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Corus Transaction
EXECUTION VERSION

MATERIAL REDACTED

LOAN CONTRIBUTION AND SALE AGREEMENT

by and between

THE FEDERAL DEPOSIT INSURANCE CORPORATION as RECEIVER for CORUS BANK, N.A.

and

CORUS CONSTRUCTION VENTURE, LLC

Dated as of October 16, 2009

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LOAN CONTRIBUTION AND SALE AGREEMENT

THIS LOAN CONTRIBUTION AND SALE AGREEMENT (as the same shall be amended or supplemented, this "**Agreement**") is made and entered into as of the 16th day of October, 2009, by and between the FEDERAL DEPOSIT INSURANCE CORPORATION (in any capacity, "**FDIC**") AS RECEIVER FOR CORUS BANK, N.A. (the "**Initial Member**"), and CORUS CONSTRUCTION VENTURE, LLC, a Delaware limited liability company (the "**Company**").

RECITALS

WHEREAS, on September 11, 2009, the FDIC was appointed receiver (the "**Receiver**") for CORUS BANK, N.A. (the "**Failed Bank**"); and

WHEREAS, the Initial Member owns the Loans (as hereinafter defined to include, among other things, real and personal property directly or indirectly owned by the Initial Member, as a result of foreclosure proceedings, deeds in lieu or foreclosure or otherwise, and equity interests of special purpose entities that hold such real property), all as described on the Loan Schedule attached hereto as Exhibit A; and

WHEREAS, the Initial Member has formed the Company and holds the sole membership interest in the Company (the "**LLC Interest**"); and

WHEREAS, the Initial Member desires to transfer the Loans to the Company, partly as a capital contribution and partly as a sale as more fully set forth herein; and

WHEREAS, the Initial Member and the Company desire that, in consideration of the transfer of the Loans to the Company to the extent such transfer constitutes a sale, the Company will execute and deliver to the Initial Member the Company's Purchase Money Notes dated as of the date hereof with maturity dates and in the principal amounts set forth on Annex I hereto (the "**Purchase Money Notes**"), guaranteed by the FDIC pursuant to that certain Guaranty Agreement dated as of the date hereof between the FDIC in its corporate capacity and the Receiver (the "**Purchase Money Note Guaranty**"); and

WHEREAS, the Company will be obligated to reimburse the FDIC for any guaranty payments made pursuant to the Purchase Money Note Guaranty, and such reimbursement obligation will be secured by the assets of the Company and its subsidiaries, all pursuant to the Reimbursement, Security and Guaranty Agreement dated as of the date hereof between the Company and the FDIC (the "**Reimbursement, Security and Guaranty Agreement**") and the Collateral Documents; and

WHEREAS, the FDIC has agreed to provide additional funding to the Company to enable it, among other things, to make additional advances pursuant to certain of the Loans, which funding shall be provided pursuant to, and in accordance with the terms of, the Credit Agreement dated the date hereof between the FDIC and the Company (the "**Advance Facility**"), with the repayment obligations under the Advance Facility being secured by the assets of the Company and

its subsidiaries pursuant to the Reimbursement, Security and Guaranty Agreement and the Collateral Documents; and

WHEREAS, pursuant to the Limited Liability Company Interest Sale and Assignment Agreement dated as of the date hereof (the "**LLC Interest Sale Agreement**") between the Initial Member and CCV Managing Member, LLC, a Delaware limited liability company (the "**LLC Interest Transferee**"), the Initial Member has agreed to sell and transfer 40% of the issued and outstanding LLC Interests to the LLC Interest Transferee for the Purchase Price (as defined in the LLC Interest Sale Agreement); and

WHEREAS, the Initial Member and the Company desire to memorialize their agreement relating to the contribution and sale of the Loans 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, the following terms shall have the meanings and definitions hereinafter respectively set forth:

"**Account Control Agreement(s)**" shall have the meaning given in the Custodial and Paying Agency Agreement.

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

"**Acquired Collateral**" shall mean (i) Collateral to which title is acquired by or on behalf of the Company or any Ownership Entity, the Failed Bank or the Receiver by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code; (ii) the equity interests in the Ownership Entities and (iii) the assets held directly or indirectly by the Ownership Entities.

"**Action**" shall mean any claim, action, suit (at law or in equity), arbitration or proceeding before or by a Governmental Authority.

"**Adjusted Unpaid Principal Balance**" shall mean, with respect to any Loan, the Loan Schedule Balance as of the Cut-Off Date adjusted (i) up or down, as appropriate, to reflect the actual Unpaid Principal Balance of the Loan as of the Closing Date on the Accounting Records, (ii) up or down, as appropriate, to correct errors reflected in the Cut-Off Date Loan Schedule due to (A) miscalculations, misapplied payments, unapplied payments, unrecorded advances of principal or other disbursements, or 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 Closing Date, and (B) the portion of any Dishonored Check that was applied to (and reflected in)

the Loan Schedule Balance as of the Cut-Off Date; and (iii) without duplication of any adjustments made pursuant to clause (i) or (ii) above, in the case of any Acquired Collateral, up in the amount of any capital expenditures made after the Cut-Off Date, or down in the amount of net proceeds received after the Cut-Off Date from any sales of any portions of the Acquired Collateral.

"**Advance Facility**" shall have the meaning given in the preamble, and shall include all exhibits, schedules and attachments thereto.

"**Affected Loan**" shall have the meaning given in Section 4.5(c).

"**Affidavit and Assignment of Claim**" shall mean an Affidavit and Assignment of Claim in the form of Exhibit B to this Agreement.

"**Affiliate**" shall mean, with respect to any specified Person, (i) any other Person directly or indirectly controlling or controlled by or under common control with such specified Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities, voting equity interests, or beneficial interests of the Person specified, (iii) any officer, director, general partner, managing member, trustee, employee or promoter of the Person specified or any Immediate Family Member of such officer, director, partner, member, trustee, employee or promoter, (iv) any corporation, partnership, limited liability company or trust for which any Person referred to in clause (ii) or (iii) acts in that capacity, or (v) any Person who is an officer, director, general partner, managing member, trustee or holder of ten percent (10%) or more of the outstanding voting securities, voting equity interests or beneficial interests of any Person described in clauses (i) through (iv); provided, however, that for purposes of this Agreement, none of the Initial Member, the initial Lender under the Advance Facility, the administrative agent under the Advance Facility, the collateral agent under the Reimbursement, Security and Guaranty Agreement, or the Purchase Money Note Guarantor shall be deemed to be an Affiliate of the Company or of any Affiliate of the Company. For purposes of this definition, the term "**control**" (including the phrases "**controlled by**" and "**under common control with**") when used with respect to any specified Person shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

"**Agreement**" shall have the meaning given in the preamble, and shall include all exhibits, schedules and attachments hereto.

"**Allocated Loan Costs**" means the product of (i) the aggregate of all outstanding Working Capital Advances (as defined in the Custodial and Paying Agency Agreement) as of the Repurchase Date multiplied by (ii) the Allocation Ratio.

"**Allocation Ratio**" means, with respect to any Loan, the quotient (expressed as a decimal) of the Unpaid Principal Balance of such Loan as of the Repurchase Date divided by the aggregate Unpaid Principal Balance of all Loans outstanding as of the Repurchase Date.

"**Ancillary Documents**" shall mean the LLC Operating Agreement, the Servicing Agreement, the Custodial and Paying Agency Agreement, one or more Account Control Agreements, the LLC Interest Sale Agreement, the Purchase Money Notes (and any promissory note reissued in respect thereof pursuant to Section 2.8 of the Custodial and Paying Agency

Agreement), the Purchase Money Note Guaranty, the Reimbursement, Security and Guaranty Agreement and the Advance Facility, in each case once executed and delivered, and any and all other agreements and instruments executed and delivered in connection with the Closing and the transactions contemplated thereby.

"**Assignment and Lost Instrument Affidavit**" shall mean an Assignment and Lost Instrument Affidavit in the form of Exhibit C to this Agreement.

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

"**Borrower**" shall mean any borrower or other obligor with respect to any Loan.

"**Business Day**" shall mean any day except a Saturday, Sunday or other day on which commercial banks in Washington, D.C. or United States federal government offices are required or authorized by Law to close.

"**Closing**" shall mean the consummation of the transactions contemplated in the LLC Interest Sale Agreement.

"**Closing Adjustment**" shall have the meaning given in the LLC Interest Sale Agreement.

"**Closing Date**" shall mean the date on which the Closing occurs.

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"**Closing Date Loan Valuation Amount**" shall mean the sum of each product obtained by multiplying (A) [redacted] of the Adjusted Unpaid Principal Balance of each Loan as of the Closing Date by (B) the applicable percentage set forth opposite each Loan on the Loan Schedule (which percentage shall be the percentage for each Loan as specified on the Cut-Off Date Loan Schedule (as defined in the LLC Interest Sale Agreement)).

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Collateral**" shall mean any and all real or personal property, whether tangible or intangible, securing or pledged to secure a Loan, including any account, equipment, guarantee or contract right, equity, partnership or other interest that is the subject of any Collateral Document and, as the context requires, includes Acquired Collateral whether or not expressly so specified.

"**Collateral Document**" shall mean any pledge agreement, security agreement, personal, corporate or other guaranty, deed of trust, deed, trust deed, deed to secure debt, mortgage, contract for the sale of real property, assignment, collateral agreement, stock power or other agreement or document of any kind, whether an original or a copy, whether similar to or different from those enumerated, (i) securing in any manner the performance or payment by any Borrower of its obligations or the obligations of any other Borrower under any of the Loans or the Notes evidencing the Loans, or (ii) evidencing ownership of any Acquired Collateral.

"**Company**" shall have the meaning given in the preamble.

"**Custodial and Paying Agency Agreement**" shall mean the Custodial and Paying Agency Agreement dated as of the date hereof between the Company, the Purchased Money Note Guarantor, the Lender under the Advance Facility and the Custodian.

"**Custodial Documents**" shall have the meaning given in the Custodial and Paying Agency Agreement.

"**Custodian**" shall have the meaning given in the Custodial and Paying Agency Agreement.

"**Cut-Off Date**" shall mean September 11, 2009.

"**Deficiency Balance**" shall mean the remaining unpaid principal balance of any Note purchased hereunder after crediting to it the proceeds of a foreclosure sale.

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

"**Escrow Account**" shall mean, collectively, (a) any accounts maintained by the Initial Member or its agent for the deposit of Escrow Payments received in respect of one or more Loans or (b) lockbox accounts maintained in respect of a Loan.

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

"**Escrow Payments**" shall mean the amounts for the purpose of paying ground rents, taxes, assessments, water rates, common charges in condominiums and planned unit developments, mortgage insurance premiums, fire and hazard insurance premiums and other payments, or for the purpose of paying construction and related costs, which have been escrowed or designated by the Borrower with the Initial Member or its servicer or other agent pursuant to any Loan.

"**Excess Damage Liability Amount**" shall have the meaning given in Section 4.5(c).

"**Excess Working Capital Advance**" shall have the meaning given in the Custodial and Paying Agency Agreement.

"**Excluded Liabilities**" shall have the meaning given in Section 2.2.

"**Failed Bank**" shall have the meaning given in the recitals.

"**FDIC**" shall mean the Federal Deposit Insurance Corporation, in any capacity.

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

"**Foreign Loan**" shall mean a Loan with respect to which the Borrower or any of the Collateral is located in any Foreign Jurisdiction.

"**GAAP**" shall mean United States generally accepted accounting principles as in effect from time to time.

