EXECUTION VERSION

CRE/ADC Venture 2012-1 Structured Transaction

AGREEMENT OF DEFINITIONS - CRE/ADC 2012-1 STRUCTURED TRANSACTION

Dated as of December 11, 2012

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AGREEMENT OF DEFINITIONS
CRE/ADC VENTURE 2012-1 STRUCTURED TRANSACTION

THIS AGREEMENT OF DEFINITIONS - CRE/ADC VENTURE 2012-1 STRUCTURED TRANSACTION (as the same may be amended or modified from time to time in accordance with the terms hereof, this "**Agreement**"), is made and entered into as of the Closing Date, by and among: (i) the Federal Deposit Insurance Corporation in its capacity as the Receiver, as the "Transferor" as defined herein (in such capacity, the "**Transferor**"); (ii) the Federal Deposit Insurance Corporation in its capacity as the Receiver, as the "Initial Member" as defined herein (in such capacity, the "**Initial Member**"); (ii) ColFin 2012 CRE ADC Funding, LLC, a Delaware limited liability company (the "**Private Owner**"); (iii) CRE/ADC Venture 2012-1, LLC, a Delaware limited liability company (the "**Company**"); (iv) the Federal Deposit Insurance Corporation in its capacity as the Receiver for various Failed Banks as defined herein, as the PMN Agent under the Reimbursement, Security and Guaranty Agreement (**in such capacity, or any successor PMN Agent, the "PMN Agent**"); and (v) Wells Fargo Bank, National Association, a national banking association (the "**Bank**"). All capitalized terms used herein (and that are defined herein) shall have the meanings and definitions set forth in this Agreement.

WHEREAS, the Transferor and the Company have entered into, or are contemporaneously herewith entering into, that certain Contribution Agreement;

WHEREAS, the Private Owner, the Initial Member and the Company have entered into, or are contemporaneously herewith entering into, that certain Private Owner Interest Sale Agreement;

WHEREAS, the Company, the PMN Agent, the Initial Member, the Private Owner and the Bank have entered into, or are contemporaneously herewith entering into, that certain Custodial and Paying Agency Agreement;

WHEREAS, the Company, the Initial Member and the Private Owner have entered into, or are contemporaneously herewith entering into, that certain LLC Operating Agreement;

WHEREAS, the Company, the PMN Agent and the Initial Member have entered into, or are contemporaneously herewith entering into, that certain Reimbursement, Security and Guaranty Agreement; and

WHEREAS, each party to this Agreement is a party to, or contemporaneously herewith is becoming a party to, one or more of the Core Agreements, and the parties hereto wish to adopt the definitions in this Agreement as the definitions of capitalized terms in the Core Agreements.

NOW, THEREFORE, in consideration of the premises and the other covenants and conditions contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, each party which has executed this Agreement agrees as follows:

ARTICLE I

Certain Definitions

Section 1.1. Definitions. Unless otherwise defined in the respective Core Agreement, the following terms in the Core Agreements shall have the meanings and definitions hereinafter respectively set forth.

"**Acceptable Investment Rating**" means any of the highest three rating categories that may be assigned to any security, obligation or entity by the Rating Agencies.

"**Acceptable Rating**" means, in each case with respect to construction loan servicers or special loan servicers of commercial and/or residential mortgage loans (or the applicable ratings category that includes such loans), (i) a rating of "Average (Select Servicer List)" (or better) or other comparable rating by Standard and Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc., (ii) a rating of Level 3 Servicer Rating (or better) or other comparable rating by Fitch, Inc., or (iii) a rating of "Approved" or "Average" (or better) or other comparable rating by Moody's Investors Service.

"**Account Control Agreement**" means one or more Account Control Agreements (in substantially the form set forth in Exhibit N to the Custodial and Paying Agency Agreement) (other than, for the avoidance of doubt, the Private Owner Pledged Account Control Agreement), among the Company, the Bank and the PMN Agent.

"**Accountants**" shall mean the independent certified public accountants of the Company.

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

"**Accounts**" means the Company Accounts and the Private Owner Pledged Account.

"**Acquired Property**" means, collectively, Company Acquired Property and Receiver Acquired Property. For the avoidance of doubt, Company Acquired Property and Receiver Acquired Property each include, to any express exclusions set forth in the Asset Schedule or the Ownership Entity and Receiver Acquired Property Schedule: (i) all related rights, powers or Liens of any Ownership Entity in, to or under the Collateral Documents and or Asset Documents; (ii) all rights of the Receiver, any Failed Bank, the Company or any Ownership Entity pursuant to any Contract for Deed or in or to the real property that is subject to any such Contract for Deed; (iii) all rights of the Receiver, any Failed Bank, the Company or any Ownership Entity pursuant to any lease or in or to the related leased property; (iv) all rights of the Receiver, any Failed Bank, the Company or any Ownership Entity under the Related Agreements (to the extent relating to such Company Acquired Property or Receiver Acquired Property and not otherwise relating to or included in a Loan); (v) all rights of the Receiver, any Failed Bank, the Company or any Ownership Entity to any Deficiency Balance or any Deficiency Judgment Claim with respect to such Deficiency Balance (in each case to the extent

relating to such Company Acquired Property or Receiver Acquired Property and not otherwise relating to or included in a Loan); (vi) all rights of the Receiver, any Failed Bank, the Company or any Ownership Entity to any Underlying Loan; (vii) 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 Receiver, any Failed Bank, the Company or any Ownership Entity with respect to any of the foregoing or the ownership, use, function, value of or other rights pertaining to any of the foregoing, whether arising by way of counterclaim or otherwise, other than any claims retained by the Receiver pursuant to Section 2.7 of the Contribution Agreement; and (viii) all guaranties, warranties, indemnities and similar rights in favor of the Receiver, any Failed Bank, the Company or any Ownership Entity with respect to any of the foregoing; provided, that, for purposes of any Transaction Document other than the Contribution Agreement, any such Receiver Acquired Property, and any of the foregoing rights, powers or Liens of (or in favor of) the Receiver or any Failed Bank, shall be included in (and considered part of) the Acquired Property only to the extent such Receiver Acquired Property, and rights, powers or Liens, are transferred to the Company pursuant to the Contribution Agreement (and not otherwise subsequently transferred back to the Receiver).

"**Acquired Property Deed**" means, with respect to any Acquired Property (other than a Receiver Acquired Property that is conveyed by the Transferor to an Ownership Entity pursuant to a Receiver's Deed or, in the case of any Potentially Defectively Foreclosed Receiver Acquired Property, a Receiver's Quitclaim Deed), the instrument or document required by the Law of the jurisdiction in which the Acquired Property is located to convey fee title.

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

(iii) the original or copy of the policy of title insurance prior to foreclosure of the related mortgage loan accompanied by a title report procured upon foreclosure of the related mortgage loan, with respect to the Acquired Property; (iv) with respect to each Receiver Acquired Property conveyed by the Transferor to an Ownership Entity pursuant to a Receiver's Deed, the policy of title insurance and survey for such Receiver Acquired Property as and to the extent required under Section 3.1(d)(v) of the Contribution Agreement; (v) with respect to each Receiver Acquired Property conveyed by the Transferor to an Ownership Entity pursuant to a Receiver's Deed, the original or a copy of the applicable Omnibus Assignment; (vi) for any Acquired Property that is subject to a lease, (A) a copy of the lease together with a certificate of the related Servicer (or Subservicer) certifying that such lease is a true, correct and complete copy of the original document, and (B) if required by the PMN Agent, the original assignment of such lease from the lessor thereunder to the Ownership Entity or a copy thereof, together with a certificate of the related Servicer (or Subservicer) certifying that such assignment is a true, correct and complete copy of the original document; (vii) with respect to any personal property Acquired Property with respect to which a document of assignment, conveyance of transfer is required to be filed or recorded pursuant to any applicable Law to evidence the transfer thereof, either the original or (if such original copy is retained by the relevant Recording Office) a copy thereof (which may be electronic) file-stamped with evidence of recording or filing thereon, together (in the case of a copy) with a certificate of the related Servicer (or Subservicer) or the foreclosure attorney certifying that such document of assignment, conveyance of transfer is a true, correct and complete copy of the original document; and (viii) with respect to any personal property Acquired Property with respect to which a certificate of title is issued under any applicable Law, the original of such certificate of title.

"**Acquired REO Property**" means any real property (and related personal property) included in the Acquired Property.

"**Act**" means the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 et seq., as may be amended, supplemented or modified from time to time.

"**Action**" means any (i) action, suit or proceeding (including the administrative claims process administered by the Receiver pursuant to 12 U.S.C. § 1821(d)(3) through (13) and initiated by the filing of a "proof of claim" with the Receiver) by or before any Governmental Authority, whether civil, criminal, administrative or investigative, and whether at law or in equity, or (ii) any arbitration proceeding.

"**Additional Security**" means collateral (securing the Private Owner Obligations) consisting of (i) Qualifying Cash Collateral or (ii) undrawn (and available) amounts under a Qualifying Letter of Credit, together aggregating an amount at least equal (at all times) to the Private Owner Pledged Amount, it being understood and agreed that the Private Owner shall initially meet the foregoing requirements solely through either (i) or (ii) above (and not a combination thereof), and that such determination with respect to (i) or (ii) above shall be as initially determined by the Private Owner on or prior to the Closing Date (including as may be set forth in the Bid submitted by or on behalf of the Private Owner, or as may otherwise be determined by the Private Owner in a manner acceptable to the Initial Member in connection with the Closing), and may not be altered after the Closing Date except as permitted pursuant to

Section 3.13(d) of the LLC Operating Agreement (including as contemplated by the definition of the term "LC Reissuance/Extension Failure"), provided that it is further understood that, to the extent that the Private Owner used a Qualifying Letter of Credit, the composition of the Additional Security can change after the Closing Date as a result of draws on such Qualifying Letter of Credit.

"**Additional Security Substitution Fee**" means a fee in the amount of $10,000.00, payable by the Private Owner to the Initial Member in connection with any substitution of the form of the Additional Security, including any such substitution resulting from, or so as to avoid or cure the occurrence of, an LC Reissuance/Extension Failure.

"**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(A) Credit to such Capital Account any amounts that such Member is obligated to restore or is deemed to be obligated to restore pursuant to Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(B) Debit to such Capital Account the items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"**Adjusted Equity Asset Value**" means, with respect to any Asset, (a) the Equity Asset Value of such Asset, *plus* (in the case of any Excess Principal) or *minus* (in the case of any Principal Deficiency) (b) the applicable Adjustment to Asset Value.

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

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

(ii) the effect of any final court decree, unappealable regulatory enforcement order or other similar action of a legal or regulatory nature effective on or before the Cut-Off Date, (iii) a foreclosure sale that occurred on or before the Cut-Off Date and for which the Redemption Period, if any, expired on or before the Cut-Off Date or (iv) the portion of any Dishonored Check that was applied to (and reflected in) the Cut-Off Date Unpaid Principal Balance.

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

"**Adjustment to Asset Value**" means, in the event of any Excess Principal (or Principal Deficiency) with respect to any Asset, an amount equal to the product of (a) the amount of such Excess Principal (or Principal Deficiency), *multiplied* by (b) the quotient of the Equity Asset Value for such Asset divided by the Cut-Off Date Unpaid Principal Balance of such Asset.

"**Affected Asset**" has the meaning set forth in Section 4.5(d)(i) of the Contribution Agreement.

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

"**Affiliate**" means, 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 10.0% 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, general partner, managing 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 10.0% 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 (x) none of the Initial Member, the Transferor, the PMN Agent, the FDIC or any Affiliate (for this purpose determined disregarding clauses (ii), (iii) and (iv) of this definition (including in the context of clause (v) of this definition) and disregarding the Company and any Person Controlled by the Company) of any of the foregoing shall be deemed to be an "Affiliate" of the Company or of any Person Controlled by the Company, and (y) for the purposes of (A) the definition of the term "Change of Control," (B) Section 10.1(s) of the LLC Operating Agreement and (C) any PO Owner Undertaking, clauses (ii), (iii), (iv) and (v) above shall be disregarded.

"**Agent Members**" means the members of, or participants in, DTC and the Clearing Agencies.

"**Agreement of Definitions**" means this Agreement.

"**Allonge**" means an allonge, executed in blank, by the Company.

"**Applicable Agreements**" has the meaning set forth in the Reporting and Access Schedule.

"**Appraisal**" means, as of any date of determination with respect to any Acquired Property (including any applicable Collateral for a Loan prior to the same becoming such Acquired Property), a determination of the market value thereof pursuant to a commercially reasonable appraisal complying with USPAP (or other appraisal standards acceptable to the Initial Member) and conducted by a state certified appraiser (not an Affiliate of the Manager, Servicer or the Private Owner) or, if broker price opinions are customarily used for properties of a similar type and location as a reliable means for determination of value thereof, a commercially reasonable broker price opinion prepared by a real estate broker (not an Affiliate of the Manager, Servicer or the Private Owner); provided, that (i) in all events such form of determination of market value shall be selected and conducted in compliance with applicable Law, including as to the exercise of relevant remedies (resulting in acquisition of title to such Acquired Property) and preservation of rights to collect the Deficiency Balance, if any, and (ii) in the event the market value for such Acquired Property as so determined pursuant to the foregoing is an amount equal to or in excess of $5,000,000, then such determination shall be subject to completion of an appraisal review conducted in accordance with USPAP (or other appraisal standards acceptable to the Initial Member) by a state certified appraiser (or other qualified professional regularly performing valuation reviews) (not an Affiliate of the Manager, Servicer, the Private Owner or the applicable Person having performed such valuation) and confirming that such valuation meets acceptable quality standards conforming to market practices in the relevant market, follows applicable requirements of Law, and concludes with a reasonable and reliable market value estimate (and such valuation shall not be deemed a completed "Appraisal" hereunder until such review and confirmation is so obtained).

"**Appraised Value**" means, as of any date of determination, the appraised value (as the relevant market value) of an Acquired REO Property or other Acquired Property based upon the most recent Appraisal obtained pursuant to Section 12.17(d) of the LLC Operating Agreement or any other applicable provision of the Transaction Documents permitting or requiring such Appraisal.

"**Asset**" means an individual Loan or Acquired Property, and "Assets" means all of the Loans and Acquired Property collectively.

"**Asset Documents**" means (i) 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 Obligor or any other obligor evidencing, creating, guaranteeing or securing, or otherwise executed or delivered in respect of, all or any part of an Asset or evidencing any transaction contemplated thereby (including, for this purpose, title insurance policies and endorsements thereto), and all Modifications thereto, and (ii) without limiting the generality of clause (i), all documents, agreements, instruments and other writings pursuant to which any Failed Bank has any obligation to make a principal advance to any Borrower (which principal advance, if it had been made on or prior to the Cut-Off Date, would have been reflected in the calculation of the outstanding principal balance of a Loan).

"**Asset File**" means all documents pertaining to any Asset, either copies or originals, that are in the possession of the Receiver or any of its employees or contractors responsible for the servicing of the Asset, other than (i) the original Notes, renewals of the Notes and other Collateral Documents and Custodial Documents and (ii) confidential or privileged communications between the Receiver (or any predecessor-in-interest, including any Failed Bank) and its legal counsel; provided, however, that the Asset Files do not include files maintained by other employees or agents of the Receiver or attorney-client or work product privileged materials held by the Receiver'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.

"**Asset Management**" means the general oversight and management of Assets (including oversight and control of litigation or other proceedings or claims with respect to any Assets), the exercise of remedies (including institution and management of foreclosure proceedings or other actions to enforce upon any Collateral or rights against any Obligor) with respect to Defaulted Loans (and exercise of applicable authority as described in Sections 12.16 and 12.17 of the LLC Operating Agreement with respect to all Loans), marketing and sale of Assets, and management (and all other Servicing) of Acquired Property; provided, however that Asset Management shall in all events exclude day-to-day servicing of Loans (other than Defaulted Loans), disbursements to Borrowers, collections of payments from Borrowers with respect to Loans (other than in connection with exercise of remedies following applicable acceleration of any such Loan, or otherwise against any Collateral for such Loan), management of Escrow Accounts, and any other Servicing of a Loan that, pursuant to applicable Law, would require the Person conducting the same to meet licensing, certification or similar requirements of any Governmental Authority (other than general qualifications to do business in a particular jurisdiction).

