) the Company delivering, along with the notice required by Section 6.2, the following, each of which must be satisfactory in form and substance to the Initial Member in its discretion:

(i) A Phase I environmental assessment, from a qualified and reputable firm, of the Acquired Property or the Mortgaged Property securing such Loan, as the case may be, and

(ii) A Phase II environmental assessment or lead-based paint survey of such Acquired Property or Collateral from a qualified and reputable firm, which assessment shall confirm (A) the existence of Environmental Hazards on such Acquired Property or Mortgaged Property and (B) that the regulator is likely to require such remediation; and,

(iii) written certification of the Company under penalty of perjury that no action has been taken by or on behalf of the Company, with respect to a Loan, (A) to initiate foreclosure proceedings or (B) to accept a deed-in-lieu-of-foreclosure in connection with such Loan.

(g) The Initial Member or the applicable Failed Bank, or its respective officers, directors or employees, fraudulently caused the Borrower to receive less than all of the proceeds and benefits of a Note. The Company's recourse with respect to this Section 6.1(g) shall be conditioned upon the Company delivering, along with the notice required by Section 6.2, written evidence of such fraud, which evidence must be satisfactory in form and substance to the Initial Member in its discretion.

(h) There is instituted after the Cut-Off Date any Action that (i) is asserted by more than one Borrower and any Affiliates (with multiple Borrowers with respect to Loans secured by the same Collateral being considered a single Borrower for purposes of this Section) with respect to more than one Asset (with multiple Loans secured by the same Collateral being considered a single Asset for purposes of this Section), (ii) includes allegations of fraud on the part of the Initial Member or any Failed Bank in connection with the Initial Member's or any Failed Bank's origination of such Assets (or the related Underlying Loans) and (iii) names the Initial Member or any Failed Bank as a defendant and that asserts liability on the part of the Initial Member or any Failed Bank for which the Company is not liable as assignee, as a matter of Law, with respect to such Assets.

IN NO EVENT SHALL THE OCCURRENCE OF ANY SUCH EVENT OR THE OBLIGATION TO REPURCHASE AN ASSET PURSUANT TO THIS ARTICLE VI BE EVIDENCE OF ANY BAD FAITH, MISCONDUCT OR FRAUD ON THE PART OF THE INITIAL MEMBER, THE FDIC OR ANY FAILED BANK OR ANY PREDECESSOR-IN-INTEREST OR ANY AFFILIATE THEREOF, OR ANY OF THEIR RESPECTIVE DIRECTORS, EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS, EVEN IF IT IS SHOWN THAT THE INITIAL MEMBER, THE FDIC OR ANY FAILED BANK OR ANY PREDECESSOR-IN-INTEREST OR ANY AFFILIATE THEREOF, OR ANY OF THEIR RESPECTIVE DIRECTORS, EMPLOYEES, OFFICERS, CONTRACTORS OR AGENTS, (A) KNEW OR SHOULD HAVE KNOWN OF THE EXISTENCE OF ANY FACTS RELATING TO THE OCCURRENCE OF SUCH EVENT, (B) CAUSED SUCH EVENT OR (C) FAILED TO MITIGATE SUCH EVENT OR ANY OF THE LOSSES RESULTING THEREFROM.

Section 6.2 **Notice to Initial Member.** The Company shall notify the Initial Member of each Asset with respect to which the Company seeks to exercise its rights pursuant to Section 6.1. Such notice shall be on the Company's letterhead and include the following information: (a) the Company's Tax identification number, (b) the Company's wire transfer instructions, (c) the Asset number and other identifying information related to the Asset, (d) the subsection of Section 6.1 pursuant to which the Company is seeking to require the Initial Member to repurchase the Asset, (e) a summary of the reasons the Company believes that the Asset should be repurchased by the Initial Member and (f) a certification by the Company that the request for repurchase is being submitted in good faith and is complete and accurate in all respects to the best of the Company's knowledge. The notice shall be accompanied by evidence supporting the

basis for the Initial Member's repurchase of such Asset. Promptly upon request by the Initial Member, the Company shall supply the Initial Member with any additional evidence that the Initial Member may reasonably request. The Initial Member shall have no obligation to repurchase any Asset pursuant to this Article VI for which notice and all supporting evidence reasonably required by the Initial Member have not been received by the Initial Member at the addresses specified in Article VII no later than the first Business Day after the expiration of (x) in the case of any purchase demand pursuant to Section 6.1(a) through (h), 180 calendar days after the Closing Date, or in the case of a Contract for Deed, the first Business Day after the expiration of 360 calendar days after the Closing Date, and (y) in the case of any purchase demand with respect to the issuance of an Order, thirty (30) days after the issuance of the Order.