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

"**Guarantor**" shall mean any guarantor of all or any portion of any Loan or all or any of any Borrower's obligations set forth and described in the Loan Documents and shall include the guarantor under any completion guaranty or similar document.

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

"**Independent Accounting Firm**" shall have the meaning given in the LLC Interest Sale Agreement.

"**Initial Member**" shall have the meaning given in the preamble.

[redacted]" shall have the meaning given in Section 4.16.

"**Law**" shall mean any applicable statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or order (including any executive order) of any Governmental Authority.

"**Lender**" shall mean a lender under the Advance Facility.

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

"**Limited Power of Attorney**" shall mean the Limited Power of Attorney in the form of Exhibit D to this Agreement.

"**LLC Interest**" shall have the meaning given in the recitals.

"**LLC Interest Sale Agreement**" shall have the meaning given in the recitals.

"**LLC Interest Transferee**" shall have the meaning given in the recitals.

"**LLC Operating Agreement**" shall mean the Amended and Restated Limited Liability Operating Company Agreement dated as of the date hereof among the Initial Member, the LLC Interest Transferee and the Company.

"**Loan**" shall mean any loan, Loan Participation, Ownership Entity (including any cash and cash equivalents held directly or indirectly by such Ownership Entities (excluding security deposits, deposits made by prospective purchasers of condominium or cooperative units or other portions of the interests in the Acquired Collateral and other cash and cash equivalents to the extent that such Ownership Entity has a corresponding liability to a third party) or Acquired Collateral listed on the Loan Schedule, and any loan into which any listed loan or Loan Participation is refinanced or modified, and includes with respect to each such loan, Loan Participation, Ownership Entity, Acquired Collateral, or other related asset or any Related Agreement: (i) any obligation evidenced by a Note; (ii) all rights, powers or Liens of the Initial Member or the Failed Bank in or under the Collateral and Collateral Documents and in and to Acquired Collateral (including all Ownership Entities and REO Property held by any Ownership Entity); (iii) all rights of the Initial Member or the Failed Bank under any lease and the related leased property; (iv) all rights to causes of action, lawsuits, judgments, claims and demands of any nature available to or being pursued by or for the benefit of the Initial Member or the Failed Bank with respect to the Loans, the Collateral or the ownership, use, function, value of or other rights pertaining thereto, whether arising by way of counterclaim or otherwise, other than any claims retained by the Initial Member pursuant to Section 2.6; (v) all guaranties, warranties, indemnities and similar rights in favor of the Initial Member or the Failed Bank with respect to any of the Loans; and (vi) all rights of the Initial Member or the Failed Bank under the Related Agreements.

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

"**Loan File**" shall mean all documents pertaining to any Loan, either copies or originals, that are in the possession of the Initial Member or any of its employees or contractors responsible for the servicing of the Loan, other than (i) the original Note, renewals of the Note and other Custodial Documents and Collateral Documents and (ii) confidential or privileged communications between the Initial Member (or any predecessor-in-interest, including the Failed Bank) and its legal counsel; provided, however, that the Loan Files do not include files maintained by other employees or agents of the Initial Member, or attorney-client or work product privileged materials held by the Initial Member's legal counsel unless in the opinion of such counsel, the disclosure of the material is not likely to result in the waiver of the attorney-client or work product privilege.

"**Loan Participation**" shall mean any Loan subject to a shared credit, participation, co-lending or similar intercreditor agreement under which the Initial Member or the Failed Bank was the lead or agent financial depository institution or otherwise managed or held the credit or sold participations, or under which the Initial Member or the Failed Bank was a participating financial depository institution or purchased participations in a credit managed by another Person.

"**Loan Proceeds**" shall have the meaning given in the LLC Operating Agreement.

"**Loan Schedule**" shall mean the Loan Schedule attached hereto as Exhibit A, as updated and adjusted in accordance with the terms of the LLC Interest Sale Agreement.

"**Loan Schedule Balance**" shall mean, with respect to any Loan, the unpaid principal balance of the Loan as stated on the Loan Schedule.

"**Loan Value**" shall mean the allocation of the Closing Date Loan Valuation Amount among the Loans.

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[redacted] **Repayment Amount**" in respect to th[redacted] Loan, the sum of (i) the product of th[redacted] Repayment Percentage multiplied by the lesser of (A) the Adjusted Unpaid Principal Balance of th[redacted] Loan as of the Closing Date and (B) the Unpaid Principal Balance of th[redacted] Loan as of the [redacted] Repayment Date, plus, (ii) the excess, if any, of the Unpaid Principal Balance of the [redacted] Loan as of th[redacted] Repayment Date over the Adjusted Unpaid Principal Balance as of the Closing Date plus (iii) the Allocated Loan Costs with respect to the [redacted] an minus (iv) the positive amount of any Escrow Balance relating to the [redacted] oan that has not been transferred to the Initial Member.

[redacted] **Repayment Percentage**" shall mean with respect to the [redacted] oan, (i) the quotient (expressed as a decimal) of 5 times the Loan Value for the [redacted] oan divided by the Adjusted Unpaid Principal Balance of the [redacted] oan as of the Closing Date.

[redacted] **Repayment Date**" shall have the meaning given in Section 4.16.

"[redacted] **Repayment Amount**" shall have the meaning given in Section 4.16.

"[redacted] **Repayment Date**" shall have the meaning given in Section 4.16.

"**Management Fee**" shall have the meaning given in the LLC Operating Agreement.

"**Managing Member**" shall have the meaning given in the LLC Operating Agreement.

"**Modification**" shall mean any extension, renewal, substitution, replacement, supplement, amendment or modification of any agreement, certificate, document, instrument or other writing, whether or not contemplated in the original agreement, document or instrument.

"**Mortgage**" shall mean the mortgage, deed of trust, deed to secure debt, trust deed or other instrument, including any amendments or modifications thereto, creating a first or junior lien on or ownership interest in a Mortgaged Property.

"**Mortgage Assignment**" shall mean, with respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the applicable Law of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment of the Mortgage.

"**Mortgaged Property**" shall mean any underlying real property constituting part of the Collateral for any Loan, whether held in fee simple estate or subject to a ground lease or otherwise, and whether or not improved by buildings or facilities, and any personal property, fixtures, leases and other property or rights pertaining thereto.

"**Note**" shall mean each note or promissory note, lost instrument affidavit, loan agreement, shared credit or Loan Participation agreement, intercreditor agreement, reimbursement agreement, any other evidence of indebtedness of any kind, or any other agreement, document or instrument evidencing a Loan, and all Modifications to the foregoing.

"**Obligations**" shall mean (i) all obligations, commitments and liabilities relating to a Loan and arising or (solely with respect to contractual commitments becoming due or payable after the Closing Date in accordance with their terms) becoming due or payable after the Closing Date, and (ii) all liabilities, costs and expenses arising from any litigation (including any bankruptcy action) with respect to any Loan that has been commenced prior to the Closing Date (including any claims or counterclaims asserted therein, whether asserted before or after the Closing Date), except litigation (or claims therein) retained by the Receiver, by notice to the Company, pursuant to Section 2.6 or otherwise; provided, however, that no legal fees or other costs or expenses, including judgments incurred by the Initial Member or the Failed Bank prior to the Closing Date with respect to any such litigation pending on the Closing Date shall constitute an Obligation.

"**Order**" shall have the meaning given in Section 6.1.

"**Ownership Entity**" shall mean a Single Purpose Entity that is a Subsidiary of the Company, whether contributed by the Initial Member on the Closing Date or formed or acquired by the Company thereafter; provided, that, with respect to any entity transferred to the Company on the Closing Date pursuant to this Agreement that is not a Single Purpose Entity as of such date, any such entity shall be deemed to be an Ownership Entity; provided, further, that, the Company and the Managing Member shall take all necessary and appropriate actions to cause such entity to become a Single Purpose Entity as promptly as possible after the Closing.

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

"**Pre-Approved Charges**" shall mean the costs and expenses expressly designated as "**Pre-Approved Charges**" in Sections 2.7, 3.1(b), 3.1(c), 3.2, 4.3 and 5.6 of this Agreement, and no other costs or expenses.

"**Pre-Closing Taxable Periods**" shall mean all taxable periods or portions thereof ending on or before the Closing Date.

"**Pre-Closing Taxes**" shall have the meaning given in Section 7.1.

"**Private Owner**" shall have the meaning given in the LLC Operating Agreement.

"**Purchase Money Note Guarantor**" shall mean the FDIC, in its corporate capacity, as the guarantor of the Purchase Money Notes.

"**Purchase Money Note Guaranty**" shall have the meaning given in the recitals.

"**Purchase Price**" shall have the meaning given in the LLC Interest Sale Agreement.

"**Purchaser Money Notes**" shall have the meaning given in the recitals.

"**Receiver**" shall have the meaning given in the recitals.

"**Reimbursement and Security Agreement**" shall have the meaning given in the recitals.

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

"**Related Party**" shall mean, any party related to the Borrower in the manner delineated in 26 U.S.C.A § 267(b) and the regulations promulgated thereunder, as such law and regulations may be amended from time to time.

"**Released Parties**" shall have the meaning given in Section 4.15(b).

"**REO Property**" shall mean real property and related personal property to which title is acquired by or on behalf of the Company, the Failed Bank or the Receiver or any Ownership Entity by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, in any such case, whether before or after the Closing.

"**REO Subsidiary**" shall mean any entity classified as an association taxable as a corporation for U.S. federal income tax purposes that is contributed to the Company by the Initial Member pursuant to the terms of this Agreement and is treated as a "**Loan**" for the purposes of this Agreement as of the Closing Date.

"**Repurchase Date**" means the date specified in the notice delivered by the Company to the Initial Member pursuant to Section 6.2, which shall be between ten (10) and sixty (60) Business Days prior to the date such notice is delivered.

"**Repurchase Loan Amount**" shall mean the product of the Repurchase Percentage multiplied by the *lesser* of (A) the Adjusted Unpaid Principal Balance of such Loan as of the Closing Date and (B) the Unpaid Principal Balance of such Loan as of the Repurchase Date.

"**Repurchase Loan Value**" means, with respect to any Loan, two times the product of (i) the Loan Value for such Loan multiplied by (ii) 2.5.

"**Repurchase Percentage**" shall mean, with respect to any Loan, (i) the quotient (expressed as a decimal) of the Repurchase Loan Value for such Loan divided by (ii) the Adjusted Unpaid Principal Balance of such Loan as of the Closing Date.

"**Repurchase Price**" shall mean, with respect to any Loan the sum of (i) the Repurchase Loan Amount, plus (ii) the excess, if any, of the Unpaid Principal Balance of such Loan as of the Repurchase Date over the Adjusted Unpaid Principal Balance as of the Closing Date plus (iii) the amount of Allocated Loan Costs with respect to such Loan minus (iii) the positive amount of any Escrow Balance relating to such Loan that has not been transferred to the Initial Member.

"**RESPA**" shall mean the Real Estate Settlement Procedures Act of 1974, as amended, and all rules and regulations promulgated thereunder.

"**Servicer**" shall have the meaning given in the LLC Operating Agreement.

"**Servicing Agreement**" shall have the meaning given in the LLC Operating Agreement.

"**Servicing Expenses**" shall have the meaning given in the LLC Operating Agreement.

"**Servicing Support Period**" shall have the meaning in Section 4.1(b).

"**Single Purpose Entity**" shall have the meaning given in the LLC Operating Agreement.

"**Straddle Period**" shall have the meaning given in Section 7.5.

"**Tax Contest**" shall have the meaning given in Section 7.3.

"**Tax Loss**" shall have the meaning given in Section 7.1.