"**Asset Proceeds**" means all of the following: (i) any and all proceeds with respect to any or all of the Assets or any or all of the Collateral, including principal, interest, default interest, prepayment fees, premiums and charges, extension and exit fees, late fees, assumption fees, other fees and charges, insurance proceeds and condemnation payments (or any portion thereof) that are not used and disbursed to repair, replace or restore the related Collateral in accordance with the terms of the Asset Documents and the Transaction Documents, and, with respect to any Acquired Property, operating cash flow realized from such Acquired Property net of Servicing Expenses and Interim Servicing Expenses, whether paid directly to the Company or payable to or distributed by an Ownership Entity; (ii) any and all proceeds from sales or other dispositions or refinancings of any or all of the Assets (including Acquired Property) or any or all of the Ownership Entities, net of Servicing Expenses and Interim Servicing Expenses incurred in connection with such sale or other disposition or refinancing, including any Repurchase Price payments pursuant to the Contribution Agreement; (iii) any proceeds from making a draw under any letter of credit or certificate of deposit held with respect to any Asset, provided that such draw is permitted by the terms of the Asset Documents; (iv) any recoveries from Borrowers or Obligors of any kind or nature with respect to the Assets; (v) any deposits or down payments forfeited by prospective purchasers or lessees of apartments or other units for space at any Collateral; and (vi) any interest or other earnings accrued and paid on any of the amounts described in the foregoing clauses (i) through (v) while held in the Collection Account or any

other account (other than the Defeasance Account, the Working Capital Reserve Account or the Private Owner Pledged Account); provided, however, that, with respect to proceeds of any Loan Participation (including as a result of any sale or other disposition of such Loan Participation or of Collateral relating thereto), the Asset Proceeds shall exclude any amounts payable to others under the applicable Loan Participation Agreement, and with respect to any Loan, the Asset Proceeds shall exclude all Escrow Payments and all other amounts required to be deposited in any Escrow Account pursuant to the applicable Asset Documents.

"**Asset Schedule**" means the Asset Schedule attached as Attachment A to the Contribution Agreement (except as used in the Servicing Agreement, wherein such term is separately defined).

"**Asset Schedule and Exception List**" means a list of the Assets, identifying, with respect to each Asset, each Custodial Document delivered to the Custodian and each Exception (including identifying, with respect to any document or other item required to be provided by the Company to the Custodian pursuant to Sections 6.1(c)(ii), (iii), (vi) or (viii) of the Custodial and Paying Agency Agreement, which of the various alternatives with respect to originals or copies thereof specified in the relevant clause applies) and that details, with respect to any such Asset that has been released by the Custodian, the following: (i) the Borrower name and any identification number assigned to the Asset, (ii) the location to which the Custodial Documents with respect to such Asset were delivered by the Custodian, (iii) the date on which such Custodial Documents were released by the Custodian, and (iv) the Person to which such Custodial Documents were released.

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

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

"**Assumed Closing Date Asset Litigation**" means any Closing Date Asset Litigation other than any Retained Closing Date Asset Litigation, including any appeal of any such Closing Date Asset Litigation after the Closing Date, and including, with respect to any such Closing Date Asset Litigation, any claim (including any assertion of a Liability) that may be asserted therein (including first asserted therein) on, or at any time after, the Closing Date (whether by amendment of a complaint, counterclaim or otherwise).

"**Authorized Denomination**" has the meaning set forth in Section 2.5(b) of the Custodial and Paying Agency Agreement.

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

"**Bank**" means Wells Fargo Bank, National Association, a national banking association.

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

"**Beneficiaries**" has the meaning set forth in the Reporting and Access Schedule.

"**Bid**" means the sealed offer of the Winning Bidder set forth in the Bid Form.

"**Bid Form**" has the meaning set forth in the Recitals of the Private Owner Interest Sale Agreement.

"**Bidder Qualification Application**" means that certain Bidder Qualification Application having been submitted by or on behalf of the Winning Bidder to, and approved, by the FDIC in connection with (and as a condition to submission of) the Bid.

"**Book Value**" means, (i) with respect to property transferred pursuant to the Contribution Agreement, the Fair Market Value of such property at the time of such transfer, and (ii) with respect to any other Company asset, the adjusted basis of such asset for federal income tax purposes; provided, however, that the Book Values of all Company assets shall be adjusted to equal their respective Fair Market Values, in accordance with the rules set forth in Section 1.704-1(b)(2)(iv)(f) of the Treasury Regulations, except as otherwise provided herein, immediately prior to: (a) the date of the acquisition of any additional LLC Interest by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (b) the date of the actual distribution of more than a *de minimis* amount of Company property (other than a pro rata distribution) to a Member in connection with the redemption of all or part of such Member's LLC Interest; or (c) the date of the actual liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; and provided further, that adjustments pursuant to clauses (a) and (b) above shall be made only if the Tax Matters Member reasonably determines, after consultation with the Initial Member, that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members. The Book Value of any Company Property distributed to any Member shall be adjusted immediately prior to such distribution to equal its Fair Market Value as of such date.

"**Borrower-Business Relationship Business Plan**" has the meaning set forth in Section 7.7 of the LLC Operating Agreement.

"**Borrower**" means any borrower with respect to any Asset.

"**Bulk Sale**" means the sale or other Disposition, in a single transaction or a series of related transactions (and directly or indirectly), to a single buyer (or two or more related buyers) of two or more assets, consisting of Assets (including any separate Acquired REO Property or other Acquired Property into which any Loan is converted); provided however, if multiple assets are marketed and offered at the same time, and each such asset is marketed individually and offers are solicited with respect thereto individually, the transaction will not be considered a

Bulk Sale if multiple assets are sold to a single buyer (or two or more related buyers) provided that the single buyer's (or related buyers') overall price for such specific assets exceeds the aggregate value of the highest individual prices offered by other buyers for each individual asset included in that specific transaction (based on net cash proceeds to be received by the Company). For the avoidance of doubt, if two or more assets (i) are from a single borrower relationship or (ii) otherwise involve (or are secured by) items of Acquired REO Property (or real property Collateral) that are part of the same project and/or physically adjacent to one another, such assets shall be considered a single asset for purposes of this definition.

"**Business**" means the acquisition of the Assets pursuant to the Contribution Agreement and the ownership, servicing, administration, management and liquidation of the Assets.

"**Business Day**" means any day except (i) a Saturday, Sunday or other day on which commercial banks in the State of New York or United States federal government offices are required or authorized by Law to close or (ii) with respect to any day on which the Company owes an obligation to the Custodian or the Paying Agent or on which the Custodian or the Paying Agent owes an obligation to the Company, any such Business Day pursuant to the foregoing clause (i) other than a day on which the Bank's offices are closed.

"**Business Plan**" has the meaning set forth in Section 7.7 of the LLC Operating Agreement.

"**Buy-Out Closing**" has the meaning set forth in Section 3.14(a) of the LLC Operating Agreement.

"**Buy-Out Closing Date**" has the meaning set forth in Section 3.14(b)(i) of the LLC Operating Agreement.

"**Buy-Out Notice**" has the meaning set forth in Section 3.14(a) of the LLC Operating Agreement.

"**Buy-Out Valuation Date**" has the meaning set forth in Section 3.14(a) of the LLC Operating Agreement.

"**Capital Account**" means the capital account of a Member related to such Member's outstanding LLC Interests, as adjusted to account for allocations of Net Income (and items thereof) and Net Loss (and items thereof), and contributions and distributions relating to such LLC Interests, as provided in greater detail in Article VI of the LLC Operating Agreement and elsewhere in the LLC Operating Agreement.

"**Capital Contribution**" means a contribution to the capital of the Company made, deemed to be made, or to be made pursuant to the Original LLC Operating Agreement, the Contribution Agreement, or the LLC Operating Agreement.

"**Cash Flow and Distribution Report**" has the meaning set forth in Section 11.3 of the Custodial and Paying Agency Agreement.

"**CERCLA**" means The United States Comprehensive Environmental Response, Compensation, and Liability Act, as may be amended, supplemented or modified from time to time.

"**Certificate**" has the meaning set forth in Section 2.1(a) of the LLC Operating Agreement.

"**Certificated Note**" has the meaning set forth in Section 2.4(b) of the Custodial and Paying Agency Agreement.

"**Change of Control**" means:

(a) with respect to the Private Owner:

(i) the Private Owner's Specified Parents for any reason (x) failing or ceasing to collectively Control the Private Owner or (y) failing or ceasing to collectively own, beneficially and of record, either directly or indirectly at least 50.1% in value of all of the Ownership Interests in the Private Owner;

(ii) any Person other than the Private Owner's Specified Parents (and their respective Affiliates) at any time, when considered together with all of such other Person's Affiliates, acquiring or holding, of record or beneficially, directly or indirectly through one or more intermediaries other than Affiliates, more than 25% in value of all of the Ownership Interests in the Private Owner;

(iii) (x) the individual, or any of the individuals, as the case may be, constituting the Key Decision Makers at any time failing or ceasing to be actively and meaningfully involved (directly or indirectly) in all non-ordinary course decision-making regarding (A) the conduct of the business and affairs of the Private Owner (including with respect to the Private Owner's obligations and powers in its capacity as the Manager) or (B) without limiting the generality of clause (A), the asset management/special servicing of the Assets, or (y) the individual, or any of the individuals, as the case may be, constituting the Key Asset Managers at any time failing or ceasing to have the power (or, if multiple individuals constitute such Key Asset Managers, the collective power), directly or indirectly, to manage and control, or shall fail or cease to be actively and meaningfully involved (directly or indirectly) on a day-to-day basis in, all ordinary course decision-making regarding the asset management/special servicing of the Assets;

(iv) [intentionally omitted]; or

(v) with respect to any Specified Parent of the Private Owner, (x) the Ultimate Parent Entity(ies) of such Specified Parent for any reason (A) failing or ceasing to Control such Specified Parent, or (B) failing or ceasing to retain, beneficially and of record, either directly or indirectly, a percentage Ownership Interest in such Specified Parent (expressed in terms of relative fair market values of all outstanding Ownership Interests in such Specified Parent) that is at least 75% of such direct or indirect percentage Ownership Interest of such Person in such

Specified Parent (determined as described above) upon consummation of the Closing (or, in the case of any Person becoming a Specified Parent after the Closing pursuant to clause (i)(y) of the definition of such term, as of the date such Person so became a Specified Parent), or (y) any Entity (considered together with its Affiliates), or any Entities acting together or that would constitute a "group" for the purposes of Section 13(d) of the Exchange Act (in the case of each such Entity, considered together with its Affiliates), in each case other than the Ultimate Parent Entity(ies) of such Specified Parent (and/or any Entities Controlled by such Ultimate Parent Entity(ies)), at any time shall Control such Specified Parent, including by Controlling such Ultimate Parent Entity(ies); and

(b) with respect to the Servicer or any Rated Subservicer:

(i) such Person's Specified Parent for any reason (x) failing or ceasing to Control such Person or (y) failing or ceasing to own, beneficially and of record, either directly or indirectly, at least 50.1% in value of all of the Ownership Interests in such Person; or

(ii) without limitation of clause (i), in the event such Person is (or at the time it became the Servicer or an applicable Rated Subservicer, was) an Affiliate of the Private Owner, any Change of Control with respect to the Private Owner.

"**Class**" means each of the Class A Purchase Money Notes and each other Subsequent Class Purchase Money Notes.

"**Class A Note Maturity Date**" means "Maturity Date" as defined in the Class A Purchase Money Notes.

"**Class A Purchase Money Notes**" means any of the Purchase Money Notes with a maturity date of December 11, 2019, issued by the Company in accordance with the terms of the Custodial and Paying Agency Agreement and designated as a Class A Purchase Money Note, or any note or notes executed and delivered upon registration of transfer of, or in exchange for, or in lieu of, such Purchase Money Note.

"**Clean-up Call**" has the meaning set forth in Section 12.20 of the LLC Operating Agreement.

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

"**Closing**" means the consummation of the transactions contemplated in the Private Owner Interest Sale Agreement.

"**Closing Date**" means December 11, 2012.

"**Closing Date Asset Litigation**" means (i) any Action relating to any of the Assets and that is pending against the Receiver and/or any Failed Bank as of the Cut-Off Date and/or the Closing Date or (ii) without limitation of clause (i), any Action relating to any of the Assets and in which the Receiver and/or any Failed Bank is involved (including as a plaintiff) as of the Cut-

Off Date and/or the Closing Date, with respect to this clause (ii) to the extent that any Liability of the Receiver and/or any Failed Bank is asserted therein (including by way of counterclaim).

"**Code**" means the United States Internal Revenue Code of 1986, together with the regulations promulgated thereunder, as may be amended, supplemented or modified from time to time.

"**Collateral**" means any and all real or personal property, whether tangible, intangible or mixed, securing or pledged to secure an Asset, including (i) any account, equipment, guarantee or contract right, equity, partnership or other interest that is the subject of any Collateral Document and (ii) as the context requires, Acquired Property, whether or not expressly specified.

"**Collateral Certificate**" has the meaning set forth in Section 6.1(b) of the Custodial and Paying Agency Agreement.

"**Collateral Document**" means any deed of trust, deed, trust deed, deed to secure debt, mortgage, contract for the sale of real property, pledge agreement, security agreement, personal, corporate or other guaranty, 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 or any Obligor of its obligations or the obligations of any Borrower or any Obligor pursuant to any of the Assets or Notes evidencing the Assets, or (ii) evidencing ownership of any Acquired Property.

"**Collection Account**" means the segregated trust or custodial account designated as the "Collection Account" pursuant to Section 3.1(a) of the Custodial and Paying Agency Agreement.

"**Company**" means CRE/ADC Venture 2012-1, LLC, a Delaware limited liability company.

"**Company Accounts**" means the Collection Account, the Distribution Account, the Working Capital Reserve Account, the Defeasance Account and such other Company accounts (other than Escrow Accounts) as may be contemplated or permitted pursuant to the Transaction Documents.

"**Company Acquired Property**" means (i) Collateral to which title is acquired by or on behalf of the Company or any Ownership Entity by foreclosure, by deed in lieu of foreclosure, by power of sale, pursuant to the Uniform Commercial Code or otherwise, (ii) the equity interests in any Ownership Entity holding any such Collateral and (iii) the assets held directly or indirectly by any such Ownership Entity.

"**Company Principal Prepayment Account**" means any voluntary amounts deposited into the Defeasance Account by the Company with the consent of the Required PMN Consenting Parties for the purposes of prepaying in whole or in the part principal on ay Class of Purchase Money Notes.

"**Company Property**" means any property contributed to, acquired by or otherwise owned by the Company (including the Assets contributed or sold by the Transferor to the Company pursuant to the Contribution Agreement), whether real or personal, tangible or intangible property, including but not limited to any legal or equitable interest in such property, ownership interests in entities owning real or personal property, and money.

"**Confidentiality Agreement**" means each Structured Transaction Confidentiality Agreement, dated as of the Closing Date or such earlier date as may have been applicable pursuant to the sealed bid process resulting in the submission of the Bid Form, by and between the FDIC and the Private Owner or any Affiliate(s) of the Private Owner (including by way of joinder).

"**Consolidated Business Plan**" has the meaning set forth in Section 7.7 of the LLC Operating Agreement.

"**Contract for Deed**" means an executory contract with a third party to convey real property to such third party upon payment of the amounts set forth therein and/or the performance of any other obligations described therein, including any installment land sale contract.

"**Contribution Agreement**" means the Asset Contribution and Sale Agreement dated as of the Closing Date by and between the Transferor and the Company.

"**Control**" (including the phrases "Controlled by" and "under common Control with") when used with respect to any specified Person means 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.