Section 6.3 **Re-delivery of Notes, Files and Documents.** For any Asset that qualifies for re-purchase pursuant to this Article, the Company shall: (a) re-endorse and deliver the Note with respect to any Loan or Underlying Loan to the Initial Member (or its designee); (b) assign all Collateral Documents associated with such Asset and reconvey any real property subject to a Contract for Deed or any related Receiver Acquired Property or Company Acquired Property, together with such other documents or instruments as shall be necessary or appropriate to convey the Asset (including any related Receiver Acquired Property or Company Acquired Property and including any related equity interests in an Ownership Entity) back to the Initial Member (or its designee); (c) deliver to the Initial Member (or its designee) the Asset File, along with any additional records compiled or accumulated by the Company pertaining to the Asset; (d) take such actions as are necessary to transfer from the Company to the Initial Member any litigation or bankruptcy action involving the subject Asset, including substituting the duties of the Company for the Initial Member and the Initial Member for the Company, and with respect to the Affidavit and Assignment of Claim, the form of which is attached to this Agreement as Attachment D, substituting the duties of the Assignor (as such term is defined therein) for the Assignee (as such term is defined therein) and the Assignee for the Assignor; and (e) deliver to the Initial Member (or its designee) a certification, notarized and executed under penalty of perjury by a duly authorized representative of the Company, certifying that as of the date of repurchase by the Initial Member none of the conditions relieving the Initial Member of its obligation to repurchase the Asset as specified in Section 6.4 has occurred. The documents evidencing the conveyance of the Asset to the Initial Member shall be substantially the same as those executed pursuant to Article III of this Agreement to convey the Asset to the Company. In all cases in which the Company recorded or filed among public records any document or instrument evidencing a transfer of the Asset to the Company, the Company shall cause to be recorded or filed among such records a similar document or instrument evidencing the reconveyance of the Asset to the Initial Member. Upon compliance by the Company with the provisions of this Section 6.3, the Initial Member shall pay to the Company the Repurchase Price, and the Repurchase Price shall be applied in the manner set forth in Section 5.1 of the Custodial and Paying Agency Agreement.

Section 6.4 **Waiver of Company's Repurchase Option.** The Initial Member will be relieved of its obligation to repurchase any Asset for any reason set forth in Section 6.1 if the Company: (a) except in the case of the permanent refinance of a Loan in connection with the final Authorized Funding Draw with respect to such Loan, modifies any of the terms of the Loan

(including the terms of any Collateral Document or Contract for Deed); (b) exercises forbearance with respect to any scheduled payment on the Loan; (c) accepts or executes new or modified lease documents assigned by the Initial Member to the Company; (d) sells, assigns or transfers the Asset or any interest therein; (e) fails to comply with the LLC Operating Agreement in the maintenance, collection, servicing and preservation of the Asset, including delinquency prevention, collection procedures and protection of collateral as warranted; (f) initiates any litigation in connection with the Asset or the Mortgaged Property securing the Asset other than litigation to force payment or to realize on the Collateral securing the Asset; (g) completes any action with respect to foreclosure on, or accepts a deed-in-lieu of foreclosure for any Collateral securing the Asset; (h) causes, by action or inaction, the priority of title to the Asset, Mortgaged Property and other security for the Asset to be less than that conveyed by the Initial Member; (i) causes, by action or inaction, the security for the Asset to be different than that conveyed by the Initial Member, except as may be required by the terms of the Collateral Documents; (j) causes, by action or inaction, a claim of third parties to arise against the Company that, as a result of purchase under this Agreement, may be asserted against the Initial Member; (k) causes to arise, by action or inaction, a Lien of any nature to encumber the Asset; (l) is the Borrower or any other Obligor, or any Affiliate thereof, with respect to such Asset; (m) makes any disbursement of principal or otherwise incrementally funds any Loan; or (n) makes a Discretionary Funding Advance with respect to an Asset.

Article VII
Notices

Section 7.1 **Notices.** All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be given by certified or registered mail, postage prepaid, delivered by hand or by nationally recognized air courier service, or sent via electronic mail followed up by a hard copy of such notice, in any case directed to the address of such Person as set forth in the applicable Section of this Article VII. Any such notice shall become effective when received (or when receipt is refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day of the recipient. From time to time, any Person may designate a new address for purposes of notice hereunder by notice to such effect to the other Persons identified in this Article VII.