"**Tax Returns**" shall mean any and all reports, returns, declarations, claims for refund, elections, disclosures, estimates, information reports or returns or statements required to be supplied to a Governmental Authority in connection with Taxes, including any schedule or attachment thereto or amendment thereof.

"**Tax Sharing Agreement**" shall mean any agreement relating to the sharing, allocation or indemnification of Taxes, or any similar agreement, contract or arrangement.

"**Taxes**" shall mean (i) any and all federal, state, provincial, local, foreign and other taxes, levies, fees, imposts, duties, and similar governmental charges (including any interest, fines, assessments, penalties or additions to tax imposed in connection therewith or with respect thereto) including, without limitation (x) taxes imposed on, or measured by, income, franchise, profits or

gross receipts, and (y) ad valorem, value added, capital gains, sales, goods and services, use, real or personal property, capital stock, license, branch, payroll, estimated withholding, employment, social security (or similar), unemployment, compensation, utility, severance, production, occupation, premium, windfall profits, and customs duties, (ii) any and all liability for the payment of any items described in clause (i) above as a result of being (or ceasing to be) a member of an affiliated, consolidated, combined, unitary or aggregate group (or being included (or being required to be included) in any Tax Return related to such group), and (iii) any and all liability for the payment of any amounts as a result of any express or implied obligation to indemnify any other person, or any successor or transferee liability, in respect of any items described in clause (i) or (ii) above. For the purposes of this Agreement, Taxes shall not include Transfer Taxes.

"**Term Loan**" shall have the meaning given in the Advance Facility.

"**Transfer Documents**" shall mean the endorsements and allonges to Notes, Assignment and Lost Instrument Affidavits (if applicable), Mortgage Assignments, deeds, assignments of leases, and other documents of assignment, conveyance or transfer required under any applicable Law to evidence the transfer to the Company pursuant to this Agreement of the Loans, the Collateral and the Collateral Documents, including the transfer of any limited liability company, corporation or other entity that may hold the Collateral (including REO Property) or the Loans.

"**Transfer Taxes**" shall mean 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 Loans, the Collateral and the Collateral Documents or the rights in the Collateral or the assignment and assumption of the Obligations thereunder pursuant to this Agreement and the Transfer Documents.

"**Transition Completion Certificate**" shall mean a certificate delivered by the Managing Member to the Initial Member certifying that the interim servicing and asset management support provided by the Initial Member to the Managing Member, the Servicer or any Subservicer pursuant to Section 4.1 hereof is no longer required.

"**Treasury Regulations**" shall mean the Treasury regulations promulgated under the Code.

"**Uniform Commercial Code**" shall mean the Uniform Commercial Code as in effect in any applicable jurisdiction, as amended from time to time.

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

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

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

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

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

For purposes of Article VI and Section 4.5(c), any amount of capitalized Servicing Expenses shall not be included in the Unpaid Principal Balance.

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

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

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

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

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

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

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

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

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

ARTICLE II
Contribution and Sale of Loans

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, by way of a sale to the extent of the principal amount of the Purchase Money Notes and otherwise as a capital contribution, in either case without representation or warranty, express or implied, all right, title and interest of the Initial Member, whether held directly or indirectly, in and to:

(a) the Loans (including, without limitation, all Acquired Collateral, equity and other interests in Ownership Entities, REO Property, Notes, the other Loan 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 under the Loan Documents and all obligations owed to the Initial Member in connection with the Loans and the Loan 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, any Guarantor or other obligor or any of their respective Affiliates, agents, representatives, contractors, advisors or any other Person arising under or in connection with the Loans or the Loan Documents or that is in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity arising under or in connection with the Loan Documents or the transactions related thereto or contemplated thereby, excluding, however, any and all claims, suits, causes or action and other rights retained by the Initial Member under Section 2.6;

(d) all cash, securities and other property received or applied by or for the account of the Initial Member under the Loans after the Closing Date, including all distributions received through redemption, consummation of a plan of reorganization, restructuring, liquidation or otherwise of a Borrower, Guarantor or other obligor under or with respect to the Loans, 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.

Section 2.2 Liabilities Assumed by the Company. The Company hereby assumes and agrees to perform and pay all of the Obligations. The Initial Member and the Company agree that the conveyance contemplated by Section 2.2 and the other provisions of this Agreement is intended to be an absolute conveyance and transfer of ownership of the Loans in part by capital contribution and in part by sale. Notwithstanding anything to the contrary herein, 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 liabilities or obligations of the Initial Member to the extent attributable to an act, omission or circumstances that occurred or existed prior to the Closing Date and that constitutes a breach or default under any contract (including any contract included in the Obligations), a tort, willful misconduct, fraud or a violation of Law by the Initial Member or the Failed Bank;

(b) any claim against or liability of the FDIC in its capacity as receiver for the Failed Bank that, under and in accordance with applicable Law, was, is or will be subject to or is required to be asserted through the receivership administrative claims processes administered by the FDIC in its capacity as receiver for the Failed Bank pursuant to 12 U.S.C. § 1821(d)(3) through (13), including claims and liabilities that are affirmative or defensive, now existing or arising in the future, contingent or fixed, monetary or non-monetary, equitable or legal, or declarative or injunctive; and

(c) any claim against or liability based on any alleged act or omission of the Failed Bank which is not provable or allowable, or is otherwise barred against FDIC as receiver for the Failed Bank under applicable Law, including claims and liabilities that are barred under 12 U.S.C. §§ 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; Closing Adjustment. Any and all Loan Proceeds received at any time on or before the Closing Date shall belong to the Initial Member or in the case of cash Loan Proceeds held by REO Subsidiaries as of the Closing Date, shall accrue to the benefit of the Initial Member as provided in Section 1(e) of the LLC Interest Sale Agreement (but, for avoidance of doubt, shall not be withdrawn from accounts of such REO Subsidiaries by the Initial Member prior to the Closing Date and shall be effectively transferred to the control of the Company as the result of the conveyance provided for in Section 2.1 hereof). Subject to Section 4.16, any and all Loan Proceeds received at any time after the Closing Date shall belong to the Company. Following the Closing Date, the Private Owner and the Initial Member shall determine the amount of the Closing Adjustment in accordance with Section 1 of the LLC Interest Sale Agreement and shall effect the adjustments specified therefor in such Section 1 of the LLC Interest Sale Agreement.

Section 2.4 Rebates and Refunds. The Company is not entitled to any rebates or refunds from the Initial Member or the Failed Bank from any pre-computed interest Loan, if any, regardless of when the Note matures. Further, on pre-computed interest Loans, if any, neither the Initial Member nor the Failed Bank will refund any unearned discount amounts to the Company.

Section 2.5 Interest Conveyed. In the event a foreclosure occurs prior to the Closing Date and the Initial Member is a purchaser, the Initial Member (i) shall deliver to the Company a special warranty deed and other applicable Transfer Documents in order to convey the property or Ownership Entity, as the case may be, purchased at the sale or transferred by deed in lieu of foreclosure and (ii) shall convey to the Company the Deficiency Balance, if any, owing in respect of the Loan in question.

Section 2.6 Retained Claims. Notwithstanding anything to the contrary in this Agreement, the Company and the Initial Member agree that the contribution and sale of the Loans pursuant to this Agreement will exclude the transfer to the Company of all right, title and interest of the Initial Member, the Receiver or the Failed Bank and any predecessors-in-interest thereto in and to any and all claims of any nature whatsoever that might now exist or hereafter arise, whether known or unknown, that the Initial Member, the Receiver or the Failed Bank or predecessors-in-interest thereto have or had or that any of them might have, regardless of when any such claim is discovered, against any of the following, excluding Borrowers, Guarantors and their Affiliates: (a) officers, directors, employees, insiders, accountants, attorneys, other persons employed by the Initial Member or any of its predecessors-in-interest, underwriters or any other similar Persons who may have caused a loss to the Initial Member, the Receiver or the Failed Bank or any of its predecessors-in-interest in connection with the initiation, origination, servicing or administration of a Loan; (b) any appraisers, accountants, auditors, attorneys, investment bankers or brokers, loan brokers, deposit brokers, securities dealers or other professional Persons who performed services for the Initial Member, the Receiver or the Failed Bank or any of its predecessors-in-interest, relative to the initiation, origination, servicing or administration of a Loan; (c) any third parties for alleged fraud, misrepresentation or other misconduct in connection with the initiation, origination or servicing of a Loan; or (d) against any appraiser or other Person with whom the Initial Member, the Receiver or the Failed Bank or any of its predecessors-in-interest or any servicing agent contracted for services or title insurance (but excluding the title insurance provider) in connection with the initiation, origination, insuring or servicing of a Loan.

Section 2.7 Transfer Taxes. Except as otherwise provided herein, the Company shall pay, indemnify and hold harmless the Initial Member from and against any Transfer Taxes, and shall timely file any returns required to be filed with respect to such Transfer Taxes. Taxes paid by the Company pursuant to this Section 2.7 shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement.

ARTICLE III
Transfer of Loans, Collateral Documents and Servicing

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

(a) Following the Closing Date, subject to the provisions of the LLC Operating Agreement, the Initial Member shall deliver to the Custodian the Notes and other Custodial Documents and Collateral Documents for a given Loan, and shall deliver the Loan Files for such Loan, to either the Company or the Servicer (as directed by the Company).

(b) (i) The Company, at the Company's expense, will prepare for execution by or on behalf of the Initial Member, within the period specified in Section 3.1(b)(iv), all Transfer Documents. Reasonable and customary expenses paid to third parties actually incurred by the Company in complying with the obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement, provided that any such expenses with respect to a Transfer Document that is not properly prepared and submitted for recordation or filing sixty (60) days of the Closing Date shall not constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. Such sixty (60) day 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 Managing Member 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). 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 herein, 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(b) (the form of which was not provided by the Initial Member) and the LLC Interest Transferee shall indemnify 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), 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) On or within a reasonable time following the Closing Date, the Initial Member will grant a Limited Power of Attorney to selected employees of the Company for the purposes of executing the Transfer Documents on behalf of the Initial Member.

(iii) The Company shall use the following forms for endorsing or preparing allonges to Notes:

Pay to the order of
Corus Construction Venture, LLC
Without Recourse

Federal Deposit Insurance Corporation as Receiver
for Corus Bank, N.A.

By: _____
Name: _____
Title: Attorney-in- Fact

All documents of assignment, conveyance or transfer (not including special warranty deeds to the REO Property, which shall contain the special warranty included therein but no other warranties or representations) shall contain the following sentence: "This assignment is made without recourse and without representation or warranty, express, implied or by operation of law of any kind or nature whatsoever, by the Federal Deposit Insurance Corporation in its corporate capacity or as Receiver for Corus Bank, N.A."

(iv) The Company will complete all Transfer Documents, and record or file them if and as appropriate in accordance with Section 3.2, within sixty (60) Business Days after the Closing Date to the extent reasonably possible. The Company shall provide a report to the Purchase Money Note Guarantor, the Lender and the Initial Member 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 Purchase Money Note Guarantor, the Lender or the Initial Member and in any event on the seventieth (70th) Business Day following the Closing Date.

(c) As to Foreign Loans, the Company, at its own expense, must retain counsel licensed in the Foreign Jurisdictions involved with the Foreign Loans. Such foreign counsel must draft the documents necessary to assign the Foreign Loans to the Company. Reasonable and customary expenses paid to third parties actually incurred by the Company in complying with the obligations set forth in the preceding sentence shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. Documents presented to the Initial Member to assign Foreign Loans 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.