"**Core Agreements**" means, collectively, the Contribution Agreement, the Private Owner Interest Sale Agreement, the LLC Operating Agreement, the Reimbursement, Security and Guaranty Agreement and the Custodial and Paying Agency Agreement.

"**Covered Persons**" has the meaning set forth in Section 4.6(f) of the LLC Operating Agreement.

"**Custodial and Paying Agency Agreement**" means the Custodial and Paying Agency Agreement dated as of the Closing Date, by and among the Company, the Bank, the PMN Agent, the Initial Member and the Private Owner, and thereafter any replacement Custodial and Paying Agency Agreement that is acceptable to the Initial Member and (so long as any Secured Obligations remain outstanding) the PMN Agent entered into from time to time in accordance with the LLC Operating Agreement and the other Transaction Documents.

"**Custodial Delivery Failure**" has the meaning set forth in Section 13.1(c) of the Custodial and Paying Agency Agreement.

"**Custodial Documents**" has the meaning set forth in Section 6.1(c) of the Custodial and Paying Agency Agreement.

"**Custodial Report**" means a report prepared by the Custodian, which shall be in a form acceptable to the Company and the PMN Agent, detailing, with respect to any Asset that has been released by the Custodian, the following: (i) the Borrower name and any identification number assigned to the Asset, (ii) the location to which the Custodial Documents with respect to such Asset were delivered by the Custodian, (iii) the date on which such Custodial Documents were released by the Custodian, and (iv) the Person to which such Custodial Documents were released.

"**Custodian**" means the Bank (as the initial document custodian appointed pursuant to the LLC Operating Agreement), and any successor custodian that is a Qualified Custodian and Paying Agent and is acceptable and approved by the Initial Member, such approval not to be unreasonably withheld, delayed or conditioned.

"**Custodian/Paying Agent**" means the Person from time to time serving as the Custodian and the Paying Agent.

"**Custodian and Paying Agent Report**" has the meaning set forth in Section 11.1(a) of the Custodial and Paying Agency Agreement.

"**Customer Information**" shall mean all non-public information regarding any Borrower or other Obligor, disclosure of which is regulated or restricted in any way by applicable Law.

"**Cut-Off Date**" means as of the close of business on November 2, 2012.

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

"**Debt**" of any Person means (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person for the deferred purchase price of property or services (excluding non-Affiliated trade payables (or Affiliated trade payables, incurred in a manner consistent with applicable requirements in the Transaction Documents, that are expressly subordinated in writing to such Person's obligations under the Transaction Documents on terms satisfactory to the Required Consenting Parties) arising in the ordinary course of business), (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (v) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (vi) all liabilities or obligations of any nature whatsoever secured by a consensual pledge, consensual security interest or other consensual Lien of, in or on any property or asset of such Person (other than (x) if such Person is the Private Owner, any such pledge, security interest or other Lien granted to the Initial Member under the LLC Operating Agreement, and (y) customary rights of set-off, revocation, refund or chargeback under deposit agreements or under the Uniform Commercial Code of banks or other similar financial institutions where such Person maintains deposits), (vii) all direct or contingent

obligations of such Person arising under, or otherwise in respect of, letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments (including any Qualifying Letter of Credit), or (viii) all indebtedness or obligations of others of the kinds referred to in clauses (i) through (vii) above in respect of which such Person has entered into or issued any Guarantee.

"**Debt Agreements**" means the Purchase Money Notes, the Reimbursement, Security and Guaranty Agreement, the Account Control Agreement and each Purchase Money Notes Guaranty.

"**Debtor**" has the meaning set forth in the Preamble of the Reimbursement, Security and Guaranty Agreement.

"**Debtor Relief Laws**" means Title 11 of the United States Code (11 U.S.C. §§101, et seq.), and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"**Default**" (i) for purposes of the Reimbursement, Security and Guaranty Agreement, means any event or condition that constitutes an Event of Default (for the avoidance of doubt, as defined in the Reimbursement, Security and Guaranty Agreement) or that, with the giving of any notice, the passage of time, or both, would be an Event of Default (for the avoidance of doubt, as defined in the Reimbursement, Security and Guaranty Agreement), and (ii) for purposes of any other Transaction Document in which it is used, has the meaning set forth in such Transaction Document.

"**Defaulted Loan**" means any Loan (i) that is delinquent sixty days or more in respect to any scheduled payment of principal and/or interest thereunder or (ii) as to which any principal or accrued interest remains unpaid for thirty days or more after the stated maturity date of such Loan.

"**Defeasance Account**" means the segregated trust or custodial account designated as the "Defeasance Account" pursuant to Section 3.3(a) of the Custodial and Paying Agency Agreement.

"**Deficiency Balance**" means the remaining unpaid principal balance of any Note or Loan sold or contributed pursuant to the Contribution Agreement (or, in the case of Receiver Acquired Property for which the foreclosure or other acquisition event occurred (with expiration of any relevant Redemption Period) on or before the Cut-Off Date, the remaining balance of the applicable Underlying Loan) after crediting to it the proceeds of any foreclosure sale, deed in lieu of foreclosure or any other exercise of remedies with respect to Collateral (or, in the case of any Receiver Acquired Property described in the preceding parenthetical, the applicable collateral for such Underlying Loan, including such Receiver Acquired Property).

"**Deficiency Judgment Claim**" means any claim, right or demand in or to any deficiency judgment, or any similar claim, right, demand or other recourse.

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

"**Determination Date**" means the last day of each Due Period.

"**Development**" means any development or construction of any kind with respect to any Asset (including any Horizontal Development or Vertical Development).

"**Development Approval Request**" has the meaning set forth in Section 12.13(b) of the LLC Operating Agreement.

"**Development Plan**" means, with respect to any Asset, a specific development plan for Development of such Asset, including a detailed scope of proposed development, timeline and budget.

"**Direct Owner**" means, with respect to any Person, any other Person who has any direct ownership interest in such Person.

"**Discretionary Funding Advance**" has the meaning set forth in Section 5.4 of the LLC Operating Agreement.

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

"**Disposition**" means, with respect to any particular property, equity interest or asset, (i) any sale, assignment, alienation, gift, exchange, conveyance, transfer, pledge or hypothecation of, any granting of a Lien or proxy with respect to, or any other disposition whatsoever of, such property, equity interest or asset (or of any interest therein), (ii) without limitation of clause (i), effecting any transaction or entering into any arrangement (including any form of participation or other derivative transaction of any nature whatsoever) that in effect (and at any time) transfers or otherwise disposes of (or results in the transfer or disposition of), to any extent, the economic or other consequences of ownership of such property, equity interest or asset (including, in the case of the Private Owner Interest, voting and/or management participation rights associated therewith or rights to receive the Interim Management Fee or the Management Fee), including any agreement to make any payment to a third party based upon any amount received in respect of such property or asset, or (iii) any other action or transaction similar to any of the foregoing, in the case of each of (i), (ii) and (iii), whether any of the foregoing is voluntary or involuntary, direct or indirect or in whole or in part, and including any of the foregoing by operation of Law (including any merger into, or any consolidation with, any other Person). For the avoidance of doubt, it is understood and agreed that a statutory conversion of a Person into another form of Person does not constitute a Disposition. The terms "**Dispose**" or "**Disposed**" mean to make or consummate a "Disposition."

"**Dispute Resolution Procedure**" means the following procedure solely for the purpose of determining a particular amount:

Each Member shall submit to the other, within five Business Days of referral to this procedure, its proposed amount. If either Member fails to submit such a proposal within such time period, then the amount to be determined in accordance with this procedure shall be as set forth in the single proposal provided. If the higher of the two proposals is not greater than 110% of the lower proposal, then the amount to be determined in accordance with this procedure shall be the average of such two proposals. If the higher of such two proposals is greater than 110% of the lower amount, then the Members shall, within seven days of their submission of such proposals, jointly select a nationally recognized investment banking firm which shall, within fifteen days of its appointment, select the proposed amount previously submitted by the Members pursuant to this procedure that in its opinion more closely reflects the amount being determined as described in the LLC Operating Agreement, and the proposal thus selected shall be considered the amount for purposes of the LLC Operating Agreement. If the Members fail to agree on such investment banking firm within such seven-day period, then each Member shall nominate, within such seven-day period, a nationally recognized investment banking firm that is not an Affiliate thereof and the investment banking firm that is to make such determination shall be chosen by the two nominated firms promptly after the expiration of such seven-day period; provided, that if either Member shall fail to nominate such an investment banking firm within such seven-day period, such determination shall be made by the investment banking firm nominated by the other Member. The fees of the selected investment banking firm shall be paid in the manner provided in the LLC Operating Agreement. Any determination of any amount made by any investment-banking firm selected in accordance with this procedure shall be final and binding on the Members and, without limitation of the foregoing, may be enforced by any court having jurisdiction in the premises.

"**Dissolution Event**" means, with respect to any specified Person, (i) in the case of a specified Person that is a partnership or limited partnership or a limited liability company, the dissolution and commencement of winding up of such partnership, limited partnership or limited liability company, (ii) in the case of a specified Person that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter and the expiration of ninety days after the date of notice to the corporation of such revocation without a reinstatement of its charter, and (iii) in the case of any other specified entity, the termination of such entity. For the avoidance of doubt, it is understood and agreed that a statutory conversion of a Person into another form of Person does not constitute a "Dissolution Event."

"**Distributable Cash**" has the meaning set forth in Section 6.5 of the LLC Operating Agreement.

"**Distribution Account**" means the segregated trust or custodial account designated as the "Distribution Account" pursuant to Section 3.2(a) of the Custodial and Paying Agency Agreement.

"**Distribution Date**" means the twenty-fifth day of each month or, if such day is not a Business Day, the next succeeding day that is a Business Day, commencing January 25, 2012.

"**Dollar**" or "**$**" means lawful currency of the United States of America.

"**DTC Eligible**" means eligible for deposit at DTC and for trading through DTC's book-entry system.

"**Due Period**" means (i) with respect to the first Distribution Date, the period from and including the day immediately following the Cut-Off Date to and including the last day of the calendar month prior to the month in which such first Distribution Date occurs, and (ii) with respect to each Distribution Date thereafter, the calendar month prior to the month in which such Distribution Date occurs.

"**Earnest Money Deposit**" has the meaning set forth in the Recitals of the Private Owner Interest Sale Agreement.

"**Electronic Tracking Agreement**" means an agreement substantially in the form of Exhibit B to the Servicing Agreement.

"**Eligible Account**" means one or more segregated trust or custodial account or accounts established and maintained with an Eligible Institution, each of which shall be entitled for the benefit of the Company and the PMN Agent.

"**Eligible Institution**" means a Person that is not an Affiliate of the Private Owner (or the Manager) and that is a federally insured depository institution that is well capitalized; provided, that an Affiliate of the Private Owner (or the Manager) may be deemed to be an Eligible Institution if the Initial Member and the PMN Agent each provides a written consent (which may be withheld in each Person's sole and absolute discretion), which consent may be withdrawn upon written notification to the Manager, in which case such Affiliate of the Private Owner (or of the Manager) shall no longer constitute an Eligible Institution as of the receipt of such notice. Any accounts maintained pursuant to any Transaction Document at any institution that ceases to be an Eligible Institution shall be moved to an Eligible Institution within three Business Days after the receipt of such notice.

"**Embargoed Person**" means any Person (i) included on the Specially Designated Nationals list administered by the U.S. Treasury Department's Office of Foreign Assets Control; (ii) owned or controlled by any Person on such Specially Designated Nationals list; or (iii) otherwise subject to trade restrictions under United States Law, including, without limitation, the International Emergency Economic Powers Act, 50 U.S.C. §§1701, et seq., the Trading with the Enemy Act, 50 U.S.C. §§ App. 1, et seq., any foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as may be amended, supplemented or modified from time to time), or any enabling legislation or regulations promulgated thereunder or any executive order relating thereto (including Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079 (2001)) or 31 C.F.R. §594.101, et seq.) with the result that a purchase of assets or any other transaction entered into with respect to any assets (including, without limitation, any investment in any structured transaction), whether directly or indirectly, is prohibited by or in violation of Law.

"**Entity**" means any Person other than a natural person.

"**Environmental Hazard**" means the presence at, in or under any real property Collateral or Acquired REO Property (whether held in fee simple or subject to a Ground Lease or otherwise, and including any improvements whether by buildings or facilities, and any personal property, fixtures, leases and other property or rights pertaining thereto), of any "hazardous substance," as such term is defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601(14), or any petroleum (including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure), at a level or in an amount that requires remediation or abatement pursuant to applicable Law.

"**Equity Asset Value**" means, with respect to any Asset, the product of (i) the Private Owner Interest Asset Value of such Asset *multiplied* by (ii) the quotient of 1.0 divided by the percentage ownership interest of the Private Owner (expressed as a decimal, with 100% being equal to 1.0).

"**ERISA**" means the United States Employee Retirement Income Security Act of 1974, together with the regulations promulgated thereunder, as may be amended, supplemented or modified from time to time.

"**ERISA Plan Assets**" means "plan assets" within the meaning of Section 3(42) of ERISA and the "plan asset" regulations set forth in 29 C.F.R. Section 2510.3-101 as promulgated under ERISA, modified to the extent applicable by Section 3(42) of ERISA.

"**Escrow Account**" means (i) for purposes of the Contribution Agreement, an account maintained by the Receiver (or, in the context of Article VI of the Contribution Agreement, the Company) or its servicer or other agent for the deposit of Escrow Payments received in respect of one or more Assets, and (ii) for purposes of the Servicing Agreement and all other Transaction Documents, one or more segregated trust or custodial accounts maintained by the Servicer (or an applicable Subservicer) in trust for the benefit of the Company and the PMN Agent for deposit of Escrow Payments received in respect of one or more Assets, and in either case includes, but is not limited to, all so-called "lockbox" accounts maintained by any Failed Bank or the Company under the terms of any Asset Documents and any other accounts maintained by any Failed Bank or the Company under the Asset Documents for amounts deposited or required to be deposited therein by the applicable Borrower.

"**Escrow Advance**" means any advance made to pay Taxes or insurance premiums or any other cost or expense that, but for a shortfall in an Escrow Account for an Asset, is payable using funds in an Escrow Account for an Asset.

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

"**Escrow Payments**" means 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 costs, tenant improvement costs and leasing commissions, debt service, furniture, fixture and equipment costs, capital improvement costs, environmental remediation costs or amounts held as in escrow or as reserves for any other purpose that have been deposited in escrow or a reserve account (or designated as such by the Borrower for such deposit) with any Failed Bank, the Receiver or the Company or (in each case) its servicer or other agent with respect to any Asset.

"**Event of Default**", as used in any Transaction Document, has the meaning set forth in such Transaction Document, or, if not so defined therein, and except as the context may otherwise require, has the meaning set forth in the Reimbursement, Security and Guaranty Agreement; provided, however, that, as used in the Servicing Agreement or the Private Owner Pledged Account Control Agreement, except as otherwise expressly provided therein, the term "Event of Default" has the meaning set forth in Section 3.13(j) of the LLC Operating Agreement.

"**Exception**" means, with respect to any Asset, any variance from the requirements of Section 6.1(c) of the Custodial and Paying Agency Agreement or the requirements set forth in the Review Criteria, including any missing Custodial Document and any document that does not meet the applicable requirements set forth in Section 6.1(c) of the Custodial and Paying Agency Agreement or in the Review Criteria.

"**Excess Damage Liability**" has the meaning set forth in Section 4.5(d) of the Contribution Agreement.

"**Excess Principal**" has the meaning set forth in Section 2.4(c) of the Contribution Agreement.

"**Excess Working Capital Advance**" has the meaning set forth in Section 5.5 of the LLC Operating Agreement.

"**Exchange Act**" means the United States Securities Exchange Act of 1934, as may be amended, supplemented or modified from time to time.