Section 7.2 **Article VI Notice**. Any notice, request, demand or other communication required or permitted to be given to the Initial Member pursuant to the provisions of Article VI shall be delivered to:

Initial Member: Assistant Director, 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
E-mail 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
E-mail Address: DGearin@fdic.gov

Section 7.3 **Transfer Documents**. For purposes of designating the Custodian as the return addressee on Transfer Documents, the following address shall be used:

Custodian: [Citibank, N.A.
388 Greenwich Street, 14th floor
New York, New York 10013
Attention: Cirino Emanuele
John Hannon
Reference: West RADC Venture 2010-2, LLC
E-mail Addresses: [redacted]

Section 7.4 **All Other Notices.** Any notice, request, demand or other communication required or permitted to be given pursuant to any provision of this Agreement and that is not governed by the provisions of Section 7.2 or 7.3 shall be delivered to:

Company before Closing: Assistant Director, 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
E-mail 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 E-mail Address: DGearin@fdic.gov
Company after Closing:	WEST RADC VENTURE 2010-2, LLC 101 North Main Street Logan, Utah 84321 Attention: J. Greg Miller E-mail Address: [redacted]
with a copy to:	N. George Daines 108 North Main Street Logan, Utah 84321 E-mail Addresses: [redacted]
Initial Member:	Assistant Director, 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 E-mail 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 E-mail Address: DGearin@fdic.gov

Article VIII
Miscellaneous Provisions

Section 8.1 **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 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 8.2.

Section 8.2 **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 MAY REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION, AND EACH PARTY TO THIS AGREEMENT UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS AGREEMENT.

Section 8.3 **Cost, Fees and Expenses.** Except as otherwise provided in this Agreement, each party to this Agreement agrees to pay all costs, fees and expenses which it has incurred in connection with or incidental to the matters contained in this Agreement, including fees and disbursements to its accountants, brokers, financial advisors and counsel.

Section 8.4 **Waivers; Amendment and Assignment.**

(a) No provision of this Agreement may be amended or waived except in writing executed by all of the parties to this Agreement. This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits set forth in this Agreement shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, 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 pursuant to or by reason of this Agreement. Notwithstanding the foregoing, this Agreement may

not be transferred or assigned without the express prior written consent of the Initial Member, and any attempted assignment without such consent shall be void *ab initio*.

(b) Notwithstanding anything to the contrary contained elsewhere in this Agreement (including the foregoing Section 8.4(a)) or in any other Transaction Document, to facilitate the possible restructuring or sale of the Purchase Money Note, the FDIC, without the consent of the Private Owner, the Company or the Holder of the Purchase Money Note, may at any time that the FDIC is the Holder of 100 percent of the Purchase Money Note or beneficial interest therein and from time to time cause the Company to replace such Purchase Money Note and make related changes, modifications or amendments to this Agreement and the Transaction Documents as permitted therein.

Section 8.5 **No Presumption**. This Agreement shall be construed fairly as to each party hereto 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 hereto.

Section 8.6 **Entire Agreement**. This Agreement and the Transaction Documents contain the entire agreement between the Initial Member and the Company and its Affiliates with respect to the subject matter hereof and supersede any and all other prior agreements, whether oral or written; provided, however, 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 Transaction Documents shall remain in full force and effect to the extent provided therein, except that the Company's rights under Article VI shall not be deemed a repurchase option for purposes of Section 2 of any such Confidentiality Agreement. In the event of a conflict between the terms of this Agreement and the terms of any Transfer Document or other document or instrument executed in connection herewith or in connection with the transactions contemplated hereby, including any translation into a foreign language of this Agreement for the purpose of any Transfer Document, or any other document or instrument executed in connection herewith which is prepared for notarization, filing or any other purpose, the terms of this Agreement shall control, and furthermore, the terms of this Agreement shall in no way be or be deemed to be amended, modified or otherwise affected in any manner by the terms of such Transfer Document or other document or instrument.

Section 8.7 **Jurisdiction; Venue and Service.**

(a) The Company, on behalf of itself and its Affiliates, hereby irrevocably and unconditionally:

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

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

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

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

(ii) consents to the jurisdiction of the Supreme Court of the State of New York, County of New York, for any suit, action or proceeding against it or any of its Affiliates commenced by the Initial Member arising out of, relating to, or in connection with this Agreement or any Transaction Document (other than the LLC Operating Agreement), and waives any right to:

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

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

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

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

(iv) agrees, if the United States District Court for the Southern District of New York and the United States District Court for the District of Columbia both lack jurisdiction to hear a suit, action or proceeding falling within Section 8.7(a)(iii), to bring that suit, action or proceeding in only the Supreme Court of the State of New York, County of New York, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member.

(b) Each of the Private Owner and the Company, 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 8.7(a) may be enforced in any court of competent jurisdiction.