(d) Nothing contained herein or elsewhere in this Agreement shall require the Initial Member to make any agreement, representation or warranty or provide any indemnity in any Transfer Document or otherwise (except with respect to the special warranty contained in a special warranty deed to any REO Property), nor is the Initial Member obligated to obtain any consents or

approval to the sale or transfer of the Loans or the related servicing rights, if any, or the assumption by the Company of the Obligations.

(e) 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 Loans to the Company (subject to the immediately preceding paragraph and the rights of the Initial Member under 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.

Section 3.2 Recordation of Documents.

(a) With respect to all recordable Transfer Documents prepared by the Company pursuant to Section 3.1(b), 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 Loans to the Company. All Transfer Documents shall provide that all recorded documents be returned to the Custodian at its notice address set forth in the Custodial and Paying Agency Agreement. The Company shall diligently and promptly follow up with respect to any non-conforming Transfer Documents, 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.

(b) Reasonable and customary expenses paid to third parties actually incurred by the Company in complying with the obligations set forth in this Section 3.2 shall constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement, provided that any such expenses with respect to a Transfer Document that is not properly prepared and submitted for recordation or filing within sixty (60) days of the Closing Date shall not constitute Pre-Approved Charges for purposes of the Custodial and Paying Agency Agreement. Such sixty (60) day 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 Managing Member 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.

ARTICLE IV
Covenants, Duties and Obligations of the Company

Section 4.1 Servicing of Loans.

(a) From and after the Closing Date (but subject to Section 4.1(b)), the Company shall cause the Managing Member to service such Loans in compliance with the LLC Operating Agreement.

(b) Notwithstanding the above, from and after the Closing Date through the ninetieth (90th) calendar day following the Closing Date or such earlier date as the Managing Member has delivered to the Initial Member a Transition Completion Certificate (such period, the "**Servicing Support Period**"), the Initial Member (directly or through one more other third-party contractors) shall provide certain interim servicing and asset management support to the Managing Member and any Person who has been appointed as Servicer following the Closing Date. Such interim servicing and asset management support shall be limited to:

(i) Receiving payments and posting them to the system of record; maintaining records reflecting payments received, and keeping reasonably detailed records governing the operation, servicing, leasing, maintenance, and management of the Loans; and

(ii) Providing accounting support services to the Company as follows: (i) continuing to account for the Loans and the Collateral using the existing information technology, computer and accounting systems and provide the Company and Managing Member with access to the same; (ii) handling cash management issues such as issuing checks made by the Company, accepting deposits for the Company, and investing excess funds of the Company; (iii) recording all transactions involving the Loans; and (iv) preparing monthly consolidated financial statements of the Company and the Ownership Entities (including balance sheets, income and expense reports and trial balances).

(c) In connection with providing such interim servicing support, the Initial Member shall (i) endeavor to cause the individuals providing asset management services for the Loan and Collateral immediately prior to the Closing Date to be the individuals responsible for providing the above described interim servicing and asset management support and in particular shall (a) not take action to cause the reduction of employment benefits currently received by such individuals or their termination other than for cause and (b) waive any restrictive covenants that otherwise would affect their ability to become employees of the Company; (ii) provide the Company with such resources and information as are mutually agreed upon with the Company, including personnel, office space, facilities, utilities, equipment, technology and connectivity and access to third party consultants employed by the Initial Member as of the Closing Date, all in connection with the above described interim servicing and asset management support.

(d) In full consideration for providing the interim servicing and asset management support pursuant to this Section 4.1, the Initial Member shall receive 50% of the Management Fee during the Servicing Support Period. For the avoidance of doubt, no other amount shall be due or payable by the Company, the Managing Member and/or any Person who has been appointed as Servicer following the Closing Date as consideration for the Initial Member's provision of providing the interim servicing and asset management support pursuant to this Section 4.1.

(e) The Company and the Managing Member acknowledge and agree that the Initial Member's agreement to provide interim servicing and asset management support pursuant to this Section 4.1 is an accommodation to the Company and the Managing Member, and that the Initial Member shall not have any liability for any acts or omissions taken in connection therewith. The Company hereby releases and forever discharges the Initial Member, the FDIC, the Failed Bank and its 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 might have in the future, whether known or unknown, which are related in any manner whatsoever to the provision of interim servicing and asset management services to the Company, the Managing Member and any Servicers or subservicers thereof. Nothing contained in this Section 4.1 shall (i) constitute or be interpreted as a waiver of any express right that the Company has under this Agreement or any of the Ancillary Documents or (ii) waive any rights under, or limit any liability with respect to a breach of, any terms and conditions of this Agreement.

Section 4.2 Collection Agency/Contingency Fee Agreements. The Company acknowledges and agrees that it accepts and acquires the Loans 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 Closing Date) that relate only to the Loans (or any of them) and are assignable, and assumes and agrees to fulfill all Obligations thereunder.

Section 4.3 Insured or Guaranteed Loans. If any Loans 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 Loans 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 Loans, 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 Loans 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 Loans, 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 Loans, it assumes and agrees to fulfill all of the Initial Member's and the Failed Bank's Obligations under the contracts of insurance or guaranty. Any out-of-pocket fees, costs or expenses incurred by 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. The Initial Member shall be responsible for submitting all Internal Revenue Service information returns related to the Loans for all applicable periods prior to the Closing Date. The Company shall be responsible for submitting all Internal Revenue Service information returns related to the Loans for all applicable periods commencing with the Closing Date. Information returns include reports on Forms 1098 and 1099 and any other reports required by the applicable taxing authorities. The Company shall be responsible for submitting all information returns required under applicable Law of any Foreign Jurisdiction, to the extent such are required to be filed by the Company or the Initial Member under such Law, relating to the Loans, for the calendar or tax year in which the Closing Date falls and thereafter.

Section 4.5 Loans in Litigation.

(a) With respect to any Loan that is the subject of any type of pending litigation as of the Closing Date of which the Company or the Managing Member has knowledge, after due investigation, the Company shall notify the FDIC's Regional Counsel, 1601 Bryan Street, Dallas, Texas 75201-4586, within thirty (30) Business Days after the Closing Date of the name of the attorney selected by the Company to represent the Company's interests in the litigation. The Company shall, within thirty (30) Business Days after the Closing Date, notify the clerk of the court or other appropriate official and all counsel of record that ownership of the Loan 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 within such 30 Business-Day period, substituting the Company's attorney for the Initial Member's attorney, removing the Initial Member and the 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 Failed Bank) to handle litigation with respect to the Loans, 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 to remove the Initial Member and the Failed Bank as parties to the litigation and substitute the Company as the real party-in-interest pursuant to the terms hereof, (1) the Initial Member may, but shall have no obligation to, continue to pursue or defend such litigation on behalf of the Company and, (2) 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 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, within such 30 Business-Day period, and 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 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, the Receiver and the Failed Bank (and any predecessor-in-interest thereto) in relation to such litigation or the subject Loans 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 Failed Bank (other than to the extent the same constitute Servicing Expenses). 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 Closing Date with respect to any such litigation, including costs incurred in connection 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 there 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 Managing Member, the Private Owner or the Servicer), (i) the Company (A) shall notify the Initial Member, in writing in accordance with the notice provisions of Article VIII, 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 Loan(s), 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 Failed Bank, at the Initial Member's own expense and with Initial Member's own counsel. The Initial Member and the Company 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 clause (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 (x) reasonable attorneys' fees and expenses incurred to defend against (or investigate) the same or pursue counterclaims or cross-claims against other parties, (y) awards or judgments assessed against the Company with respect to any such claim or action, or (z) the costs of any settlement as described in clause (ii) below of such claim or action, shall constitute Servicing Expense for purposes of the Custodial and Paying Agency Agreement. If, as a result of any claim or action subject to the provisions of this Section 4.5(c):

(i) there is entered against the Company either (1) a final, non-appealable monetary judgment holding the Company liable for damages in excess of an amount (such amount, the "**Excess Damage Liability Amount**") in respect of the Loan relating to or that is the subject of such claim or action (such Loan, the "**Affected Loan**") or (2) 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 amount in excess of the Excess Damage Liability Amount, then, in the case of clause (i) or (ii) above, the Initial Member shall reimburse the Company for such excess amount and the Initial Member shall be entitled, at its option, to repurchase the Affected Loan 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 Section 4.5(c) for any liability imposed upon the Company to the extent it arises as a result of any act or omission of the Company, the Managing Member or the Private Owner. The Excess Damage Liability Amount for any Loan shall be an amount equal to 50% of the Repurchase Loan Value for such Loan.

(d) The provisions of Sections 4.5(a), 4.5(b) and 4.5(c)(i) are subject to the right of the Initial Member to retain claims pursuant to Section 2.6 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 2.6 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.

(e) Notwithstanding any provision to the contrary, any payments by the Company of Servicing Expenses pursuant to Section 4.5(c) shall be subject to the obligation of the Managing Member to reimburse the Initial Member under Section 4.6 of the LLC Operating Agreement.

(f) 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 Loan 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 Loans in Bankruptcy. In accordance with Bankruptcy Rules 3001 and 3002, the Company agrees to take all actions necessary to file, within thirty (30) Business Days after the Closing Date, (i) proofs of claims in pending bankruptcy cases involving any Loan for which the Initial Member or the 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 Loan 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 Closing Date, an Affidavit and Assignment of Claim or any similar forms as may be required in any relevant Foreign Jurisdiction and shall be acceptable to the Initial Member, for each Loan where a Borrower under such Loan is in bankruptcy as of the Closing Date. The Company hereby releases the Initial Member and the 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 or the Failed Bank with respect to such Loan. In the event the Company fails, within thirty (30) Business Days after the Closing Date, to take the actions required by this Section 4.6, (1) the Initial Member may, but shall have no obligation to, file proofs of claim or other documents as the Initial Member determines may be necessary or appropriate to evidence and assert the

Company's rights and, (2) 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 4.6 are subject to the right of the Initial Member to retain claims pursuant to Section 2.6 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 2.6 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.

Section 4.7 Loan 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 the Collateral for each Loan; (b) the Company shall be responsible for having itself substituted as loss payee on all Loan related insurance in which the Failed Bank or the Initial Member is currently listed as a loss payee; and (c) the Company shall cause to be put in place such insurance for the Collateral (including the Acquired Collateral) as required under the Advance Facility. Upon the cancellation of any insurance policy maintained by the Initial Member or the Failed Bank with respect to any Loan 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 Loans to the extent they are entitled thereto, and shall otherwise benefit the Initial Member, and such refunded amount shall, to the extent the right inures to the benefit of the Borrower, 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 Loans.

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 shall be transferred to the Company as promptly as practicable following the Closing Date. Any negative Escrow Balances shall be netted against the amount of any positive Escrow Balances held in the Escrow Accounts 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 Borrower.

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

Section 4.10 Letters of Credit. The Company shall use its commercially reasonable best efforts to assist Borrowers to replace the outstanding letters of credit issued by the Failed Bank as promptly as practicable within three (3) months following the Closing Date (utilizing Authorized Overage Loans under the Advance Facility to the extent permitted thereby) and the Company

hereby agrees and acknowledges that the Failed Bank's obligations under such letters of credit shall be terminated without any liability on the part of the Failed Bank or the Initial Member, no later than three (3) months after the Closing Date, unless the Initial Member otherwise consents in writing to an extension thereof.

Section 4.11 Notice to Borrowers. The Company shall, on a timely basis in accordance with RESPA and any other applicable Laws, and pursuant to the Limited Powers of Attorney granted to it pursuant to Section 3.1(b)(ii), prepare and transmit to each Borrower a joint "hello" and "goodbye" letter, at the Company's expense, which shall be subject to the review and reasonable approval of the Initial Member.