"**Excluded Expenses**" means any of the following:

(i) any expenses or costs that are not incurred in accordance with the Servicing Standard or, to the extent applicable, the Fannie Mae Guidelines;

(ii) any expenses or costs that are paid to any Affiliate of any of the Manager, the Company, the Servicer or any Subservicer; provided, however, Excluded Expenses under this clause (ii) do not include out-of-pocket expenses or costs incurred by the Manager, the Servicer or any Subservicer in accordance with the Transaction Documents, so long as such expenses or costs both (x) are paid (by the Manager, the Servicer or such Subservicer) to Persons that are not Affiliates of any of the Manager, the Company, the Servicer or any Subservicer and (y) would otherwise constitute Servicing Expenses but for application of this clause (ii);

(iii) any fees or other compensation to or expenses of financial advisors or consultants (including any advisors or consultants engaged by the Manager, the Servicer, any Subservicer or any other Person to assist with preparation of any Business Plan or Development Plan or with any strategic determinations with respect to actual or potential Disposition of any or all Assets), except to the extent the same are incurred as brokerage fees or sales commissions incurred (x) to market or sell the Assets or any Acquired Property in a Bulk Sale, which Bulk Sale (A) is approved by each Required Consenting Party pursuant to Section 3.4 of the LLC Operating Agreement or (B) does not require approval of any Required Consenting Party pursuant to Section 3.4 of the LLC Operating Agreement; and (y) in connection with the marketing or sale of any Acquired Property or any portion thereof on an individual basis;

(iv) any fine, Tax or other penalty, late fee, service charge, interest or similar charge, costs to release Liens or any other costs or expenses (including legal fees and expenses) incurred by or on behalf of the Company, the Manager (in its capacity as such or in its individual capacity), the Servicer or any Subservicer as a result of the Company's or any Manager's or the Servicer's or any Subservicer's failure to service any Asset or Collateral properly in accordance with the applicable Asset Documents, the LLC Operating Agreement, the Servicing Agreement, any Subservicing Agreement, any other Transaction Document or otherwise, or failure to make a payment in a timely manner, or failure otherwise to act in a timely manner;

(v) any interest on any amounts paid by any Person with respect to any Servicing Expenses, Interim Servicing Expenses or Pre-Approved Charges;

(vi) any overhead or administrative costs (whether or not attributable to Servicing) incurred by the Company, the Manager, the Servicer, any Subservicer or any other Person (including any (A) travel expenses, (B) costs for office space, office equipment, supplies and related expenses, employee salaries, bonuses and other compensation and related expenses and similar internal costs and expenses, together with any other expenses incurred by the Manager to comply with Section 3.3 of the LLC Operating Agreement (including any costs or expenses of engaging independent contractors to perform relevant services for the day-to-day operation of the Company in lieu of performance of the same by personnel required to be made available by the Manager pursuant to such Section 3.3), and (C) expenses incurred by any of the Manager, the Tax Matters Member, the Company, the Servicer or any Subservicer to comply with Section 4.3, Section 7.2, Section 7.3, Section 7.4, Section 7.5, Section 7.6(a) and Section 7.7 of the LLC Operating Agreement and the Reporting and Access Schedule), in each case other than applicable administrative (but not overhead) costs of the Company (payable to Persons that are not Affiliates of any of the Manager, the Company, the Servicer or any Subservicer) expressly qualifying as Reimbursable Company Administrative Expenses;

(vii) any servicing, management (including property management) or similar fees paid to the Servicer, any Subservicer or any other Person, provided, that property management fees for on-site property managers (or other dedicated property managers to the extent such fees are directly attributable to such on-site property management) of specific Acquired REO Property, in each case that are not Affiliates of any of the Manager, the Company, the Servicer or any Subservicer, are not included in this clause (vii);

(viii) any expenses incurred by the Manager, the Servicer, any Subservicer or any other Person (x) to become a MERS member or to maintain the Manager or such other Person as a MERS member in good standing, in each case as contemplated by the Transaction Documents, or (y) to remove any Asset from the MERS® System in connection with any voluntary removal by or at the direction of the Manager (as permitted in Section 12.3(h) of the LLC Operating Agreement), it being understood that any such removal dictated by default, foreclosure or similar legal or MERS requirements shall not be considered a voluntary removal for purposes of this clause;

(ix) any amounts subject to the indemnity obligations of the Private Owner under Section 4.6 of the LLC Operating Agreement, of the Servicer under Section 8.2 of the Servicing Agreement, or equivalent indemnity obligations of any Subservicer as required to be included in its Subservicing Agreement pursuant to Section 4.2 of the Servicing Agreement or Section 12.1(b) of the LLC Operating Agreement; or

(x) any other amounts expressly designated as "Excluded Expenses" (or otherwise expressly required to be borne by the Manager, the Servicer or any Subservicer without reimbursement) pursuant to the terms of the Transaction Documents.

"Excluded Liabilities" means:

(a) solely with respect to clause (a) of the definition of the term "Obligations", all Liabilities of any Failed Bank and/or the Receiver under any Transferred Contract for damages or other remedies (at law or in equity), to the extent (and only to the extent) attributable to an act or omission or circumstance that occurred or existed prior to the Cut-Off Date and that constituted a breach by any Failed Bank and/or the Receiver under such Transferred Contract, or a tort, willful misconduct, fraud or a violation of Law by any Failed Bank and/or the Receiver; provided, however, that, this clause (a) does not exclude from clause (a) of the definition of the term "Obligations" any Liability of the Receiver under any Transferred Contract that is overdue (but solely excludes any Liability of any Failed Bank and/or the Receiver for damages or other remedies (at law or in equity) for any breach of any such Liability occurring prior to the Cut-Off Date);

(b) all Liabilities under any Transferor Loan-Servicing Contract; and

(c) all Liabilities of any Failed Bank or the Receiver as of the Closing Date other than the Obligations.

"**Excluded Liability Company Action**" means any Action commenced against the Company at any time after the Closing Date in which an Excluded Liability is asserted against the Company, provided, for the avoidance of doubt, that no Action against the Company in respect of a Liability asserted against the Receiver and/or any Failed Bank in any Assumed Closing Date Asset Litigation shall constitute an Excluded Liability Company Action.

"**Excluded Liability Company Claim**" means any Excluded Liability that is asserted against the Company in an Excluded Liability Company Action, provided, for the avoidance of

doubt, that no claim against the Company in respect of a Liability asserted against the Receiver and/or any Failed Bank in any Assumed Closing Date Asset Litigation shall constitute an Excluded Liability Company Claim.

"**Exempt Taxes**" means, in each case, with respect to any real property (and related personal property) Receiver Acquired Property, (i) any penalty accrued for any period prior to the Closing Date on any Tax with respect to any such Receiver Acquired Property in which the Receiver holds a fee interest that was not secured by a valid Lien against the Receiver Acquired Property in effect before the Receiver acquired an interest in such Receiver Acquired Property, (ii) any Tax (including any special assessment) accrued for any period prior to the Closing Date that is not an ad valorem real property Tax, the amount of which was not fixed at the time the Receiver acquired a fee interest in such Receiver Acquired Property, regardless of the existence of any Lien purporting to secure the payment of any such Tax, and (iii) any Tax (including any special assessment) accrued for any period prior to the Closing Date that is not an ad valorem real property Tax and that was not secured by a valid Lien against such Receiver Acquired Property in effect before the Receiver acquired an interest in such Receiver Acquired Property.

"**Existing Servicer**" means a Person (including the Receiver) acting as servicer for any Asset as of the Cut-Off Date.

"**Failed Banks**" means each of the various failed financial institutions listed on Schedule II to this Agreement, and each reference to a "Failed Bank" means the applicable failed financial institution, as the context may require.

"**Fair Market Value**" means, with respect to any asset on a given date, the gross fair market value of such asset, unreduced by any liability, on such date as determined in good faith by the Manager after consultation with the Initial Member; provided, however, that (i) the initial Fair Market Value for each Asset shall be Total Asset Value for such Asset, and (ii) the parties hereto acknowledge and agree that, as of the Closing Date, the Fair Market Value of the Capital Contribution made by the Initial Member shall be based on the Private Owner Interest Sale Price, as set forth in the Private Owner Interest Sale Agreement, and such Fair Market Value shall be utilized for determining the initial Capital Accounts of the Members as of the Closing Date.

"**Fannie Mae**" means the Federal National Mortgage Association of the United States, or any successor thereto.

"**Fannie Mae Guidelines**" means those guidelines governing reimbursement of costs and expenses by Fannie Mae with respect to loans owned or securitized by Fannie Mae, as in effect on the date on which an expense or cost is incurred, including as such guidelines may be set forth in the then effective Fannie Mae Delegated Underwriting and Servicing Guide (or replacement thereto), including all applicable lender memos issued by Fannie Mae in connection therewith.

"**FDIA**" means the Federal Deposit Insurance Act, as may be amended, supplemented or modified from time to time.

"**FDIC**" means the Federal Deposit Insurance Corporation, in any capacity (for the avoidance of doubt, present or future).

"**FDIC Legal Powers**" means the powers, immunities, defenses, privileges and other rights granted to the Receiver pursuant to the provisions of the FDIA (including 12 U.S.C. §§ 1821(d), 1823(e) and 1825), the National Bank Act (including 12 U.S.C. §§ 91 and 191, *et seq.*), applicable state receivership laws (incorporated into the FDIA, for example, by 12 U.S.C. §1821(c)(3)(B)), and similar federal law and state law (including statutory and common law) doctrines which protect financial institution receivers and their assignees (for example, the D'Oench Doctrine, statutory bona fide purchaser status, involuntary assignee protection, etc.), regardless of whether any of the foregoing powers, immunities, defenses, privileges or other rights are (or are asserted, claimed or purported to be) available to an assignee of the Receiver (including a purchaser of assets from the Receiver).

"**FDIC-Owned**" means, with respect to any Class of Purchase Money Notes, that the FDIC is the Holder or Note Owner of (or otherwise is the beneficial owner of) 100% of the Purchase Money Notes of such Class.

"**FDIC Power of Attorney**" means (i) the Limited Power of Attorney or (ii) any other power of attorney, or other authorization to act in the name of, or otherwise on behalf of, the Transferor or the FDIC, that the Transferor or the FDIC may provide to the Company or representatives of the Company (including the Manager or representatives of the Manager) under, or otherwise in connection with the transactions contemplated by, any Transaction Document (including in the discretion of the Transferor or the FDIC).

"**FDIC Purchase Money Notes Disposition**" means any Disposition at any time by the FDIC of any Purchase Money Note or any interest therein (including any interest in a Purchase Money Note as a Note Owner), in whole or in part and directly or indirectly.

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

"**Final Distribution**" means the distribution of all remaining Asset Proceeds in accordance with the applicable terms of the LLC Operating Agreement and the Custodial and Paying Agency Agreement after liquidation of all of the Assets and related Collateral (including Acquired REO Property) following the dissolution of the Company.

"**Final Distribution Date**" means the date of the Final Distribution.

"**Final PMNG Calculation**" has the meaning set forth in Section 3.3(e) of the Custodial and Paying Agency Agreement.

"**Final Purchase Money Notes Maturity Date**" means the Purchase Money Notes Maturity Date of the latest maturing Class of Purchase Money Notes.

"**Fiscal Year**" means the fiscal year of the Company and its Subsidiaries beginning on January 1 and ending on December 31 of each calendar year.

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

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

"**Funding Draw**" means any principal advance made to a Borrower after the Closing Date under a Loan pursuant to the terms of the applicable Asset Documents.

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

"**Governmental Authority**" means (i) any United States or non-United States national, federal, state, local, municipal, provincial or international government or any political subdivision of any thereof or (ii) any governmental, regulatory or administrative authority, agency or commission, or judicial or arbitral body of any of the foregoing described in clause (i).

"**Grantor**" has the meaning set forth in the Preamble of the Reimbursement, Security and Guaranty Agreement.

"**Ground Lease**" means a ground lease or other lease.

"**Group of Assets**" means all Assets that, as of the Cut-Off Date, are serviced by the same Existing Servicer.

"**Guarantee**" means, with respect to any particular indebtedness or other obligation, (i) any direct or indirect guarantee thereof by a Person other than the obligor with respect to such indebtedness or other obligation or any transaction or arrangement intended to have the effect of directly or indirectly guaranteeing such indebtedness or other obligation, including without limitation any agreement by a Person other than the obligor with respect to such indebtedness or other obligation (A) to pay or purchase such indebtedness or other obligation or to advance or supply funds for the payment or purchase of such indebtedness or other obligation, (B) to purchase, sell or lease (as lessee or lessor) property of, to purchase or sell services from or to, to supply funds to or in any other manner invest in, the obligor with respect to such indebtedness or other obligation (including any agreement to pay for property or services of the obligor irrespective of whether such property is received or such services are rendered), primarily for the purpose of enabling the obligor to make payment of such indebtedness or other obligation or to assure the holder or other obligee of such indebtedness or other obligation against loss, or (C) otherwise to assure the obligee of such indebtedness or other obligation against loss with respect thereto, or (ii) any grant (or agreement in favor of the obligee of such indebtedness or other obligation to grant such obligee, under any circumstances) by a Person other than the obligor with respect to such indebtedness or other obligation of a security interest in, or other Lien on, any property or other interest of such Person, whether or not such other Person has not assumed or become liable for the payment of such indebtedness or other obligation.

"**Guaranteed Obligations**" has the meaning set forth in each Purchase Money Notes Guaranty.

"**Guaranteed Purchase Money Note**" means any Purchase Money Note in respect of which a Purchase Money Notes Guaranty has been issued pursuant to Section 2.8 of the Custodial and Paying Agency Agreement or Section 8.4(c) of the Contribution Agreement.

"**Guaranteed Purchase Money Notes Reissuance Fee**" has the meaning set forth in Section 8.19 of the Reimbursement, Security and Guaranty Agreement.

"**Guaranteed Purchase Money Notes Satisfaction Date**" means, in relation to any particular Purchase Money Notes Guaranty and the Purchase Money Notes Guarantor thereunder, the first date, after the execution and delivery of such Purchase Money Notes Guaranty, on which both of the following conditions are (on such date) satisfied: (i) the Class, or all Classes, of Purchase Money Notes that is or are the beneficiary of such Purchase Money Notes Guaranty shall have been indefeasibly paid, satisfied and discharged in full and (ii) all reimbursement amounts, together with any accrued interest thereon, owed to such Purchase Money Notes Guarantor pursuant to the Reimbursement, Security and Guaranty Agreement for previous payments made by it pursuant to such Purchase Money Notes Guaranty shall have been indefeasibly paid, satisfied and discharged in full.

"**Guaranty**" has the meaning set forth in Section 8.19(a) of the Reimbursement, Security and Guaranty Agreement.

"**Guaranty Issuance Date**" means the date on which the first Purchase Money Notes Guaranty is executed and delivered (if any are executed and delivered).

"**HAFA**" has the meaning set forth in Section 1.1 of the Servicing Agreement.

"**HAMP**" has the meaning set forth in Section 1.1 of the Servicing Agreement.

"**HFSH Act**" means the Helping Families Save Their Home Act of 2009, as may be amended, supplemented or modified from time to time.

"**Holder**" means, with respect to any Purchase Money Note, the Person whose name appears on the Purchase Money Notes Register as the registered holder of such Purchase Money Note.

"**Holder Percentage**" means, with respect to each Holder and each Class of Purchase Money Notes at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), (i) the numerator of which is the outstanding principal amount of such Class of Purchase Money Notes for which such Holder is registered as the owner on the Purchase Money Notes Register at such time and (ii) the denominator of which is the aggregate outstanding principal amount of such Class of Purchase Money Notes at such time.