(c) Subject to the provisions of Section 8.7(d), each of the Private Owner and the Company, on behalf of itself and its Affiliates, and the Initial Member hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 8.7(a) or Section 8.7(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 Sections 7.1 and 7.4 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 8.7(c) shall affect the right of any party to serve process in any other manner permitted by Law.

(d) Nothing in this Section 8.7 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Section 8.7(a)(iii) and Section 8.7(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 8.8 **Waiver of Jury Trial.** EACH OF THE COMPANY, FOR ITSELF AND ITS AFFILIATES, AND THE INITIAL MEMBER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

Section 8.9 **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 hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in Person. No signatory to this Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

Section 8.10 **Headings**. Article, section or paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof. All article, section and paragraph references contained in this Agreement shall refer to articles, sections and paragraphs in this Agreement unless otherwise specified.

Section 8.11 **Compliance with Law.** Except as otherwise specifically provided in this Agreement, each party to this Agreement shall, at its own cost and expense, obey and comply with all Laws, as they may pertain to such party's performance of its obligations hereunder.

Section 8.12 **Right to Specific Performance.** THE COMPANY HEREBY ACKNOWLEDGES AND AGREES THAT THE DAMAGES TO BE INCURRED BY THE INITIAL MEMBER AS A RESULT OF THE COMPANY'S BREACH OF THIS AGREEMENT WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN, THAT DAMAGES WILL NOT BE AN ADEQUATE REMEDY AND THAT ANY BREACH OR THREATENED BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT BY THE COMPANY MAY CAUSE IMMEDIATE IRREPARABLE HARM FOR WHICH THERE MAY BE NO ADEQUATE REMEDY AT LAW. ACCORDINGLY, THE PARTIES AGREE THAT, IN THE EVENT OF ANY SUCH BREACH OR THREATENED BREACH, THE INITIAL MEMBER SHALL BE ENTITLED TO (I) IMMEDIATE AND PERMANENT EQUITABLE RELIEF (INCLUDING INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE OF THE PROVISIONS OF THIS AGREEMENT) FROM A COURT OF COMPETENT JURISDICTION (IN ADDITION TO ANY OTHER REMEDY TO WHICH IT MAY BE ENTITLED AT LAW OR IN EQUITY), AND (II) SOLELY IN THE CASE OF A BREACH OF SECTION 4.15 HEREOF, LIQUIDATED DAMAGES IN THE AMOUNT OF $25,000 FOR EACH BREACH OF SUCH SECTION. THE PARTIES AGREE AND STIPULATE THAT THE INITIAL MEMBER SHALL BE ENTITLED TO EQUITABLE (INCLUDING INJUNCTIVE) RELIEF WITHOUT POSTING A BOND OR OTHER SECURITY, AND THE COMPANY FURTHER WAIVES ANY DEFENSE IN ANY SUCH ACTION FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF THAT A REMEDY AT LAW WOULD BE ADEQUATE AND ANY REQUIREMENT UNDER LAW TO POST SECURITY AS A PREREQUISITE TO OBTAINING EQUITABLE RELIEF. NOTHING CONTAINED IN THIS SECTION SHALL LIMIT EITHER PARTY'S RIGHT TO ANY REMEDIES AT LAW, INCLUDING THE RECOVERY OF DAMAGES FOR BREACH OF THIS AGREEMENT.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

INITIAL MEMBER:

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR EACH OF THE VARIOUS FAILED FINANCIAL INSTITUTIONS LISTED ON SCHEDULE I HERETO

By: [redacted]
Name: J. M. Elliott
Title: Attorney-in-Fact

COMPANY:

WEST RADC VENTURE 2010-2 VENTURE, LLC

By: Federal Deposit Insurance Corporation in its Capacity as Receiver for each of the Various Failed Financial Institutions Listed on Schedule I hereto as Sole Member and Manager

By: [redacted]
Name: J. M. Elliott
Title: Attorney-in-Fact

SCHEDULE I

West RADC Venture 2010-2, LLC

List of Various Failed Financial Institutions

Bank Name	City	State	Fund	Closing Date
Desert Hills Bank	Phoenix	AZ	10205	8/27/2010
Independent Bankers' Bank	Springfield	IL	10166	12/18/2009
AmTrust Bank	Cleveland	OH	10155	12/4/2009
Irwin Union Bank & Trust Company	Columbus	IN	10120	9/18/2009
Irwin Union Bank F.S.B.	Columbus	IN	10121	9/18/2009
Warren Bank	Warren	MI	10125	10/02/2009
Barnes Banking Company	Kaysville	UT	10171	1/15/2010
Centennial Bank	Ogden	UT	10193	3/05/2010
The Bank of Bonifay	Bonifay	FL	10234	5/07/2010