Section 4.12 Notice of Claims. The Company shall immediately notify the Initial Member in accordance with the notice provisions of Section 8.4, of any claim, threatened claim or litigation against the Initial Member or the Failed Bank or any predecessors-in-interest thereto arising out of any Loan of which the Company or the Managing Member has knowledge, after due investigation.

Section 4.13 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, for so long as the FDIC is a Member, 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 shall notify the Receiver in writing (such notice to be given in accordance with Article VII below and to include all relevant details) prior to utilizing in any legal action any special legal power or right which the Company derives as a result of having acquired a Loan pursuant to this Agreement, and the Company shall not utilize any such power unless the Receiver shall have consented in writing to the proposed usage. The Receiver shall have the right to direct such proposed usage by the Company and the Company shall comply in all respects with such direction. Upon request of the Receiver, the Company will advise the Receiver as to the status of any such legal action. The Company shall immediately notify the Receiver of any judgment in litigation involving any of the aforesaid special powers or rights.

Section 4.14 Prior Servicer Information. The Company acknowledges and agrees that the Initial Member might not have access to information from servicers of a Loan prior to the appointment of the FDIC as receiver of the 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 a Loan. 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 4.15 Release of Initial Member.

(a) Except as otherwise specifically provided in this Agreement or any Ancillary Document, the Company hereby releases and forever discharges the Initial Member, the FDIC, the Failed Bank and any predecessor-in-interest thereof 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 might have in the future, whether known or unknown, which are related in any manner whatsoever to the Loans or Collateral, the servicing of the Loans by the Initial Member, the Failed Bank or its predecessors-in-interest, the FDIC or any Person acting on behalf of the Initial Member, the FDIC or the Failed Bank or its predecessors-in-interest, or the acquisition of the Loans (other than for acts or omissions constituting gross negligence or willful misconduct of the Initial Member); provided, however, that nothing contained in this Section 4.15(a) shall constitute or be interpreted as a waiver of any express right that the Company, the FDIC or the Initial Member has under this Agreement or any of the Ancillary Documents.

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

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Section 4.16 [redacted] Loan.

(a) Notwithstanding any provision herein to the contrary, loan number [redacted] on the Loan Schedule, which consists of the debtor-in-possession loan relating to [redacted] project together with the related construction loan and REO Subsidiary the (collectively, the [redacted] **Loan**") shall not be sold, contributed or transferred by the Initial Member to the Company unless and until the [redacted] Loan is sold, contributed and transferred to the Company pursuant to Section 4.16(c) below. Subject to Section 4.16(d), from and after the Closing Date, the [redacted] oan shall be treated as if it had been sold, contributed and transferred to the Company on the Closing Date for all purposes under this Agreement and the Ancillary Documents and (i) Article III of this Agreement shall not apply to the [redacted] Loan except as provided in Section 4.16(c) below, (ii) litigation involving the transfer of the [redacted] an from the Initial Member to the Company shall be governed exclusively by Section 4.16(b), and (iii) the Company shall consult with the Initial Member regarding actions to be taken with respect to the [redacted] oan. Following the Closing Date, the Initial Member shall no later than 5 Business Days after the Closing Date, remove the existing officers and directors of the [redacted] wnership Entity and cause designees of the Managing Member to be elected as officers and directors with complete and sole control over the [redacted] Ownership Entity and the [redacted] Loan and provide the Company, the Managing Member and the Servicer copies of such documents and other information regarding the [redacted] Loan as are in its possession and as are reasonably requested by any of them in connection with their obligations with respect thereto under this Agreement and the Ancillary Documents.

(b) The Company acknowledges that the REO Subsidiary included as part of the [redacted] Loan has filed for bankruptcy. The Initial Member expects that it will file a motion with the bankruptcy court and take such other actions as it deems necessary or appropriate

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to obtain any consents and provide any notifications that may be necessary or appropriate to sell, contribute and transfer the [redacted] Loan to the Company. The Company shall reasonably cooperate and assist the Initial Member in the Initial Member's efforts in this regard and, without limiting the foregoing, shall at no cost to the Company prepare and file (at the request and direction of the Initial Member) such affidavits, motions or other pleadings as may be requested by the Initial Member or required by the court. The Initial Member shall otherwise control such litigation at its sole cost and expense and shall reimburse the Company for all reasonable and documented out-of-pocket costs incurred by the Company in connection with the cooperation and assistance referred to in the preceding sentence. The Initial Member shall within five (5) Business Days deliver to the Company any payments it receives with respect to the [redacted] Loan, which shall be treated as Loan Proceeds. The Managing Member shall notify the Company and the Initial Member of any additional funding of the [redacted] Loan to be made by the Initial Member after the Closing Date, whereupon the Company shall promptly pay to the Initial Member an amount equal to such additional funding with the proceeds of borrowings under the Advance Facility.

(c) Within thirty (30) Business Days following delivery by the Initial Member to the Company of a notice that the transfer of the [redacted] Loan to the Company is permitted by Law (as a result of court approval of such transfer or otherwise), the Initial Member and the Company shall execute and deliver the documents and take the actions set forth in Article III hereof with respect to the transfer of the [redacted] Loan; provided that the sixty (60) day period for preparation and submission of Transfer Documents specified therein shall commence on the date of the delivery of such notice rather than on the Closing Date.

(d) In the event that the Initial Member determines and delivers a notice to the Company that the transfer of the [redacted] Loan is not permitted by Law (as a result of a court denial of such transfer or otherwise) or on the first anniversary of the Closing Date if no notice under Section 4.16(c) or (d) has been delivered prior to such anniversary, the Initial Member shall retain the [redacted] Loan and the Initial Member and the Company shall take the following actions:

(i) Following its receipt of the notice referred to above, the Company shall deliver a schedule to the Initial Member setting forth the Company's calculation of the [redacted] Repayment Amount, together with calculations relating thereto (including Allocated Loan Costs, Allocation Ratio, Unpaid Principal Balance as of the [redacted] Repayment Date and reasonably detailed supporting data), and the [redacted] Repayment Amount shall be established in accordance with the procedures set forth in Section 6.2(b) of this Agreement. The "[redacted] **Repayment Date**" shall mean the date of the notice referred to in the first sentence of this Section 4.16(d) or the first anniversary of the Closing Date, if no notice under Section 4.16(c) or (d) has been delivered prior to such anniversary.

(ii) Within five (5) Business Days following the final determination of the [redacted] Repayment Amount, the Initial member shall pay, by wire transfers of immediately available funds, the following amounts in respect of the [redacted] Loan (a) to the Private Owner, an amount equal to the lesser of (i) Loan Value and (ii) the product of (A) [redacted] and (B) the [redacted] Repayment Amount plus the product of (I) the amount of the aggregate Excess Working Capital Advances outstanding on the [redacted] Repayment Date multiplied by (II) the Allocation Ratio, (b) to

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the Defeasance Account, an amount equal to the excess, if any of (i) the product of [redacted] times the Loan Value minus (ii) the excess, if any of the Adjusted Unpaid Principal Balance of such Loan as of the Closing Date over the Unpaid Principal Balance of such Loan as of the [redacted] Repayment Date, and (c) to the Administrative Agent (as defined in the Advance Facility), in respect of the outstanding Term Loans, an amount equal to the sum of (I) the Allocated Loan Costs and (II) the excess of the Unpaid Principal Balance of such Loan on the [redacted] Repayment Date over the Adjusted Unpaid Principal Balance of such Loan as of the Closing Date, if any.

(iii) From and after the [redacted] Repayment Date, the [redacted] Loan shall no longer be deemed a Loan under this Agreement and the Ancillary Documents, including for purposes of Section 4.1 and the officers and directors designated by the Managing Member pursuant to Section 4.16(a) shall resign; provided that the foregoing shall not relieve any Party of rights, obligations or liabilities with respect to the [redacted] Loan arising or occurring prior to the [redacted] Repayment Date. The Company, the Managing Member and the Servicer (and any Subservicers) shall provide the Initial Member and its Affiliates and representatives such assistance and cooperation as may be reasonably requested with respect to the transition of servicing and other matters relating to the [redacted] Loan.

(e) Not withstanding the foregoing, if the Company at any time prior to the transfer of the [redacted] Loan in accordance with subsection (c) above is unable to effectuate any of its material rights with respect to the [redacted] Loan directly or indirectly (by the Initial Member on the Company's behalf following a request to do so by the Company) primarily because of the Initial Member's failure to transfer the [redacted] Loan during any period following the Closing Date, and such inability has had or could reasonably be expected to have a material adverse effect on the [redacted] Loan, the Managing Member shall have the right to deliver written notice thereof to the Initial Member (a "[redacted] Failure Notice"). Upon the delivery and receipt of a [redacted] Failure Notice, the Initial Member shall retain the [redacted] Loan and the Initial Member and the Company shall take the actions described in clauses (i)-(iii) of subsection (d) of this Section 4.16.

ARTICLE V
Loans Sold "As Is" and Without Recourse

Section 5.1 Loans Conveyed "As Is". THE LOANS (INCLUDING THE OWNERSHIP ENTITIES, REO PROPERTY AND OTHER ACQUIRED COLLATERAL) ARE CONVEYED 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 BANK OR THE FDIC, OR ANY PREDECESSORS-IN-INTEREST OR AFFILIATES OF THE INITIAL MEMBER, THE FAILED BANK 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 LOANS, THE COLLATERAL OR THE COLLATERAL DOCUMENTS.

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 further 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.

Section 5.4 Disclaimer Regarding Calculation or Adjustment of Interest on any Loan. 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, the 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 Loan. The Company acknowledges that, for example, and not by way of limitation, some Loan 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 2.3 or an option to repurchase under 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 the Failed Bank that is not contained in the Loan File or among the Collateral Documents. Neither the absence of any intervening Mortgage Assignment or other assignment to the Initial Member, the FDIC or the Failed Bank, nor the existence of any Lien on the Loan or its Collateral, nor any defect in the Lien or priority of the Initial Member's or the 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 other assignment to the Initial Member, the FDIC or the Failed Bank that may be missing from the Collateral Documents, but the cost thereof shall constitute a Pre-Approved Charge for purposes of the Custodial and Paying Agency 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.

ARTICLE VI
Repurchase by the Initial Member at the Company's Option

Section 6.1 Repurchases at Company's Option. The Company may, at its option, and upon satisfaction of the procedures and other requirements set forth below, require the Initial Member to repurchase a Loan, if, and only if, (x) prior to the Closing Date, one of the events described in Sections 6.1(a) through (e) has occurred or (y) after the Closing Date, there is issued by a court of competent jurisdiction with respect to such Loan a final, non-appealable order or judgment 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 Loan back to the Initial Member (unless the Initial Member has agreed in writing that no appeal need be taken). IN NO EVENT SHALL THE OCCURRENCE OF ANY SUCH EVENT OR THE OBLIGATION TO REPURCHASE A LOAN HEREUNDER BE EVIDENCE OF ANY BAD FAITH, MISCONDUCT OR FRAUD ON THE PART OF THE INITIAL MEMBER, THE FAILED BANK OR THE FDIC EVEN IF IT IS SHOWN THAT THE INITIAL MEMBER, THE FAILED BANK OR THE FDIC, 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.

(a) 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 Guarantors or sureties of the Note, if any, or the obligations contained therein, have similarly been discharged in no asset bankruptcies.

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

(c) The Initial Member or Failed Bank had executed and delivered to the Borrower a release of liability from all obligations under the Note.