"**Horizontal Development**" means, with respect to any Acquired REO Property, construction or design work in connection with (i) the remediation of an environmental condition

existing at such Acquired REO Property prior to the commencement of Vertical Development, (ii) the design and planning related to the construction of the infrastructure and the Vertical Development, including, but not limited to, work necessary to (a) change any zoning classification of any portion of such Acquired REO Property, (b) seek any variance under any existing zoning ordinance that could result in the use of such Acquired REO Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, (c) allow any portion of such Acquired REO Property to be used in any manner that could result in the use of such Acquired REO Property becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation, or (d) obtain any entitlements or other permits necessary to perform construction on such Acquired REO Property, (iii) the construction of the infrastructure related to such Acquired REO Property, including, without limitation, cutting the roads, installing the utilities (including without limitation, pipelines for water, crude oil, slurry and sewer, power lines, cable television lines and other telecommunication lines, bridges and tunnels), waterways, port facilities, networks for irrigation sanitation and sewage, paving the roads, railway tracks, signaling system, stations, sidewalks and gutters, and (iv) the performance of any demolition or site-clearing work necessary to commence Vertical Development; provided, however, to the extent not specified herein, "Horizontal Development" may include such other work as may be expressly approved by the Initial Member in connection with the approval of an applicable Horizontal Development Plan; and provided, further, that in all events "Horizontal Development" shall exclude applicable uses of Servicing Expenses to the extent required in accordance with clause (B) of the proviso appearing as the last paragraph of the definition of "Servicing Expenses".

"**Horizontal Development Approval Request**" has the meaning set forth in Section 12.13(c) of the LLC Operating Agreement.

"**Horizontal Development Plan**" means, with respect to any Acquired REO Property, a specific development plan for Horizontal Development of such Acquired REO Property, including a detailed scope of proposed development, timeline and budget.

"**HUD**" means the United States Department of Housing and Urban Development or any successor thereto.

"**Immediate Family Member**" means, 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.

"**Indemnified Parties**" has, (i) for purposes of the LLC Operating Agreement, the meaning given therein, (ii) for purposes of the Contribution Agreement, the meaning given therein, and (iii) for purposes of the Reimbursement, Security and Guaranty Agreement, the meaning given therein.

"**Initial Member**" means the Person(s) from time to time constituting the "Initial Member" under, and in accordance with, the LLC Operating Agreement (initially, the Receiver). For avoidance of doubt, references to the Initial Member shall, as the context may require (with

respect to any period (x) on or before the Closing Date or (y) during which the Receiver is the Initial Member), include the Receiver as a party to the Original LLC Operating Agreement and/or as the Transferor, as applicable.

"**Initial Member Capital Contribution**" has the meaning set forth in Section 2.3(a)(i) of the LLC Operating Agreement.

"**Initial Member Interest**" means (i) the limited liability company interest in the Company held by the Initial Member, including the rights to share in the income, gain, loss, deductions and credits of, and the right to receive distributions from, the Company, (ii) all other rights, benefits and privileges enjoyed by the Initial Member (under the Act, the LLC Operating Agreement or otherwise) in its capacity as a Member, including rights to vote, consent and approve, and (iii) all other rights, benefits, privileges and claims (whether known or unknown) of the Initial Member under, or arising under, the LLC Operating Agreement. For the avoidance of doubt, the "Initial Member Interest" does not include any right, title or interest of the Receiver in its capacity as the Transferor or as a Holder.

"**Initial Member Related Person**" means the Initial Member and any other Related Person with respect to the Initial Member.

"**Initial Member WCR Account Deposit**" has the meaning set forth in the Private Owner Interest Sale Agreement.

"**Insolvency Event**" means, with respect to any specified Person, the occurrence of any of the following events:

(i) the specified Person makes an assignment for the benefit of creditors;

(ii) the specified Person files a voluntary petition for relief in any Insolvency Proceeding;

(iii) the specified Person is adjudged bankrupt or insolvent or there is entered against the specified Person an order for relief in any Insolvency Proceeding;

(iv) the specified Person files a petition or answer seeking for the specified Person any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Law;

(v) the specified Person seeks, consents to, or acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer of the specified Person or of all or any substantial part of the specified Person's properties. or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such specified Person and the appointment continues undischarged and unstayed for forty-five calendar days;

(vi) the specified Person files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the specified Person in any proceeding described in clauses (i) through (v);

(vii) the specified Person becomes unable to pay its obligations (other than, with respect to the Company (unless a Purchase Money Notes Trigger Event has occurred and is continuing and is not cured within ten Business Days), the Purchase Money Notes) as they become due, or the sum of such specified Person's debts is greater than all of such Person's property, at a fair valuation; or

(viii) (A) at least sixty days have passed following the commencement of any proceeding against the specified Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law and such proceeding has not been dismissed, or (B) (1) at least sixty days have passed following the appointment of a trustee, receiver or liquidator for the specified Person or all or any substantial part of the specified Person's properties without the specified Person's agreement or acquiescence, and such appointment has not been vacated or stayed, or (2) if such appointment has been stayed, at least sixty days have passed following the expiration of the stay and such appointment has not been vacated.

"**Insolvency Proceeding**" means any proceeding under Title 11 of the United States Code (11 U.S.C. §§101, et seq.) or any proceeding under any other Debtor Relief Law.

"**Insurance Deficiency Notice**" has the meaning set forth in the Section 4(c) of the Insurance Schedule.

"**Insurance Modifications**" has the meaning set forth in the Section 4(c) of the Insurance Schedule.

"**Insurance Schedule**" means the Insurance Schedule attached as Annex III to the LLC Operating Agreement.

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

"**Interim Management Fee**" means, with respect to each Due Period commencing during the Interim Servicing Period, a fee payable to the Manager (pursuant to, and for the purposes set forth in, Section 12.5 of the LLC Operating Agreement, and as payable in accordance with the Custodial and Paying Agency Agreement) for each Group of Assets for

which the Servicing Transfer Date has not yet occurred as of the first day of such Due Period, in an amount equal to (i) except as provided in clause (ii), the Interim Servicing Fee, or (ii) with respect to any Due Period commencing prior to the Closing Date, (x) if such Due Period ends prior to or on the Closing Date, zero, or (y) if such Due Period ends after the Closing Date, what the Interim Servicing Fee for such Due Period would have been if, for purposes of calculating the number of days in such Due Period, the portion of such Due Period prior to the Closing Date was disregarded.

"**Interim Servicing Expenses**" means all out-of-pocket fees, costs, expenses and indemnified amounts incurred by or on behalf of the Transferor (including as the Initial Member) or any Existing Servicer in connection with the Servicing and, to the extent expressly set forth in item (iv) below, the management of the Company and the Ownership Entities, incurred during, or in connection with the applicable exercise of rights or performance of applicable obligations with respect to, any Interim Servicing Period (or, for purposes of item (vii) below, as may otherwise be payable pursuant to such item), including, in each case to the extent so incurred during or in connection with any such Interim Servicing Period (or as may otherwise be payable pursuant to item (vii) below), (i) any and all out-of-pocket fees, costs, expenses and indemnified amounts which a Borrower is obligated to pay to any Person or to reimburse to the lender, in either case, pursuant to the applicable Note or any other Asset Documents, including Escrow Advances, (ii) any and all out-of-pocket expenses deemed necessary by the Transferor or any Existing Servicer to protect or preserve the value of the Collateral or the priority of the Liens and security interests created by the Asset Documents relating thereto, including Taxes, insurance premiums (including forced place insurance premiums), payment of ground rent, the costs of prevention of waste, repairs and maintenance, foreclosure expenses and legal fees and expenses relating to foreclosure or other litigation with respect to the Assets, (iii) any and all direct expenses related to the preservation, operation, management (including for engagement of on-site property managers for any specific Acquired REO Property), appraisal (including for any required Appraisal), leasing (including tenant improvements), and sale of the Collateral and/or Acquired Property (including real estate brokerage fees), and fees to Governmental Authorities to preserve or retain entitlements granted to, and benefitting, such Collateral and/or Acquired Property, (iv) costs and expenses in connection with the formation of the Company and other Reimbursable Company Administrative Expenses (but only to the extent incurred from and after the Closing Date or otherwise in connection with the formation of the Company), (v) to the extent not covered by any of clauses (i) through (iv), and subject only to any express exclusions set forth in the Contribution Agreement, expenses (including judgments, settlements and reasonable attorneys' fees of outside counsel) incurred by the Transferor (including to reimburse any applicable Existing Servicer) in connection with any litigation (including any bankruptcy action) with respect to the Assets, but only to the extent incurred from and after the Cut-Off Date, (vi) the costs of preparing, negotiating and recording any additional documentation required pursuant to Section 8.11 of the Reimbursement, Security and Guaranty Agreement, in each case pursuant to Section 8.11 of the Reimbursement, Security and Guaranty Agreement, but only to the extent incurred from and after the Closing, (vii) amounts required for the Company to discharge (in accordance with the Transaction Documents) the Obligations as they become due, and to make applicable indemnification and/or reimbursement payments (other than for Pre-Approved Charges) owing by the Company to the Initial Member, the Transferor, the PMN

Agent or any other Indemnified Party under the Transaction Documents, and (viii) Required Funding Draws or other advances required or permitted to be made to any Borrower (and any advances to the Company for making the same).

"**Interim Servicing Fee**" means, with respect to each Due Period during the Interim Servicing Period (or commencing during such Interim Servicing Period), a fee payable by the Company to the Transferor (including as the Initial Member) (for the provision of interim Servicing on behalf of the Company) for each Group of Assets for which the Servicing Transfer Date has not yet occurred as of the first day of such Due Period, which fee shall be calculated and earned as of the first day of such Due Period (and payable on the applicable Distribution Date for such Due Period in accordance with the Custodial and Paying Agency Agreement), and which fee shall be (i) with respect to Loans (other than, for the avoidance of doubt, Acquired Property), in the amount determined by multiplying (x) the Unpaid Principal Balance of the Loans (other than, for the avoidance of doubt, Acquired Property) in such Group of Assets calculated as of the first day of such Due Period by (y) 0.375%, and by (z) a fraction, the numerator of which is the number of days in the respective Due Period and the denominator of which is three hundred and sixty, and (ii) with respect to Acquired Property, in an amount determined by multiplying (x) the Net Fair Value of the Acquired Property in such Group of Assets calculated as of the first day of such Due Period by (y) 0.375%, and by (z) a fraction, the numerator of which is the number of days in the respective Due Period and the denominator of which is three hundred sixty.

"**Interim Servicing Period**" means, with respect to each Group of Assets, the period beginning on the day after the Cut-Off Date and ending, with respect to such Group of Assets, on the Servicing Transfer Date for such Group of Assets.

"**Interpretive Statement**" means any written or oral statement with respect to an Asset or Obligation, whether in, or in any filing made in connection with, any Action or otherwise, that involves interpreting the FDIA or any FDIC Legal Power.

"**Investment Company Act**" means the Investment Company Act of 1940, as may be amended, supplemented or modified from time to time.

"**Issuing Bank**" means, with respect to any Qualifying Letter of Credit, the applicable issuing bank.

"**Key Asset Managers**" means the individuals designated as the "Key Asset Managers" in the Bidder Qualification Application, as such group of individuals may be modified from time to time pursuant to a written request for such modification submitted by the Private Owner and consented to in writing by the Initial Member (such consent not to be unreasonably withheld).

"**Key Decision Makers**" means the individuals designated as the "Key Decision Makers" in the Bidder Qualification Application, as such group of individuals may be modified from time to time pursuant to a written request for such modification submitted by the Private Owner and consented to in writing by the Initial Member (such consent not to be unreasonably withheld).

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

"**LC Reissuance/Extension Failure**" means, with respect to any Qualifying Letter of Credit, (i) any failure of Issuing Bank to be and remain a Qualified Issuer, or (ii) any failure of such Qualifying Letter of Credit to be automatically renewed (for an additional year) at least sixty days prior to the then-scheduled expiry of such Qualifying Letter of Credit, or the receipt by the Initial Member of any notice to the effect that such Qualifying Letter of Credit will not be automatically renewed (for such additional one year period), in each case unless, within ten days of the occurrence of such failure or the Initial Member's receipt of such notice, as the case may be, the Private Owner shall have either (x) fully replaced such Qualifying Letter of Credit with a new Qualifying Letter of Credit issued by a Qualified Issuer (in conformance with all of the requirements set forth in the LLC Operating Agreement with respect to Qualifying Letters of Credit) or (y) completed an exercise of its right to substitute such Qualifying Letter of Credit with Qualifying Cash Collateral pursuant to Section 3.13(d) of the LLC Operating Agreement (and provided Qualifying Cash Collateral in the full undrawn face amount of such Qualifying Letter of Credit and paid to the Initial Member the Additional Security Substitution Fee), which right to substitute pursuant to Section 3.13(d) shall be deemed to exist for substitution of such Qualifying Letter of Credit notwithstanding the occurrence, if any, of a prior substitution (of Qualifying Cash Collateral with such Qualifying Letter of Credit) pursuant to such Section.

"**Lead Bidder**" means Colony Capital Acquisition, LLC, a limited liability company.

"**Liabilities**" means, as to any Person, all liabilities, covenants and obligations of such Person of any nature whatsoever, whether direct or indirect, absolute or contingent, matured or unmatured, known or unknown, or material or immaterial, whether accrued, vested or otherwise, and whether or not actually reflected, or required by GAAP to be reflected, in such Person's balance sheets or other books and records, including any such liabilities, covenants or obligations based or founded upon negligence, gross negligence, recklessness, fault, strict liability, misrepresentation, fraud, quantum meruit, contract, tort (including toxic tort), breach of warranty (express or implied), theories of design defect or failure to warn, so-called "successor liability" doctrines, infringement or misappropriation of intellectual property rights, breach of fiduciary duty, violation of Law or any other legal or equitable theory.

"**LIBOR Business Day**" means any day (i) that is a Business Day, and (ii) on which dealings in deposits in Dollars are conducted by and between banks in the London interbank Eurodollar market.

"**LIBOR Rate**" means, with respect to each calendar month (and for purposes of calculating interest accrued on Discretionary Funding Advances and any other amounts (to which the LIBOR Rate is applicable in accordance with the Transaction Documents) outstanding during such calendar month), the rate per annum equal to the British Bankers Association LIBOR Rate, as published by Reuters (or other commercially available source providing such quotations as selected by (with respect to Discretionary Funding Advances) or the Purchase Money Notes Guarantor (with respect to amounts payable to the Purchase Money Notes Guarantor) or the PMN Agent (with respect to amounts payable to the Holders), as applicable,

from time to time) as determined at approximately 11:00 a.m. New York time, two LIBOR Business Days prior to the first day of such calendar month, for Dollar deposits with a term of thirty days, adjusted for statutory reserve requirements for Eurocurrency liabilities.

"**Lien**" means any mortgage, deed of trust, pledge, deed to secure debt, trust deed, security interest, 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 liability company interest**" has the meaning ascribed to such term in the Act.

"**Limited Power of Attorney**" means the Limited Power of Attorney in the form of Attachment K to the Contribution Agreement.

"**Litigation Substitution Deadline Date**" means, with respect to any particular Closing Date Asset Litigation, or any particular claim or claims asserted in any Closing Date Asset Litigation, the earlier of (i) the sixtieth day after the last Servicing Transfer Date and (ii) the thirtieth day after the date on which the Transferor notifies the Company in writing (after the Closing Date) that it irrevocably waives its right to designate such Closing Date Asset Litigation, or such particular claim or claims asserted in such Closing Date Asset Litigation, respectively, to be a Retained Closing Date Asset Litigation, or such other date as may be agreed to in writing by the Transferor and the Company (each acting in their discretion).

"**LLC Interest**" means, with respect to any particular Member, (i) the entire limited liability company interest in the Company owned or held by such Member, including such Member's rights to share in the income, gain, loss, deductions and credits of, and the right to receive distributions from, the Company, (ii) all other rights, benefits and privileges enjoyed by such Member (under the Act, the LLC Operating Agreement or otherwise) in its capacity as a Member, including rights to vote, consent and approve, and (iii) all other rights, benefits, privileges and claims (whether known or unknown) of such Member under, or arising under, the LLC Operating Agreement (including, to the extent applicable, all rights, benefits, privileges and claims (whether known or unknown) of such Member (in its capacity as the Manager) under, or arising under, the LLC Operating Agreement (including rights to receive the Interim Management Fee or the Management Fee)).

"**LLC Operating Agreement**" means the Amended and Restated Limited Liability Company Operating Agreement dated as of the Closing Date, by and among the Initial Member, the Private Owner and the Company.

"**Loan**" means any loan or Loan Participation set forth on the Asset Schedule, and any loan into which any such loan or Loan Participation is refinanced or modified, and includes with respect to each such loan or Loan Participation: (i) any obligation evidenced by a Note; (ii) all rights, powers or Liens of the Receiver, the Failed Banks, the Company or any Ownership Entity in or under the Collateral and Collateral Documents; (iii) all rights of the Receiver, any Failed Bank or the Company under the Related Agreements and Asset Documents; (iv) all rights of the Receiver, any Failed Bank or the Company to any Deficiency Balance (in each case to the extent

relating to such Loan and not otherwise included in any Acquired Property, and in all events subject to any exclusions/inclusions as may be expressly set forth in the Asset Schedule or Ownership Entity and Receiver Acquired Property Schedule); (v) 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 Receiver, any Failed Bank, or the Company with respect to any of the foregoing or the ownership, use, function, value of or other rights pertaining to any of the foregoing, whether arising by way of counterclaim or otherwise, other than any claims retained by the Receiver pursuant to Section 2.7 of the Contribution Agreement; and (vi) all guaranties, warranties, indemnities and similar rights in favor of the Receiver, any Failed Bank or the Company with respect to any of the foregoing; provided, that, for purposes of any Transaction Document other than the Contribution Agreement, the foregoing rights, powers or Liens of (or in favor of) the Receiver or any Failed Bank shall be included in (and considered part of) the Loans only the extent such rights, powers or Liens are transferred to the Company pursuant to the Contribution Agreement (and not otherwise subsequently transferred back to the Receiver).

"**Loan Participation**" means any loan listed on the Asset Schedule subject to a shared credit, participation, co-lending or similar inter-creditor agreement under which any Failed Bank or the Receiver was, or the Company is, the lead or agent financial depository institution or otherwise managed or held the credit or sold participations, or under which any Failed Bank or the Receiver was, or the Company is, a participating financial depository institution or purchased participations in a credit managed by another Person.

"**Loan Participation Agreement**" means an agreement under which any Failed Bank or the Receiver was, or the Company is, the lead or agent financial depository institution or otherwise managed or held a shared credit or sold participations, or under which any Failed Bank or the Receiver was, or the Company is, a participating financial depository institution or purchased participations in a credit managed by another Person.

"**Losses**" means, collectively, losses, claims, damages, disbursements, suits, Liabilities, costs and expenses (including attorneys' fees and litigation and similar costs, and other out-of-pocket expenses, actually incurred in investigating, defending, asserting or preparing the defense or assertion of any of the foregoing), deficiencies, interest, awards, amounts paid in settlement, judgments, penalties and fines.

"**Lost Instrument Affidavit**" means a Lost Instrument Affidavit, in the form of Exhibit L to the Custodial and Paying Agency Agreement, executed by the Custodian.

"**Management Fee**" means, with respect to each Due Period, a fee payable to the Manager (pursuant to, and for the purposes set forth in, Section 12.5 of the LLC Operating Agreement, and as payable in accordance with the Custodial and Paying Agency Agreement) for each Group of Assets for which the Servicing Transfer Date has occurred as of (or occurs on) the first day of such Due Period (and which the Company or an Ownership Entity continues to own as of such first day), which fee shall be calculated and earned as of the first day of such Due Period (and payable on the applicable Distribution Date for such Due Period or, in the event of insufficient funds for such payment on such Distribution Date, on the applicable subsequent Distribution Date(s)) in accordance with the Custodial and Paying Agency Agreement), and shall

be (i) with respect to Loans (other than, for the avoidance of doubt, Acquired Property), in the amount determined by multiplying (x) the Unpaid Principal Balance of the Loans (other than, for the avoidance of doubt, Acquired Property) in such Group of Assets calculated as of the first day of such Due Period by (y) 0.75%, and by (z) a fraction, the numerator of which is the number of days in the respective Due Period and the denominator of which is three hundred and sixty, and (ii) with respect to Acquired Property, in the amount determined by multiplying (x) the Net Fair Value of Acquired Property in such Group of Assets calculated as of the first day of such Due Period by (y) 0.75%, and by (z) a fraction, the numerator of which is the number of days in the respective Due Period and the denominator of which is three hundred and sixty, payable with respect to any such Acquired Property for a maximum of three years after the title to such Acquired Property (or applicable Ownership Entity holding the same) is first transferred to the Company or such Ownership Entity (and if title to such Acquired Property or Ownership Entity was transferred to the Receiver prior to the Closing Date, such three-year period shall commence on the Closing Date), or such longer period as the Initial Member may expressly approve in its sole discretion on a case-by-case basis based on the applicable disposition plan, if any, for such Acquired Property prepared by the Manager. For purposes of clarification, in no event shall any Servicing Expenses (or Interim Servicing Expenses) be included in the determination of the Unpaid Principal Balance or Net Fair Value for purposes of calculation of the Management Fee (or the Interim Management Fee or the Interim Servicing Fee), notwithstanding any provisions of the Asset Documents that would permit or require any such Servicing Expenses (or Interim Servicing Expenses) to be treated as advances (or otherwise as part of the principal amount of any such Asset).

"**Manager**" (i) has, for purposes of the LLC Operating Agreement, the meaning given therein, and (ii) for purposes of any other Transaction Document means the Person from time to time constituting the "Manager" under, and in accordance with, the LLC Operating Agreement.

"**Maturing Purchase Money Notes**" has the meaning set forth in Section 2.8 of the Custodial and Paying Agency Agreement.

"**Maturity Date Report**" mean a report that specifies the amount on deposit in the Defeasance Account to pay a class of Purchase Money Notes as of the Purchase Money Notes Maturity Date for such Class.

"**Member Schedule**" has the meaning set forth in Section 4.1 of the LLC Operating Agreement.

"**Members**" means (i) the Person from time to time constituting the "Initial Member" under and in accordance with the LLC Operating Agreement, and (ii) from and after the Closing Date, the Person from time to time constituting the "Private Owner" under and in accordance with the LLC Operating Agreement (regardless of whether such Person is also the Manager), in each case so long as such Person remains a member of the Company. For purposes of clarification, references in the LLC Operating Agreement to the term "member" (lowercase) means a "member" as such term is defined in the Act.

"**MERS**" means Mortgage Electronic Registration Systems, Incorporated, or any successor thereto.

"**MERS Designated Loan**" has the meaning set forth in the Electronic Tracking Agreement, and shall include, as of any date of determination, any Loan (for so long as the applicable Mortgage with respect thereto remains held by or on behalf of the Company) that is registered in the MERS System as of such date.

"**MERS Registered Mortgage**" means any Asset that is registered in the MERS System as of the Closing Date.

"**MERS Registered Mortgages**" has the meaning set forth in Section 3.1(c)(i) of the Contribution Agreement.

"**MERS Report**" means the schedule listing the MERS Designated Loans and other information.

"**MERS® System**" means the MERSCORP, Inc. mortgage electronic registry system, as more particularly described in the MERS Procedures Manual (a copy of which is attached as an exhibit to the Electronic Tracking Agreement).

"**Modification**" means 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.

"**Monthly Report**" means a report in electronic format in the form set forth in Exhibit B to the LLC Operating Agreement (as such form may be updated or otherwise modified from time to time pursuant to Section 3(b) of the Reporting and Access Schedule), to be prepared and distributed by the Manager in accordance with the Reporting and Access Schedule.

"**Mortgage**" means the mortgage, deed of trust or other instrument, including any Modifications thereto, creating a first or junior Lien on or ownership interest in a Mortgaged Property.

"**Mortgage Assignment**" means, 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 and pledge of the Mortgage.

"**Mortgaged Property**" means (i) the underlying real property or interest in real property, whether or not improved by buildings or facilities, and any personal property, fixtures, leases and other property or rights pertaining thereto, securing a mortgage loan, and (if applicable) any other Collateral securing such mortgage loan, or (ii) with respect to any other type of loan, the Collateral securing such loan. The Collateral for a Loan may include one or more of the collateral types described in clauses (i) or (ii).

"**Net Fair Value**" of Acquired Property means, as of any measurement date, (a) the fair value thereof based on the price that would be received to sell such Acquired Property (excluding any related Deficiency Balance or Deficiency Judgment Claim) in an orderly transaction between market participants at the measurement date (including as determined based on the Appraised Value), less (b) the expected incremental direct costs to transact such a sale, including broker commissions, legal and title transfer fees, and closing costs (except that, in determining the Net Fair Value of single family residences, this item (b) shall not be subtracted from item (a) above), in each case as the foregoing may be reasonably determined by the Manager from time to time (and in any event recalculated based on the foregoing not less than once per year in connection with the preparation of the annual audited financial statements of the Company) in accordance with the requirements herein (and in the other Transaction Documents), with such determination to be set forth (and updated, as applicable), on an Acquired Property-by-Acquired Property basis, in each Consolidated Business Plan (and update thereto), and, for purposes of each Distribution Date, further updated in the Monthly Report covering the Due Period with respect to such Distribution Date; provided that:

(i) with respect to any Acquired Property that is included among the Assets on the Closing Date, until such time as the Manager shall have delivered a Consolidated Business Plan setting forth the applicable Net Fair Value of such Acquired Property, the Net Fair Value of such Acquired Property shall initially be the book value set forth on the Asset Schedule (as the Unpaid Principal Balance of such Acquired Property as of the Cut-Off Date) as adjusted to its Adjusted Unpaid Principal Balance pursuant to the Contribution Agreement, as such amount may be further adjusted as set forth herein;

(ii) with respect to any Acquired Property that is not included among the Assets on the Closing Date, such Net Fair Value shall initially be determined at the time the relevant Collateral becomes Acquired Property, based on the Appraised Value as determined pursuant to Section 12.17(d) of the LLC Operating Agreement (and, until such determination of the Appraised Value, shall be based on the Unpaid Principal Balance of the applicable Loan immediately prior to the same being converted to such Acquired Property (where such Acquired Property represented, immediately prior to such conversion, all or substantially all in value of the Collateral for such Loan), or otherwise on the applicable Release Price for such Collateral immediately prior to such conversion thereof to such Acquired Property);

(iii) in the event of any partial sale or other partial disposition of any Acquired Property, the Net Fair Value of such Acquired Property (as so retained by the Company) shall be reduced by the Release Price of the portion so sold or otherwise disposed (or, if no Release Price shall exist for such portion, by the net proceeds of such partial sale or other disposition), in each case to the extent such sale or disposition occurred after the most recent determination of the Net Fair Value of such Acquired Property pursuant to an applicable Appraisal (or annual determination in connection with the audited annual financial statements of the Company); and

(iv) the Net Fair Value with respect to any Acquired Property will be increased by the amount of, without duplication, (A) any advances or Interim Servicing Expenses by the Transferor (or the Initial Member) during the Interim Servicing Period under or as described in the Contribution Agreement (and applicable provisions of the LLC Operating Agreement) made

with respect thereto, and (B) any Permitted Development Expenses (or other expressly permitted expenditures for Development pursuant to Section 12.14 of the LLC Operating Agreement) or Servicing Expenses for any construction or development (pursuant to clause (B) of the proviso appearing as the last paragraph of the definition of "Servicing Expenses") paid with respect thereto, in each case (for (A) and (B) above) only to the extent such advances or expenses both (x) are capitalized thereto in accordance with GAAP (and applicable Law), and (y) were made or incurred, as applicable, after the effective date of the most recent determination of the Net Fair Value of such Acquired Property pursuant to an applicable Appraisal (or determination in connection with the audited annual financial statements of the Company).

"**Net Gain on Investments**" means, as of any date, the Net Gain/Loss on Investments calculated as of such date, if such Net/Gain Loss on Investments is a positive number. For the avoidance of doubt, if, as of any date, the Net Gain/Loss on Investments calculated as of such date is zero or a negative number, then the "Net Gain on Investments" as of such date is zero.

"**Net Gain/Loss on Investments**" means, as of any date, (i) the aggregate net income, if any, or the aggregate net loss (expressed as a negative number), if any, resulting from all investments from time to time of the funds on deposit in the Defeasance Account pursuant to Section 4.1 of the Custodial and Paying Agency Agreement (and, to the extent applicable, the liquidation of the same in accordance with Section 4.1 of the Custodial and Paying Agency Agreement), as determined by the Paying Agent (whose determination shall be conclusive absent manifest error), plus (ii) any amount previously deposited into the Defeasance Account by any Purchase Money Notes Guarantor or the Transferor in respect of "Net Loss on Investments".

"**Net Income and Net Loss**" means, for each Fiscal Year or other period, the taxable income or loss of the Company, or particular items thereof, determined in accordance with the accounting method used by the Company for federal income tax purposes with the following adjustments: (a) all items of income, gain, loss, deduction or expense specially allocated pursuant to the LLC Operating Agreement (including pursuant to Sections 6.2(b)(i) through (iv) of the LLC Operating Agreement) shall not be taken into account in computing such taxable income or loss; (b) any income of the Company that is exempt from federal income taxation and not otherwise taken into account in computing the taxable income of the Company shall be added to such taxable income or loss; (c) if the Book Value of any asset differs from its adjusted tax basis for federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Book Value; (d) upon an adjustment to the Book Value of any asset pursuant to the definition of Book Value, the amount of the adjustment shall be included as gain or loss in computing such Net Income or Net Loss; (e) if the Book Value of any asset differs from its adjusted tax basis for federal income tax purposes, the amount of depreciation, amortization or cost recovery deductions with respect to such asset for purposes of determining Net Income or Net Loss shall be an amount which bears the same ratio to such Book Value as the federal income tax depreciation, amortization or other cost recovery deductions bears to such adjusted tax basis (provided that if the federal income tax depreciation, amortization or other cost recovery deduction is zero, the Tax Matters Member may use any reasonable method for purposes of determining depreciation, amortization or other cost recovery deductions in calculating Net Income or Net Loss); and (f) except for items in (a) above, any expenditures of the Company not deductible in computing taxable income or loss, not properly

capitalizable and not otherwise taken into account in computing Net Income or Net Loss pursuant to this definition, shall be treated as deductible items.

"**Net Loss on Investments**" means, as of any date, the absolute value of the Net Gain/Loss on Investments calculated as of such date, if such Net/Gain Loss on Investments is a negative number. For the avoidance of doubt, if, as of any date, the Net Gain/Loss on Investments calculated as of such date is zero or a positive number, then the "Net Loss on Investments" as of such date is zero.

"**Non-Guaranteed Purchase Money Note**" means any Purchase Money Note that is not a Guaranteed Purchase Money Note.

"**Non-Guaranteed Purchase Money Note Obligations**" means the Secured Obligations consisting of all debts, Liabilities, obligations (including any obligation to pay principal, charges, expenses, fees, attorney costs, indemnities and other amounts), covenants and duties of any Grantor arising under any Non-Guaranteed Purchase Money Note, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including fees that accrue after the commencement by or against the Debtor under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such fees are allowed claims in such proceeding.

"**Non-Permitted Holder**" has the meaning set forth in Section 2.12(b) of the Custodial and Paying Agency Agreement.

"**Note**" means 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, in each case evidencing the indebtedness of a borrower under a Loan, and all Modifications to the foregoing.

"**Note Owner**" means the beneficial owner of an interest in a Rule 144A Global Note.

"**Notice of Event of Default**" has, for purposes of the Account Control Agreement, the meaning set forth in the Account Control Agreement, and for purposes of the Private Owner Pledged Account Control Agreement, the meaning set forth in the Private Owner Pledged Account Control Agreement.

"**Notice Schedule**" means the Notice Schedule attached as Schedule I to this Agreement.

"**NY UCC**" means the Uniform Commercial Code as in effect on the Closing Date in the State of New York, as may be amended, supplemented or modified from time to time, and any successor statute.