(d) A court of competent jurisdiction had entered a final, non-appealable order or judgment (unless the Initial Member has agreed in writing that no appeal need be taken) holding that the Initial Member is not the owner of the Loan (or, in the case of a Loan Participation, the Initial Member is not the owner of a *pro rata* interest in such Loan Participation) and such is not

curable by the Initial Member so as to permit ownership of the Loan to be transferred to the Company.

(e) The Initial Member or the Failed Bank, or their 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(e) 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.

Section 6.2 Notice to Initial Member; Determination of Purchase Price.

(a) The Company shall notify the Initial Member of each Loan with respect to which the Company seeks to exercise its rights under Section 6.1. Such notice shall be delivered to the Initial Member no earlier than the Adjustment Date (as defined in the LLC Interest Sale Agreement) and 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 loan number and other identifying information related to the Loan, (d) the subsection of Section 6.1 under which the Company is seeking to require the Initial Member to repurchase the Loan, (e) a summary of the reasons the Company believes that the Loan should be repurchased by the Initial Member, (f) the Company's calculation of the Repurchase Price of such Loan, together with calculations relating thereto (including Allocated Loan Costs, Allocation Ratio, Unpaid Principal Balance as of the Repurchase Date and reasonably detailed supporting data), and (g) 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 Loan. Promptly upon request by the Initial Member, the Company shall supply the Initial Member with any additional evidence, documentation, data and information that the Initial Member may reasonably request. The Initial Member shall have no obligation to repurchase any Loan 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 VIII no later than (i) 180 calendar days after the Closing Date or (ii) with respect to an Order only, thirty (30) days after the issuance of the Order.

(b) If the Initial Member disputes the Company's calculation of the Repurchase Price, the parties shall promptly commence good faith negotiations with a view towards resolving all disagreements relating thereto. If, within sixty (60) calendar days following the delivery by the Company of the notice referred to in Section 6.2(a), the Initial Member and the Company have not reached agreement on the amount of the Repurchase Price, the parties shall submit the matter to the Independent Accountant Firm, who shall determine the Repurchase Price substantially in accordance with the procedures set forth in Section 1(g) (including the limitation contained in Section 1(g)(i)-(iii) thereof) of the LLC Interest Sale Agreement, *mutatis mutandi*, as modified by the mutual agreement of the parties, provided, that the Independent Accountant Firm is authorized by this Section 6.2(b) to determine the amount of the Repurchase Price only, and any other dispute relating to this Article VI (including with respect to whether an event requiring the Initial Member to repurchase the Loan has occurred) shall be resolved in the appropriate forum as set forth in Section 9.7.

Section 6.3 Re-delivery of Notes, Files and Documents. For any Loan that qualifies for purchase under this Article VI, the Company shall as promptly as practicable: (a) re-endorse and deliver the Note to the Initial Member (or its designee); (b) assign all Collateral Documents associated with such Loan and reconvey any real property transferred by special warranty deed pursuant to Section 2.5, together with such other documents or instruments as shall be necessary or appropriate to convey the Loan back to the Initial Member (or its designee); (c) deliver to the Initial Member (or its designee) the Loan File, along with any additional records compiled or accumulated by the Company pertaining to the Loan; (d) take such actions as are necessary to transfer from the Company to the Initial Member any litigation or bankruptcy action involving the subject Loan, 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, a form of which is attached as Exhibit B, substituting the duties of the Assignor (as defined therein) for the Assignee (as defined therein) and the Assignee for the Assignor; (e) record or terminate any Mortgage Assignment or other filings or recordings to the extent required by applicable laws; and (f) 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 purchase by the Initial Member none of the conditions relieving the Initial Member of its obligation to purchase the Loan as specified in Section 6.4 has occurred. The documents evidencing the conveyance of the Loan to the Initial Member shall be substantially the same as those executed pursuant to Article III of this Agreement to convey the Loan to the Company and shall include, if appropriate, any Transfer Documents necessary to transfer an Ownership Entity to the Initial Member. In all cases in which the Company recorded or filed among public records any document or instrument evidencing a transfer of the Loan to the Company, the Company shall cause to be recorded or filed among such records a similar document or instrument evidencing the conveyance of the Loan to the Initial Member. Upon compliance by the Company with the provisions hereof and the final determination of the amount of the Repurchase Price in accordance with Section 6.2, the Initial Member shall pay the Repurchase Price in respect of such Loan, which payment obligation shall be satisfied in full as follows: within five (5) Business Days following the final determination of the Repurchase Price, the Initial Member shall transfer, by wire transfers of immediately available funds, the following amounts, all in respect of the Loan subject to repurchase: (a) to the Private Owner, an amount equal to the Repurchase Loan Amount plus the product of (I) the amount of the aggregate Excess Working Capital Advances outstanding on the Repurchase Date multiplied by (II) the Allocation Ratio, (b) to the Defeasance Account, an amount equal to the product of 2.5 times the Repurchase Loan Amount and (c) to the Administrative Agent (as defined in the Advance Facility), in respect of the outstanding Term Loans, an amount equal to the sum of (I) the Allocated Loan Costs and (II) the excess of the Unpaid Principal Balance of such Loan on the Repurchase Date over the Adjusted Unpaid Principal Balance of such Loan as of the Closing Date, if any.

Section 6.4 Waiver of Company's Repurchase Option. The Initial Member will be relieved of its obligation to purchase any Loan for any reason set forth in Section 6.1 if the Company: (a) modifies any of the terms of the Loan (including the terms of any Collateral Document); (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 Loan or any interest therein; (e) fails to comply with the LLC Operating Agreement in the maintenance, collection, servicing and preservation of the Loan, including delinquency prevention, collection procedures and protection of collateral as

warranted; (f) initiates any litigation in connection with the Loan or the Mortgaged Property securing the Loan other than litigation to force payment or to realize on the Collateral securing the Loan; (g) completes any action with respect to foreclosure on, or accepts a deed-in-lieu of foreclosure for any Collateral securing the Loan; (h) causes, by action or inaction, the priority of title to the Loan, Mortgaged Property and other security for the Loan to be less than that conveyed by the Initial Member; (i) causes, by action or inaction, the security for the Loan 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, might be asserted against the Initial Member; (k) causes, by action or inaction, a Lien of any nature to encumber the Loan to arise; (l) is the Borrower or any Related Party thereof under such Loan; or (m) makes any disbursement of principal or advances additional amounts to the Borrower or otherwise incrementally funds any Loan other than with the proceeds of funds provided under the Advance Facility that are borrowed and applied for such purpose.

ARTICLE VII
Tax Matters

Section 7.1 Tax Indemnity.

(a) Indemnification by Initial Member. Except as otherwise provided in Section 2.7, from and after the Closing Date, the Initial Member shall indemnify and hold harmless the Company from and against any and all liabilities, losses, damages, claims, costs, expenses, interest, awards, judgments and penalties (including, without limitation, reasonable fees for outside counsel, outside accountants and other outside consultants) suffered or incurred (each a "**Tax Loss**") arising out of (i) Taxes of the REO Subsidiaries for periods or portions thereof ending on or before the Closing Date, other than those relating to or arising out of Section 597 of the Code ("**Pre-Closing Taxes**"); (ii) Taxes of any member of an affiliated, consolidated, combined or unitary group of which any REO Subsidiary is or was a member on or prior to the Closing Date by reason of liability under Treasury Regulations section 1.1502-6, Treasury Regulations section 1.1502-78 or any comparable provision of foreign, state or local Tax law; and (iii) Taxes or other payments required to be paid after the date hereof by any of the REO Subsidiaries to any party under any Tax Sharing Agreement or by reason of being a successor-in-interest or transferee of another entity, other than those relating to or arising out of Section 597 of the Code.

(b) Indemnification by the Company. From and after the Closing Date, the Company shall indemnify and hold harmless the Initial Member from and against any and all Tax Losses (other than Tax Losses incurred as a result of acts or omissions constituting gross negligence or willful misconduct of the Initial Member, FDIC or Failed Bank of any predecessor in interest thereof or any of their respective Affiliates, employees or representatives) arising out of Taxes of the Company or any of the REO Subsidiaries for periods or portions thereof beginning after the Closing Date, other than amounts for which the Company is indemnified by Initial Member under Section 7.1(a).

Section 7.2 Tax Returns of the REO Subsidiaries.

(a) The Initial Member shall prepare (or cause to be prepared) and timely file at its own expense all Tax Returns of each REO Subsidiary that are (i) required to be filed with respect to any taxable period that ends on or prior to the Closing or (ii) required to be filed on a consolidated, unitary or combined basis with the Initial Member or any if its Affiliates. The Initial Member shall pay (or cause to be paid) any Taxes due in respect of such Tax Returns.

(b) The Company shall prepare (or cause to be prepared) and file or cause to be filed at its own expense when due all Tax Returns of the REO Subsidiaries that are not required to be filed by the Initial Member pursuant to Section 7.2(a) and shall remit any Taxes due in respect of such Tax Returns. With respect to Tax Returns that are required to be filed by or with respect to any REO Subsidiary for any Straddle Period ("**Straddle Returns**"), such Straddle Returns shall be prepared in a manner consistent with past practice, and the Initial Member shall be responsible for the Pre-Closing Taxes due in respect of such Straddle Returns. The Company shall deliver each Tax Return described in this Section 7.2(b) to the Initial Member no later than thirty (30) days before the due date of such Tax Returns, shall permit the Initial Member to review and comment on such Tax Returns before filing, and shall make such revisions to such Tax Returns as are reasonably requested by the Initial Member. The Company shall deliver the final version of any Tax Return prepared pursuant to this Section 7.2(b) to the Initial Member no later than five (5) business days after such Tax Return is filed.

Section 7.3 Cooperation; Records.

(a) The Initial Member and the Company agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information (including access to books and records) and assistance relating to the Failed Bank, the Company, and the REO Subsidiaries as is reasonably requested for the filing of any Tax Return or the preparation, prosecution, defense or conduct of any audit, claim for refund, or administrative or judicial proceeding involving any asserted Tax liability or refund with respect to the Failed Bank, the Company or any of the REO Subsidiaries (each such audit, claim, or proceeding, a "**Tax Contest**"). The Initial Member and the Company shall reasonably cooperate with each other in the conduct of any Tax Contest or other proceeding involving or otherwise relating to the Failed Bank, the Company or the REO Subsidiaries (or their income or assets) with respect to any Tax and each shall execute and deliver such documents as are necessary to carry out the intent of this Section 7.3(a). Any information obtained under this Section 7.3(a) shall be kept confidential, except as may be otherwise necessary in connection with the filing of Tax Returns or in the conduct of a Tax Contest or other Tax proceeding or as may be required to be disclosed by applicable Law including the Freedom of Information Act.

(b) Each of the Company and the REO Subsidiaries shall (a) properly retain and maintain the Tax and accounting records of the Company and the REO Subsidiaries that relate to Pre-Closing Taxable Periods for ten (10) years and shall thereafter provide the Initial Member with written notice prior to any destruction, abandonment or disposition of all or any portions of such records, (b) transfer such records to the Initial Member upon its written request prior to any such destruction, abandonment or disposition, and (c) allow the Initial Member and its affiliates and their respective agents and representatives, at times and dates reasonably and mutually acceptable

to the parties, to from time to time inspect and review such records as the Initial Member may deem necessary or appropriate.