"**Obligations**" means all of the following (in each case, whether existing or accrued (or due, overdue or not due) as of, or incurred, imposed or arising on or after, the Cut-Off Date and/or the Closing Date):

(a) all Liabilities (including any Liability to make an extension of credit (or other advance)) of the Receiver under any Transferred Contract, in each case to the extent the same are, in accordance with the FDIC Legal Powers (interpreted as set forth in the last sentence of Section 2.2 of the Contribution Agreement), legally binding on and valid against the Receiver;

(b) all Liabilities (including (i) Liabilities for Taxes, (ii) homeowners association dues and other assessments, (iii) the obligation to prevent waste or allow the property to become a nuisance, and (iv) the obligation to comply with deed, zoning or other use restrictions) of the Receiver with respect to any Receiver Acquired Property (including with respect to the existence, acquisition, ownership, possession, operation, conduct or condition thereof), whether imposed by Law, order of any Governmental Authority, recorded instrument or deed, or otherwise, in each case to the extent the same are, in accordance with the FDIC Legal Powers (interpreted as set forth in the last sentence of Section 2.2 of the Contribution Agreement), legally binding on and valid against the Receiver;

(c) without limitation of clause (ii) of the first sentence of Section 2.2 of the Contribution Agreement, all Liabilities (including any Liabilities for or in respect of any costs and expenses (including attorneys' fees and litigation and similar costs, and other out-of-pocket expenses, actually incurred in investigating, defending, asserting or preparing the defense of any Assumed Closing Date Asset Litigation), judgments, awards, fines, settlement amounts or penalties) of the Receiver (after giving effect to the FDIC Legal Powers) for or in respect of, or otherwise arising out of, any Assumed Closing Date Asset Litigation, in each case (i) to the extent the same are, in accordance with the FDIC Legal Powers (interpreted as set forth in the last sentence of Section 2.2 of the Contribution Agreement), legally binding on and valid against the Receiver and (ii) in the case of any such costs or expenses, to the extent the same were or are incurred after the Cut-Off Date; and

(d) all Liabilities of the Receiver arising out of or in connection with, resulting from or related in any way to, any Asset (including with respect to the existence, acquisition, ownership, possession, operation, conduct or condition thereof), to the extent attributable to acts, omissions, events or circumstances (including (i) acts or omissions of, or on behalf of, the Company, the Private Owner, the Servicer, any subsidiary of the Company or any Ownership Entity, and (ii) without limitation of clause (i), any acts or omissions of the Transferor and/or any Existing Servicer in connection with the services (including in any event all Servicing) provided (or caused to be provided) or contemplated to be provided (or to be caused to be provided) by the Transferor and/or any Existing Servicer pursuant to, or as described in, Section 3.3 of the Contribution Agreement) occurring or initially arising at any time after the Cut-Off Date (including at any time after the Closing Date);

in each case (for (a) through (d) inclusive) excluding, however, any Excluded Liability (disregarding for this purpose clause (c) of the definition of the term "Excluded Liabilities"). It is understood and agreed that any Liability of any Failed Bank or the Receiver that has been discharged or otherwise extinguished (whether by operation of Law, by settlement or payment (including payment by issuance of a receivership certificate), by contract or otherwise) prior to, on or as of a specified date does not constitute a Liability of the Receiver as of such specified date, provided, for the avoidance of doubt, that this sentence does not limit or qualify, and is

subject to, clause (c) of the preceding sentence or the indemnity set forth in clause (ii) of the first sentence of Section 2.2 of the Contribution Agreement.

"**Obligor**" means (i) 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 Asset Documents or (ii) any other Person (other than any Borrower, the lender(s) and any administrative or other agent) that is obligated pursuant to the Asset Documents with respect to an Asset, and shall include the guarantor under any completion guaranty or similar document.

"**Office**" has the meaning set forth in Section 6.1(a) of the Custodial and Paying Agency Agreement.

"**Omnibus Assignment**" means, with respect to any Receiver Acquired Property (other than a Potentially Defectively Foreclosed Receiver Acquired Property), the title to which is held by the Receiver (rather than an Ownership Entity) as of the Closing Date, a general assignment and assumption, without representation, warranty or covenant of any kind, of any Related Agreements and tangible and intangible personal property related to such Receiver Acquired Property, in the form of Attachment J-2 to the Contribution Agreement.

"**Order**" has the meaning set forth in Section 6.1 of the Contribution Agreement.

"**Organizational Documents**" means: (i) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (ii) with respect to any limited liability company, the certificate or articles of formation or organization and limited liability company or operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**Original Face Amount**" (i) with respect to any Rule 144A Global Note, has the meaning set forth therein, and (ii) with respect to a Certificated Note, means the stated original principal amount of such Certificated Note.

"**Original LLC Operating Agreement**" means the initial "limited liability company agreement" (as such term is defined in the Act) of the Company dated as of a date prior to the Closing Date, pursuant to which the Initial Member held the entire limited liability company interest in the Company.

"**Ownership Entity**" means a Special Purpose Entity that is a direct, wholly-owned subsidiary of the Company (or, for purposes of the Contribution Agreement, an entity that is identified as an Ownership Entity on the Ownership Entity and Receiver Acquired Property Schedule), whether contributed by the Transferor 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 the Contribution Agreement (or otherwise identified as an Ownership Entity in the Ownership Entity and Receiver Acquired Property Schedule) that is not a Special Purpose Entity as of the Closing Date, any such entity shall be deemed to be an Ownership Entity; provided, further, that, the Company and the Manager shall take all necessary and appropriate actions to cause such entity to become a Special Purpose Entity as promptly as possible after the Closing.

"**Ownership Entity and Receiver Acquired Property Schedule**" means Attachment C to the Contribution Agreement.

"**Ownership Interest**" means, with respect to any Person, (i) any limited liability company interest in, any shares of capital stock of, or any other ownership or profit, or voting, interest in, such Person, (ii) any rights or recourse against such Person under any stock appreciation, phantom stock, profit participation or similar rights or plan, (iii) any rights of any nature whatsoever (including conversion rights, exchange rights or rights under warrants) to have such Person issue (or otherwise cause to become outstanding), sell, execute or deliver, or any liability or obligation of such Person to issue (or otherwise cause to become outstanding), sell, execute or deliver, (x) any Ownership Interest with respect to such Person described in clause (i) or (ii), or (y) any contract including any right or recourse described in clause (i) or (ii) or above in this clause (iii), or (iv) any other "equity security" (as such term is defined in Rule 3a11-1 under the Exchange Act) of such Person.

"**Paying Agent**" means the Bank, and any successor paying agent that is a Qualified Custodian and Paying Agent and is acceptable and approved by the Initial Member, such approval not to be unreasonably withheld, delayed or conditioned.

"**Percentage Interest**" means, with respect to the limited liability company interest in the Company held by the Initial Member prior to the Closing Date, 100% and, with respect to the limited liability company interests in the Company held by the Initial Member and Private Owner, respectively, on and after the Closing Date, as set forth in Section 2.3(c) of the LLC Operating Agreement (pursuant to which Section 2.3(c) such Percentage Interest is 60% for the Initial Member and 40% for the Private Owner).

"**Perfection Requirements**" has the meaning set forth in Section 7.1(e) of the Reimbursement, Security and Guaranty Agreement.

"**Permitted Development**" means any applicable Substantially Complete Vertical Development, to the extent of the Permitted Vertical Completion Expenses with respect thereto, and any Permitted Horizontal Development has the meaning set forth in Section 12.13(a) of the LLC Operating Agreement.

"**Permitted Development Expenses**" means any Permitted Vertical Completion Expenses or Permitted Horizontal Expenses, and the approved budgeted costs and expenses of the Company (other than Working Capital Expenses) set forth in the approved Development Plan in connection with the Permitted Development with respect to a particular Asset; provided, that, in no event shall any such costs and expenses include any Excluded Expenses.

"**Permitted Dispositions**" has the meaning set forth in Section 8.1 of the LLC Operating Agreement.

"**Permitted Horizontal Development**" has the meaning set forth in Section 12.13(a) of the LLC Operating Agreement.

"**Permitted Horizontal Development Expenses**" means the approved budgeted costs and expenses of the Company (other than Working Capital Expenses) set forth in the approved Horizontal Development Plan in connection with the Permitted Horizontal Development; provided, that, in no event shall any such costs and expenses include any Excluded Expenses.

"**Permitted Investments**" means any one or more of the following obligations or securities having at the time of purchase, or at such other time as might be specified, the required ratings, if any, provided for in this definition:

(i) direct obligations of, or guaranteed as to timely payment of principal and interest by, the United States of America or any agency or instrumentality of the United States of America, the obligations of which are backed by the full faith and credit of the United States of America; for the avoidance of doubt, this clause (i) shall include any debt guaranteed by the FDIC in its corporate capacity;

(ii) demand and time deposits in or certificates of deposit of, or bankers' acceptances issued by, any bank or trust company, savings and loan association or savings bank in the United States, provided that, in the case of obligations that are not fully FDIC-insured deposits, the commercial paper and/or long-term unsecured debt obligations of such depository institution or trust company (or in the case of the principal depository institution in a holding company system, the commercial paper or long-term unsecured debt obligations of such holding company) have an Acceptable Investment Rating;

(iii) general obligations of or obligations guaranteed by any state of the United States or the District of Columbia receiving ratings of not less than the highest rating of each Rating Agency rating such obligations;

(iv) mutual funds in which investments are limited to the obligations referred to in clauses (i), (ii) or (iii) of this definition; and

(v) with the prior written consent of the Required Consenting Parties (or (x) the Initial Member alone, in the case of the Private Owner Pledged Account, and (y) the PMN Agent alone, in the case of the Defeasance Account), any other demand, money market or time deposit or other obligation, instrument, security or investment.

"**Permitted Liens**" means (i) Liens in favor of the Secured Parties pursuant to the Transaction Documents; (ii) Liens on Collateral (other than Acquired Property) caused or permitted by the Manager as permitted under the Asset Documents where the applicable Borrower is not in default thereunder (so long as any such Lien caused by, or permitted pursuant to a discretionary consent or waiver of, the Manager is subordinated and junior to the security

interest in favor of the Company in the applicable Collateral); (iii) any Lien arising by operation of Law with respect to any Mortgaged Property as a result of the applicable Borrower's failure to pay ground rents, Taxes, assessments, water rates, sewer rents, and other similar charges with respect to such Mortgaged Property, so long as the Manager shall have determined in accordance with the Servicing Standard (and shall have maintained applicable records of such determination pursuant to Section 1 of the Reporting and Access Schedule) that the amount of such Lien (or applicable aggregate amount required to be paid by the Company so as to discharge the same) exceeds the net recoverable amount to the Company with respect to such Mortgaged Property and provided that, so long as such Lien remains in effect, the Company does not acquire title to such Mortgaged Property or otherwise have any liability with respect to such Lien; (iv) inchoate Liens arising by operation of law for Taxes not yet due, payable or delinquent; (v) leasehold interests of lessees and purchase rights of purchasers under leases and sales contracts otherwise permitted under the Transaction Documents (with respect to the Collateral or Acquired Property being so leased or purchased); (vi) in the case of Acquired Property (and in addition to the foregoing), any Permitted Lien (and all title and survey exceptions based thereon as set forth in the applicable owner's title insurance) in existence at the time the Company or an applicable Ownership Entity acquired title to such Acquired Property (other than, in connection with any such title acquired by foreclosure or other applicable legal process, any such Lien as would be extinguishable in accordance with applicable Law in connection with such foreclosure or other legal process); and (vii) such other Liens as the Required Consenting Parties may unanimously approve in writing in their sole discretion.

"**Permitted Vertical Completion Expenses**" means, as the context may require, (i) in connection with any Loan, Permitted Vertical Development Funding Draws, and/or (ii) in connection with any Acquired REO Property, the reasonable costs and expenses for Substantially Complete Vertical Development of such Acquired REO Property (including the payment of so-called "soft costs" payable during construction (such as real estate Taxes, ground rents and insurance premiums)) consistent with such costs as would typically have been paid out of funding of the applicable Loan relating to such Acquired REO Property (as reasonably determined by the Manager), in each case (x) only to the extent the Manager determines, in its reasonable judgment, that the payment of such costs and expenses is in the best interests (in terms of maximizing the value of the Acquired REO Property) of the Company and the Initial Member, and (y) in accordance with the Servicing Standard and, except to the extent specifically superseded by the Business Plan as it relates to such Asset, the Asset Documents that were applicable to the Acquired REO Property before it became an Acquired REO Property (not including payment of debt service under the applicable Asset Documents, and without reference to the unfunded commitment, if any, having been in effect with respect to such Acquired REO Property under the Asset Documents); provided, that in no event shall any such costs and expenses include any Excluded Expenses.

"**Permitted Vertical Development Funding Draw**" means, with respect to any Loan, any Funding Draw, other than a Required Funding Draw, for the funding of Substantially Complete Vertical Development of the real property securing such Loan pursuant to the funding provisions of the applicable Asset Documents and in accordance with the Servicing Standard, in each case so long as (i) if required by applicable Law or if otherwise deemed necessary by the

Manager or required hereunder or under the Transaction Documents, an endorsement to each applicable title policy insuring the Asset, which endorsement shall be in form and content acceptable to the Manager, is obtained that (a) brings down the effective date of the title policy to the date on which the applicable Permitted Vertical Development Funding Draw it covers is made, (b) increases the liability limit of the title policy by an amount equal to the principal amount of such Permitted Vertical Development Funding Draw, and (c) contains no new exceptions to title; (ii) notwithstanding anything to the contrary contained in the LLC Operating Agreement, if the then outstanding unpaid principal balance of the Loan exceeds (or would, after taking into account the applicable Permitted Vertical Development Funding Draw, so exceed) the value of the Collateral for such Loan, the Manager shall make or permit any such Permitted Vertical Development Funding Draw only if the Manager determines, in its reasonable judgment, that the Borrower is reasonably likely to be able to repay the Loan, or that the making of the Permitted Vertical Development Funding Draw is in the best interests (in terms of maximizing the value of the Loan) of the Company and the Members; and (iii) such Permitted Vertical Development Funding Draw is made in accordance with the terms of the Loan and the Asset Documents; provided, however, that if such Permitted Vertical Development Funding Draw would result in the principal amount of such Loan being in excess of the related unfunded commitment set forth in the Asset Documents (less the aggregate principal amount of any Required Funding Draws or other Permitted Vertical Development Funding Draws previously made by the Company on or after the Closing Date in respect of such Loan) or if any term with respect to the Loan or the Asset Documents precludes such Permitted Vertical Development Funding Draw in the event of a Borrower default, the applicable unfunded commitment may be increased (and such Permitted Vertical Development Funding Draw may be made) and/or such term may be waived, in each case only if the Manager determines, in its reasonable judgment and in accordance with the Servicing Standard, that such increase to the unfunded commitment (and related Permitted Vertical Development Funding Draw) and/or waiver is in the best interests of the Company and the Initial Member in terms of maximizing the value of the Loan and, in the case of any such increase to the unfunded commitment (or other Permitted Vertical Development Funding Draw not contemplated in the existing Asset Documents), (x) such increased commitment and the related Permitted Vertical Development Funding Draw are evidenced by an applicable Note (or Notes) and amendments to the Asset Documents (including Collateral Documents) pursuant to which such increased commitment and Permitted Vertical Development Funding Draw shall be secured by all of the Collateral for such Loan and otherwise subject to the general provisions with respect to other outstanding amounts under such Loan, all on terms and conditions consistent with the Asset Documents as in effect prior to such amendment, and (y) the Manager complies with the requirements in item (i) above; provided, that in no event shall any such costs and expenses payable pursuant to any such Permitted Vertical Development Funding Draw include any Excluded Expenses.

"**Person**" means 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 Authority or other entity.

"**Pledged Interests**" shall have the meaning set forth in Section 3.1 of the Reimbursement, Security and Guaranty Agreement.

"**PMN Agent**" means Person from time to time constituting the "PMN Agent" under the Reimbursement, Security and Guaranty Agreement (initially, the Receiver), in such capacity.