Section 7.4 Refunds. Any Tax refunds that are received by an REO Subsidiary, and any amounts credited against Taxes to which an REO Subsidiary becomes entitled, in each case that relate to Pre-Closing Taxable Periods of such REO Subsidiary, shall be for the account of the Initial Member, and the Company shall pay over to the Initial Member any such refund or the amount of any such credit within fifteen (15) days after receipt or entitlement thereto. Under no circumstances shall Tax refunds be considered to be Loan Proceeds for the purposes of the LLC Operating Agreement or any Ancillary Document.

Section 7.5 Straddle Periods. For purposes of this Agreement, in the case of any Taxes of the Company or any REO Subsidiary that are payable with respect to any Tax period that begins before and ends after the Closing Date (a "**Straddle Period**"), the portion of any such Taxes that constitutes Pre-Closing Taxes shall: (i) in the case of Taxes that are either (x) based upon or related to income or receipts, or (y) imposed in connection with any sale, transfer or assignment or any deemed sale, transfer or assignment of property (real or personal, tangible or intangible), be deemed equal to the amount that would be payable if the Tax year or period ended on the Closing Date; and (ii) in the case of Taxes (other than those described in clause (i) above) that are imposed on a periodic basis with respect to the business or assets of the Company or any REO Subsidiary or otherwise measured by the level of any item, be deemed to be the amount of such Taxes for the entire Straddle Period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding Tax period) multiplied by a fraction the numerator of which is the number of calendar days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period. For purposes of clause (i) of the preceding sentence, any exemption, deduction, credit or other item (including, without limitation, the effect of any graduated rates of Tax) that is calculated on an annual basis shall be allocated to the portion of the Straddle Period ending on the Closing Date on a pro rata basis determined by multiplying the total amount of such item allocated to the Straddle Period times a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period. In the case of any Tax based upon or measured by capital (including net worth or long-term debt) or intangibles, any amount thereof required to be allocated under this Section 7.5 shall be computed by reference to the level of such items on the Closing Date. The parties hereto will, to the extent permitted by applicable Law, elect with the relevant Governmental Authority to treat a portion of any Straddle Period as a short taxable period ending as of the close of business on the Closing Date.

Section 7.6 Net Operating Losses. The Company hereby acknowledges and agrees that none of the Company or any of its subsidiaries will be permitted to take advantage of any tax benefits relating to net operating losses of the Failed Bank or, to the extent such net operating losses relate to a Pre-Closing Taxable Period, the REO Subsidiaries.

Section 7.7 Survival. Notwithstanding anything in this Agreement to the contrary, the Initial Member's obligations under this Article VII shall survive for the duration of the statute of limitations for any Tax liability for which it is required to indemnify the Company under this Article VII.

Section 7.8 Tax Sharing Agreements. All Tax Sharing Agreements relating to any REO Subsidiary shall be terminated as of the Closing Date, and after the Closing Date no REO Subsidiary shall be bound by any Tax Sharing Agreement or have any liability thereunder.

ARTICLE VIII
Notices

Section 8.1 Notices. All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be mailed or delivered to the applicable address or electronic mail address of the parties specified below for such Person or to such other address or electronic mail address as shall be designated by such party in a notice to the other parties. All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt (or refusal) thereof by the relevant party hereto and (ii) (A) if delivered by hand or by nationally recognized courier service, when signed for (or refused) by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; and (C) if delivered by electronic mail (which form of delivery is subject to the provisions of this paragraph), when delivered. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder.

Section 8.2 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:

Timothy A. Kruse
Senior Capital Markets Specialist
Federal Deposit Insurance Corporation
550 17th Street, NW
Room 7-7026
Washington, D.C. 20429
Email Address: TKruse@fdic.gov

with a copy to:

Senior Capital Markets Specialist
Federal Deposit Insurance Corporation
550 17th Street, NW
Room F-7036
Washington, D.C. 20429
Attention: Robert W. McComis
Email Address: RMccomis@fdic.gov

with a copy to:

Manager, Capital Markets & Resolutions
c/o Federal Deposit Insurance Corporation
550 17th Street, NW
Room F-7008
Washington, D.C. 20429-0002
Attention: George C. Alexander
Email Address: GAlexander@fdic.gov

with a copy to:	Senior Counsel FDIC Legal Division Litigation and Resolutions Branch, Receivership Section Special Issues Unit 3501 Fairfax Drive Room E-7056 Arlington, VA 22226 Attention: David Gearin Email Address: DGearin@fdic.gov
with a copy by email to:	Thomas Raburn Email Address: TRaburn@fdic.gov
Receiver:	Timothy A. Kruse Senior Capital Markets Specialist Federal Deposit Insurance Corporation 550 17th Street, NW Room 7-7026 Washington, D.C. 20429 Email Address: TKruse@fdic.gov
with a copy to:	Senior Capital Markets Specialist Federal Deposit Insurance Corporation 550 17th Street, NW Room F-7036 Washington, D.C. 20429 Attention: Robert W. McComis Email Address: RMccomis@fdic.gov
with a copy to:	Manager, Capital Markets & Resolutions c/o Federal Deposit Insurance Corporation 550 17th Street, NW Room F-7008 Washington, D.C. 20429-0002 Attention: George C. Alexander Email Address: GAlexander@fdic.gov

with a copy to:	Senior Counsel FDIC Legal Division Litigation and Resolutions Branch, Receivership Section Special Issues Unit 3501 Fairfax Drive Room E-7056 Arlington, VA 22226 Attention: David Gearin Email Address: DGearin@fdic.gov
with a copy by email to:	Thomas Raburn Email Address: TRaburn@fdic.gov

Section 8.3 Transfer Documents. For purposes of designating the Company as the return addressee on Transfer Documents, the following address shall be used:

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

Section 8.4 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 8.2 or 8.3, shall be delivered to:

Company before Closing Date:	Timothy A. Kruse Senior Capital Markets Specialist Federal Deposit Insurance Corporation 550 17th Street, NW Room 7-7026 Washington, D.C. 20429 Email Address: TKruse@fdic.gov
with a copy to:	Manager, Capital Markets & Resolutions c/o Federal Deposit Insurance Corporation 550 17th Street, NW Room F-7008 Washington, D.C. 20429-0002 Attention: George C. Alexander Email Address: GAlexander@fdic.gov

with a copy to:	Senior Capital Markets Specialist Federal Deposit Insurance Corporation 550 17th Street, N.W. Room F-7036 Washington, D.C. 20429 Attention: Robert W. McComis Email Address: RMccomis@fdic.gov
with a copy to:	Senior Counsel FDIC Legal Division Litigation and Resolutions Branch, Receivership Section Special Issues Unit 3501 Fairfax Drive Room E-7056 Arlington, VA 22226 Attention: David Gearin Email Address: DGearin@fdic.gov
with a copy by email to:	Thomas Raburn Email address: TRaburn@fdic.gov
Company after Closing Date:	Corus Construction Venture, LLC 591 West Putnam Avenue Greenwich, CT 06830 Attention: John McCarthy
with a copy to:	Rinaldi, Finkelstein & Franklin, LLC 591 West Putnam Avenue Greenwich, CT 06830 Attention: Ellis Rinaldi Email Address: Rinaldi@Starwood.com
Initial Member:	Timothy A. Kruse Senior Capital Markets Specialist Federal Deposit Insurance Corporation 550 17th Street, NW Room 7-7026 Washington, D.C. 20429 Email Address: TKruse@fdic.gov

with a copy to:	Senior Capital Markets Specialist Federal Deposit Insurance Corporation 550 17th Street, NW Room F-7036 Washington, D.C. 20429 Attention: Robert W. McComis Email Address: RMccomis@fdic.gov
with a copy to:	Manager, Capital Markets & Resolutions c/o Federal Deposit Insurance Corporation 550 17th Street, NW Room F-7008 Washington, D.C. 20429-0002 Attention: George C. Alexander Email Address: GAlexander@fdic.gov
with a copy to:	Senior Counsel FDIC Legal Division Litigation and Resolutions Branch, Receivership Section Special Issues Unit 3501 Fairfax Drive Room E-7056 Arlington, Virginia 22226 Attention: David Gearin Email Address: DGearin@fdic.gov
with a copy by email to:	Thomas Raburn Email Address: TRaburn@fdic.gov
Receiver:	Timothy A. Kruse Senior Capital Markets Specialist Federal Deposit Insurance Corporation 550 17th Street, NW Room 7-7026 Washington, D.C. 20429 Email Address: TKruse@fdic.gov
with a copy to:	Senior Capital Markets Specialist Federal Deposit Insurance Corporation 550 17th Street, NW Room F-7036 Washington, D.C. 20429 Attention: Robert W. McComis Email Address: RMccomis@fdic.gov

with a copy to:	Manager, Capital Markets & Resolutions c/o Federal Deposit Insurance Corporation 550 17th Street, NW Room F-7008 Washington, D.C. 20429-0002 Attention: George C. Alexander Email Address: GAlexander@fdic.gov
with a copy to:	Senior Counsel FDIC Legal Division Litigation and Resolutions Branch, Receivership Section Special Issues Unit 3501 Fairfax Drive Room E-7056 Arlington, VA 22226 Attention: David Gearin Email Address: DGearin@fdic.gov
with a copy by email to:	Thomas Raburn Email Address: TRaburn@fdic.gov

ARTICLE IX
Miscellaneous Provisions

Section 9.1 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including without limitation, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 9.1 is intended to, or shall, limit (1) the ability of any party to

this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 9.2.

Section 9.2 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL LAW, BUT IF FEDERAL LAW DOES NOT PROVIDE A RULE OF DECISION, IT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. Nothing in this Agreement shall require any unlawful action or inaction by any party hereto.

Section 9.3 Cost, Fees and Expenses. Except as otherwise provided herein, each party hereto 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 and counsel.

Section 9.4 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 hereof 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 Loans) shall have any rights or remedies under 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 contrary contained elsewhere in this Agreement (including without limitation the foregoing Section 9.4(a)) or in any Ancillary Document, in order to facilitate the possible restructuring and sale of the Purchase Money Notes, the FDIC, without the consent of the LLC Interest Transferee, may at any time replace the Purchase Money Notes with one or more substitute notes reissued pursuant to Section 2.8 of the Custodial and Paying Agency Agreement and make related revisions to this Agreement and the Ancillary Documents as permitted therein. Prior to effecting any such changes, amendments or modifications, the FDIC shall notify LLC Interest Transferee of any such contemplated changes, amendments or modifications, and LLC Interest Transferee agrees that it will cooperate in good faith with the FDIC in effecting all such changes, amendments or modifications.

Section 9.5 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 9.6 Entire Agreement. This Agreement and the Ancillary 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 that the Confidentiality Agreement, dated August 27, 2009, between the FDIC and the Affiliates of the Private Owner named therein (including by way of joinder) shall remain in full force and effect to the extent provided therein, except that the Company's rights under Article VI shall not be deemed a repurchase option for purposes of Section 2 of 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 9.7 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 Ancillary 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 Ancillary Document (other than the LLC Operating Agreement), and waives any right to:

(A) remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the 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 Ancillary 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 9.7(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 Managing Member, 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 9.7(a) may be enforced in any court of competent jurisdiction;

(c) Subject to the provisions of Section 9.7(d), each of the Managing Member, 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 9.7(a) or Section 9.7(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 8.1 and 8.2 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 9.7(c) shall affect the right of any party to serve process in any other manner permitted by Law;

(d) Nothing in this Section 9.7 shall constitute consent to jurisdiction in any court by the FDIC, other than as expressly provided in Section 9.7(a)(iii) and Section 9.7(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 9.8 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 9.9 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 9.10 Headings. Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof. All Section and paragraph references contained herein shall refer to Sections and paragraphs in this Agreement unless otherwise specified.

Section 9.11 Compliance with Law. Except as otherwise specifically provided herein, each party to this Agreement shall, at its own cost and expense, obey and comply with all Laws, as they may pertain to such party's performance of its obligations hereunder.

Section 9.12 Right to Specific Performance. THE COMPANY HEREBY ACKNOWLEDGES AND AGREES THAT THE DAMAGES TO BE INCURRED BY 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 4.13 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 9.12 SHALL LIMIT EITHER PARTY'S RIGHT TO ANY REMEDIES AT LAW, INCLUDING THE RECOVERY OF DAMAGES FOR BREACH OF THIS AGREEMENT.

[*Remainder of Page Intentionally Left Blank*]

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 AS RECEIVER FOR CORUS BANK, N.A.

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

COMPANY:

CORUS CONSTRUCTION VENTURE, LLC, a Delaware Limited Liability Company

By: Federal Deposit Insurance Corporation as Receiver for CORUS BANK, N.A., as Sole Member and Manager

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

EXHIBIT B
to
Loan Contribution and Sale Agreement

(For use with Loans in Bankruptcy)

(Note to Preparer: When preparing the actual Affidavit and Assignment, delete this instruction and the reference to Exhibit B above.)

State of _____ §
§
County of _____ §

AFFIDAVIT AND ASSIGNMENT OF CLAIM

The undersigned, being first duly sworn, deposes and states as follows:

Federal Deposit Insurance Corporation as Receiver for CORUS BANK, N.A. ("**Assignor**"), acting by and through its duly authorized officers and agents, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged does hereby sell, transfer, assign and set over to Corus Construction Venture, LLC ("**Assignee**") of *{insert the Company's address}* _____ _____, _____ and his/her/its successors and assigns, all of the Assignor's interest in any claim in the bankruptcy case commenced by or against *{insert Obligor's name}*_____("**Obligor**") in the *{insert appropriate U. S. Bankruptcy Court, including the district of the court, such as for the Western District of Texas}* being designated as Case Number *{insert docket number assigned case}* ("**Bankruptcy Claim**"), or such part of said Claim as is based on the promissory note of *{insert the names of the makers of the note exactly as they appear on the note}*, dated *{insert the date the note was made}*, and made payable to *{insert the name of the payee on the note exactly as it appears on the note}*, provided, however, that this assignment is made pursuant to the terms and conditions as set forth in that certain Loan Contribution and Sale Agreement between the Assignor and the Assignee dated as of _____, _____ (the "**Agreement**").

For purposes of "Rule 3001 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rule 3001**"), this assignment and affidavit represent the unconditional transfer of the Bankruptcy Claim or such part of the Claim as is based on the promissory note or notes above and shall constitute the statement of the transferor acknowledging the transfer and stating the consideration therefore as required by Bankruptcy Rule 3001.

This transfer was not for the purpose of the enhancement of any claim in a pending bankruptcy. The transfer of the debt was pursuant to the Agreement, through which numerous debts were sold; no specific amount of the total consideration was assigned to the debt that forms the basis of claim.

This assignment shall also evidence the unconditional transfer of the Assignor's interest in any security held for the claim.

IN WITNESS WHEREOF, the Assignor has caused this Affidavit and Assignment of Claim to be executed this __ day of _____, _____.

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

By: _____
Name: _____
Title: [Attorney-in-Fact]

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

Before me, the undersigned authority, a Notary Public in and for the county and state aforesaid, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, as [Attorney-in-Fact] of the Federal Deposit Insurance Corporation as Receiver for CORUS BANK, N.A. acting in the capacity stated above, and acknowledged to me that s/he executed the same as the act of the Federal Deposit Insurance Corporation as Receiver for CORUS BANK, N.A., for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office on this the __ day of _____, _____.

_____
_____
_____

Notary Public

[SEAL]

My Commission expires: _____

EXHIBIT C
to
Loan Contribution and Sale Agreement

(Note to Preparer: When preparing the actual Affidavit delete this instruction and the reference to Exhibit C above.)

STATE OF _____ §
§
COUNTY OF _____ §

ASSIGNMENT AND LOST INSTRUMENT AFFIDAVIT

Before me, the undersigned authority, personally appeared _____, who upon being duly cautioned and sworn deposes and says, to the best of his /her knowledge, as follows:

(A) That s/he is the _____ for the Federal Deposit Insurance Corporation as Receiver for CORUS BANK, N.A., whose address is 550 17th Street, NW, Washington, DC 20429-0002 ("**Initial Member**").

(B) That at the time of the preparation of transfer to Corus Construction Venture, LLC (the "**Company**"), the Initial Member was the owner of that certain loan, obligation or interest in a loan or obligation evidenced by a promissory note, evidencing an indebtedness or evidencing rights in an indebtedness (the "**Instrument**"), as follows:

Loan Number: _____

Name of Maker: _____

Original Principal Balance: _____

Date of Instrument: _____

(C) That the original Instrument has been lost or misplaced. The Instrument was not where it was assumed to be, and a search to locate the Instrument was undertaken, without results. Prior to the transfer to the Company, the Instrument had not been assigned, transferred, pledged or hypothecated.

(D) That if the Initial Member subsequently locates the Instrument, the Initial Member shall use reasonable efforts to provide written notice to the Company and deliver

and endorse the Instrument to the Company in accordance with written instructions received from the Company (or such other party designated in writing by the Company).

(E) That the purpose of this affidavit is to establish such facts. This affidavit shall not confer any rights or benefits, causes or claims, representations or warranties (including, without limitation, regarding ownership or title to the Instrument or the obligations evidenced thereby) upon the Company, its successors or assigns. All such rights, benefits, causes or claims, representations and warranties (if any) shall be as set forth in the Loan Contribution and Sale Agreement between the Company and the Initial Member dated as of October __, 2009 (the "Contribution Agreement").

(F) That pursuant to the terms and conditions of the Loan Contribution and Sale Agreement, the Instrument (including, without limitation, any and all rights the Initial Member may have to enforce payment and performance of the Instrument, including any rights under Section 3-309 of the Uniform Commercial Code) is hereby assigned effective as of the date hereof, without recourse, representation or warranty to the Company. A copy of the Instrument is attached to this affidavit, if available.

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

By: _____
Name: _____
Title:

[Remainder of Page Intentionally Left Blank]

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

Before me, the undersigned authority, a Notary Public in and for the county and state aforesaid, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, as _____ of the Federal Deposit Insurance Corporation as Receiver for CORUS BANK, N.A. acting in the capacity stated above, and acknowledged to me that s/he executed the same as the act of the Federal Deposit Insurance Corporation as Receiver for CORUS BANK, N.A., for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office on this the _____ day of _____,

20___.

_____
_____
_____

Notary Public

[SEAL]

My Commission expires: _____

EXHIBIT D
to
Loan Contribution and Sale Agreement

(Note to Preparer: When preparing the actual Limited Power of Attorney, delete this instruction and the reference to Exhibit D above.)

LIMITED POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that the FEDERAL DEPOSIT INSURANCE CORPORATION ("**FDIC**") as Receiver for CORUS BANK, N.A. (hereafter the "Receiver"), hereby designates the individuals listed on Exhibit A hereto (the "**Attorneys-in-Fact**") for the sole purpose of executing the documents referred to in Paragraph 1 below.

WHEREAS, the undersigned has full authority to execute this instrument on behalf of the FDIC as Receiver under applicable Resolutions of the FDIC's Board of Directors and redelegations thereof.

NOW THEREFORE, the FDIC as Receiver grants to the above-named Attorneys-in-Fact the authority, subject to the limitations herein, as follows:

1. To execute, acknowledge, seal and deliver on behalf of the FDIC as Receiver for CORUS BANK, N.A. all instruments of transfer and conveyance, appropriately completed, with all ordinary or necessary endorsements, acknowledgments, affidavits and supporting documents as may be necessary or appropriate to evidence the sale and transfer of any asset pursuant to that certain Loan Contribution and Sale Agreement between the FDIC as Receiver for CORUS BANK, N.A. and CORUS CONSTRUCTION VENTURE, LLC.

The form which the Attorneys-in-Fact shall use for endorsing promissory notes or preparing allonges to promissory notes is as follows:

Pay to the order of
CORUS CONSTRUCTION VENTURE, LLC
Without Recourse

FEDERAL DEPOSIT INSURANCE
CORPORATION as Receiver for CORUS BANK,
N.A.

By: _____
Name: _____
Title: Attorney-in-Fact

All other documents of assignment, conveyance or transfer shall contain this sentence: "This assignment is made without recourse, representation or warranty, express or implied, by the FDIC in any capacity."

2. To grant to each Attorney-in-Fact full power and authority to do and perform all acts necessary to carry into effect the powers granted by this Limited Power of Attorney as fully as the FDIC or the Receiver might or could do with the same validity as if all and every such act had been herein particularly stated, expressed and especially provided for.

This Limited Power of Attorney shall be effective from October 16, 2009 and shall continue in full force and effect through October 16, 2010, unless otherwise terminated by an official of the FDIC authorized to do so by the Board of Directors ("**Revocation**"). At such time this Limited Power of Attorney will be automatically revoked. Any third party may rely upon this document as the named individuals' authority to continue to exercise the powers herein granted unless a Revocation has been recorded in the public records of the jurisdiction where this Limited Power of Attorney has been recorded, or unless a third party has received actual notice of a Revocation.

IN WITNESS WHEREOF, the FDIC by its duly authorized officer empowered by appropriate resolution of its Board of Directors, has caused these presents to be executed and subscribed in its name as of this __th day of October, 2009.

FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for CORUS BANK, N.A.

By:_____
Name:
Title:

(CORPORATE SEAL) ATTEST:_____
Name:
Title:

Signed, sealed and delivered
in the presence of

By:_____
Name:_____
Witness

By:_____

Name:_____
Witness

[ACKNOWLEDGMENT ON NEXT PAGE]

ACKNOWLEDGMENT

UNITED STATES OF AMERICA)
)
DISTRICT OF COLUMBIA)

On this ___ day of October, 2009, before me, Notary Public in and for the District of Columbia, personally appeared _____ and _____, with a business address of 550 17th Street, NW, Washington, DC 20429, who, being duly sworn, severally depose and say:

First, _____, first affiant, for herself/himself, says that s/he is [title], Federal Deposit Insurance Corporation, the Corporation in whose name the foregoing Limited Power of Attorney has been subscribed, that the said Limited Power of Attorney was subscribed on behalf of the said Corporation by due authority of the Corporation's Board of Directors, and that the said _____ acknowledges that said Limited Power of Attorney to be the free act and deed of the said Corporation.

Second, _____, second affiant, for herself/himself, says that s/he is [title], Federal Deposit Insurance Corporation, the Corporation in whose name the foregoing Limited Power of Attorney has been subscribed, that the seal affixed to the said Limited Power of Attorney is the corporate seal of the said Federal Deposit Insurance Corporation, that the said Limited Power of Attorney was subscribed on behalf of the said Corporation and its seal thereto affixed by due authority of the Corporation's Board of Directors, and that the said _____ acknowledged the said Limited Power of Attorney to be the free act and deed of the said Corporation.

_____
Notary Public, District of Columbia
United States of America

My Commission Expires:

_____

Exhibit A

To Limited Power of Attorney

[list names and organizations of Attorney(s)-in-Fact]

ANNEX I

Maturity Dates and Principal Amounts of the Purchase Money Notes

Maturity Date	Principal Amount
October 25, 2011	$150,000,000
October 25, 2012	$850,000,000
October 25, 2013	$377,351,000