"**PMN Factor**" means, in relation to any particular Purchase Money Note, the quotient of the then-outstanding unpaid principal amount of such Purchase Money Note divided by the aggregate then-outstanding unpaid principal amount of all of the Purchase Money Notes of the same Class of Purchase Money Notes.

"**PMN Satisfaction/Defeasance Date**" means (i) prior to the Guaranty Issuance Date, the date on which all the Purchase Money Notes shall have been indefeasibly paid, satisfied and discharged in full, and (ii) on or after the Guaranty Issuance Date, the date on which both (x) the balance in the Defeasance Account (plus any Net Loss on Investments, and disregarding for purposes of such calculation any amounts deposited into the Defeasance Account pursuant to Section 2.8 of the Custodial and Paying Agency Agreement or pursuant to any Purchase Money Notes Guaranty (and any related disbursement from the Defeasance Account in respect of any such deposit)) equals (or exceeds) the aggregate outstanding principal amount of all the Purchase Money Notes and (y) all reimbursement amounts, together with any accrued interest thereon, owed to all Purchase Money Notes Guarantors pursuant to the Reimbursement, Security and Guaranty Agreement for previous payments made by them pursuant to any Purchase Money Notes Guaranty shall have been indefeasibly paid, satisfied and discharged in full.

"**PO Owner**" means (i) any holder of an Ownership Interest in the Private Owner at any time prior to the Transaction Termination Date and (ii) if any such holder is a nominee for another Person or Persons, each such other Person or Persons.

"**PO Owner Undertaking**" has the meaning set forth in Section 4(a) of the Private Owner Interest Sale Agreement.

"**PO/Manager Distribution Instruction**" has the meaning set forth in Section 5.1(a) of the Custodial and Paying Agency Agreement.

"**PO/Manager Distribution Reinstatement Notice**" has the meaning set forth in Section 5.1(a) of the Custodial and Paying Agency Agreement.

"**Potentially Defectively Foreclosed Receiver Acquired Property**" means each real property (and related personal property) Receiver Acquired Property identified as "Potentially Defectively Foreclosed" or as a "Potentially Defectively Foreclosed Receiver Acquired Property" on the Ownership Entity and Receiver Acquired Property Schedule.

"**Pre-Approved Charges**" means the costs and expenses (including legal fees and costs incurred by the Company, the Manager, the Servicer or any Subservicer for the benefit of the Company) expressly designated as "Pre-Approved Charges" in the Contribution Agreement (including Sections 2.8, 3.1(c), 3.1(d)(i), 3.1(e), 3.2(b), 4.3, 4.10 and 5.6 of the Contribution Agreement) or the Reimbursement, Security and Guaranty Agreement, and no other costs or expenses.

"**Previously Approved Matters**" has the meaning set forth in Section 2.7 of the LLC Operating Agreement.

"**Principal Deficiency**" has the meaning set forth in Section 2.4(c) of the Contribution Agreement.

"**Prior Servicers**" means, as of any date of determination, the Receiver, the Company, the Existing Servicers, the FDIC, any Failed Bank and any predecessor-in-interest thereof, any Ownership Entities existing (or having been in existence) on or before such date, and all of their respective Related Persons (but excluding, in all cases, the Manager (in its individual capacity)).

"**Priority of Payments**" has the meaning set forth in Section 5.1 of the Custodial and Paying Agency Agreement.

"**Private Owner**" means the Person from time to time constituting the "Private Owner" under, and in accordance with, the LLC Operating Agreement (initially, ColFin 2012 CRE ADC Funding, LLC, a Delaware limited liability company).

"**Private Owner Interest**" (a) for purposes of the Private Owner Interest Sale Agreement, has the meaning set forth in the Recitals of the Private Owner Interest Sale Agreement, and (b) for purposes of each Transaction Document other than the Private Owner Interest Sale Agreement, means (i) the limited liability company interest in the Company held by the Private Owner, including the rights to share in the income, gain, loss, deductions and credits of, and the right to receive distributions from, the Company, (ii) all other rights, benefits and privileges enjoyed by the Private Owner (under the Act, the LLC Operating Agreement or otherwise) in its capacity as a Member, including rights to vote, consent and approve, and (iii) all other rights, benefits, privileges and claims (whether known or unknown) of the Private Owner (in any capacity, including as the Manager) under, or arising under, the LLC Operating Agreement or the Custodial and Paying Agency Agreement, including in any event all rights of the Private Owner (in any capacity, including as the Manager) to receive the Interim Management Fee or the Management Fee, to receive any distributions or payments on account of any Excess Working Capital Advances or Discretionary Funding Advances made by or on behalf of the Private Owner (in any capacity, including as the Manager) and all rights with respect to any funds in the Private Owner Pledged Account. For the avoidance of doubt, the "Private Owner Interest" does not include any right, title or interest of the Manager (in its individual capacity) under the Servicing Agreement.

"**Private Owner Interest Asset Value**" means, with respect to any Asset, the portion of the Private Owner Interest Sale Price allocated to such Asset, as set forth on the Private Owner Interest Asset Value Schedule.

"**Private Owner Interest Asset Value Schedule**" means the "Private Owner Interest Asset Value Schedule" attached as Attachment B to the Contribution Agreement.

"**Private Owner Interest Sale Agreement**" means the Private Owner Interest Sale and Assignment Agreement between the Initial Member and the Private Owner dated as of the Closing Date.

"**Private Owner Interest Sale Price**" means the purchase price set forth in the Private Owner Interest Sale Agreement (as the "Private Owner Interest Sale Price" defined therein) for the limited liability company interest sold to the Private Owner.

"**Private Owner Obligations**" means all duties, liabilities and obligations of the Private Owner under or with respect to the LLC Operating Agreement and the Transaction Documents.

"**Private Owner Pledged Account**" means the segregated trust or custodial account designated as the "Private Owner Pledged Account" pursuant to Section 3.9(a) of the Custodial and Paying Agency Agreement.

"**Private Owner Pledged Account Control Agreement**" means the Private Owner Pledged Account Control Agreement (in substantially the form set forth in Exhibit Q to the Custodial and Paying Agency Agreement), among the Private Owner, the Paying Agent and the Initial Member, with respect to the Private Owner Pledged Account.

"**Private Owner Pledged Amount**" means Two Million and No/100 Dollars ($2,000,000.00).

"**Private Owner WCR Account Deposit**" has the meaning set forth in the Private Owner Interest Sale Agreement.

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

"**Purchase Money Notes**" means, (i) individually, a Class A Purchase Money Note and (ii) collectively, (a) Class A Purchase Money Notes and (b) any Subsequent Class Purchase Money Notes.

"**Purchase Money Notes Asset Value**" means, with respect to any Asset, the product of (A) the aggregate original principal amount of the Purchase Money Notes and (B) a fraction, the numerator of which is the Private Owner Interest Asset Value of such Asset and the denominator of which is the Private Owner Interest Sale Price. By way of clarification, adjustments based on Excess Principal or a Principal Deficiency do not affect the Purchase Money Notes Asset Value.

"**Purchase Money Notes Disposition**" means any Disposition of any Purchase Money Note.

"**Purchase Money Notes Guarantor**" means the "Purchase Money Notes Guarantor" under any Purchase Money Notes Guaranty (and, in each case, any successor thereto).

"**Purchase Money Notes Guaranty**" means any, and each, guaranty entered into pursuant to Section 8.4(b)(iv) of the Contribution Agreement or Section 2.8 of the Custodial and

Paying Agency Agreement. If more than one such agreement is entered into, all such agreements shall rank *pari passu* with each other in right of payment.

"**Purchase Money Notes Issuance Fee**" has the meaning set forth in Section 2.10(a) of the Contribution Agreement.

"**Purchase Money Notes Maturity Date**" means either the Class A Note Maturity Date or, with respect to any Subsequent Class Purchase Money Notes, the "Maturity Date" as defined in the Purchase Money Notes of such Class.

"**Purchase Money Notes Register**" has the meaning set forth in Section 2.7(a) of the Custodial and Paying Agency Agreement.

"**Purchase Money Notes Registrar**" has the meaning set forth in Section 2.7(a) of the Custodial and Paying Agency Agreement.

"**Purchase Money Notes Trigger Event**" shall be deemed to have occurred (and to exist) if, as of any time during the periods set forth below, (a) the sum of (i) the aggregate amount previously paid by the Company (including from the Distribution Account or the Defeasance Account, but excluding any payments made (including through the Defeasance Account) (x) pursuant to any Purchase Money Notes Guaranty or (y) from any amount deposited into the Defeasance Account pursuant to Section 2.8 of the Custodial and Paying Agency Agreement) to Holders to pay the principal of the Purchase Money Notes plus (ii) the aggregate amount previously paid by the Company to the Purchase Money Notes Guarantors to reimburse the Purchase Money Notes Guarantors (including from the Distribution Account or the Defeasance Account) for the principal of any payments made by the Purchase Money Notes Guarantors pursuant to any Purchase Money Notes Guaranty (other than for any amount paid by such Purchase Money Notes Guarantor pursuant to Section 16(b) of any Purchase Money Notes Guaranty), plus (iii) the total amount then on deposit in the Defeasance Account (plus the Net Loss on Investments, and disregarding for purposes of such calculation any amounts deposited into the Defeasance Account pursuant to Section 2.8 of the Custodial and Paying Agency Agreement or pursuant to any Purchase Money Notes Guaranty (and any related disbursement from the Defeasance Account in respect of any such deposit)), divided by (b) the original aggregate principal amount of the Purchase Money Notes as of the Closing Date, is less than:

fourth (4th) anniversary of the Closing Date or any time thereafter before the fifth (5th) anniversary of the Closing Date:	25%
fifth (5th) anniversary of the Closing Date or any time thereafter before the sixth (6th) anniversary of the Closing Date:	50%
sixth (6th) anniversary of the Closing Date or any time thereafter before the seventh (7th) anniversary of the Closing Date:	75%
seventh (7th) anniversary of the Closing Date or any time thereafter:	100%

"**Purchase Price Payment**" has the meaning set forth in Section 1(a) of the Private Owner Interest Sale Agreement.

"**Purchaser Eligibility Certification**" means, (i) with respect to the Private Owner, any Purchaser Eligibility Certification delivered by the Private Owner or any of its Affiliates to the Receiver in connection with the transactions contemplated in the LLC Operating Agreement and the other Transaction Documents, including the Purchaser Eligibility Certification delivered by the Private Owner to the Receiver on or about the Closing Date, and, (ii) with respect to any Permitted Disposition (and the applicable transferee in connection therewith), a Purchaser Eligibility Certification in substantially the form of the Purchaser Eligibility Certification referenced in item (i), with such changes as the Initial Member may require based on changes to such form of Purchaser Eligibility Certification as maintained by the FDIC.

"**Qualified Custodian and Paying Agent**" means any Person that (i) is a bank, trust company or title insurance company subject to supervision and examination by any federal or state regulatory authority, (ii) is experienced in providing services of the type required to be performed by the Bank as the Custodian and Paying Agent under the Custodial and Paying Agency Agreement, (iii) is qualified and licensed to do business in each jurisdiction in which the Custodial Documents will be held to the extent required unless and to the extent the failure to be so qualified or licensed will not have a material adverse effect on the Custodian or its ability to perform its obligations under the Custodial and Paying Agency Agreement, (iv) is not prohibited from exercising custodial powers in any jurisdiction in which the Custodial Documents are or will be held, (v) has combined capital and surplus of at least $50,000,000 as reported in its most recent report of condition, (vi) has the facilities to safeguard the funds deposited in the Accounts, the Asset Documents and other Custodial Documents, and (vii) is not an Affiliate of the Company, the Initial Member, the Private Owner, the Servicer or any Subservicer.

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

"**Qualified Issuer**" means any FDIC-insured depository institution that is at all times "well capitalized" as defined in 12 U.S.C. § 1831o (b)(1)(A), is in the business of issuing letters of credit and either (i) maintains offices in either or both of New York City, NY and Washington, D.C. where presentation and drawings on such letters of credit can be duly made, or (ii) maintains a letter of credit department at its offices in another city and confirms to the Initial Member that its standard institutional practice is to permit presentation and drawing on such letters of credit by facsimile transmission of documents to such office.

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

"**Qualified Servicer**" means any Person that (i) is properly licensed and qualified to conduct business in each jurisdiction in which such licenses and qualifications to conduct business are necessary for the Servicing to be conducted by or through such Person (taking into account any Servicing being conducted by any Subservicer engaged by such Person), (ii) has the management capacity and experience to service Assets of the type held by the Company and to

be serviced by such Person, especially performing and non-performing commercial real estate loans (including acquisition, development and construction loans) secured by commercial properties and residential real estate loans (including acquisition, development and construction loans) secured by residential properties, as applicable, including the number and types of Assets serviced, (iii) has the ability itself, or through an applicable Subservicer engaged by such Person, to track, process and post payments, to furnish Tax reports to borrowers, and to monitor construction and approve and disburse construction draws, (iv) in the event such Person is to perform any Servicing other than Asset Management, such Person either (x) has an Acceptable Rating, (y) has engaged a Rated Subservicer for all such Servicing other than Asset Management, or (z) is approved by and continues to be acceptable to the Initial Member in its sole discretion, and (v) in the event any of the serviced Loans are (or are required pursuant to the terms hereof to be) registered on the MERS® System, is a member of MERS.

"**Qualified Transferee**" has the meaning set forth in Section 10.1 of the LLC Operating Agreement.

"**Qualifying Cash Collateral**" means cash and any interest earned thereon (and Permitted Investments with respect thereto) in the Private Owner Pledged Account.

"**Qualifying Letter of Credit**" means an irrevocable standby letter of credit (i) delivered to (and naming as sole beneficiary thereunder) the Initial Member substantially in the form of Exhibit D to the LLC Operating Agreement (or in such other form as may be acceptable to, and approved in writing by, the Initial Member), duly issued by an Issuing Bank that is, as of the date of issuance thereof, a Qualified Issuer, (ii) drawable either (x) at such Issuing Bank's offices in New York City, NY or Washington, D.C. or (y) through a letter of credit department located at its offices in another city which permits presentation and drawing on such letters of credit by facsimile transmission of documents to such office; provided, however, with respect to this clause (y) above, such Qualified Issuer shall confirm to the Initial Member that such Qualified Issuer's standard institutional practice is to permit presentation and drawing on such letters of credit by facsimile transmission of documents to such office and (iii) having an initial term of one year with automatic renewals thereafter (without amendment except for extension of the then current expiry date by an additional year) until the Initial Member has delivered written notice to the Issuing Bank to the effect that such Qualifying Letter of Credit is being released in its entirety.

"**Rated Subservicer**" means a Qualified Servicer (that, for purposes of clause (iv) of such definition, either (x) has an Acceptable Rating, or (y) is approved by and continues to be acceptable to the Initial Member in its sole discretion) engaged as a Subservicer by the Servicer in order for the Servicer to qualify as a Qualified Servicer (and without the engagement of which such Servicer would not, as to applicable Servicing being conducted by such Rated Subservicer, so qualify as a Qualified Servicer).

"**Rating Agencies**" means each of Moody's Investors Service, Inc., Standard and Poor's Ratings Service, Fitch, Inc. and such other rating agencies as are nationally recognized.

"**Receiver**" means the FDIC, in its separate capacities as receiver with respect to each Failed Bank; provided that, from and after the acquisition of the assets of any such receivership by the FDIC in its corporate capacity, "Receiver" shall, in relation to such particular receivership, refer to the FDIC in its corporate capacity as successor to such receiver with respect to such receivership.

"**Receiver Acquired Property**" means (i) the equity interests in any Ownership Entity (or other special purpose entity holding applicable real and/or personal property) set forth on the Ownership Entity and Receiver Acquired Property Schedule (and the assets held directly or indirectly by any such Ownership Entity), (ii) Collateral that is identified as "Owned Real Estate" on the Ownership Entity and Receiver Acquired Property Schedule, the title to which has been acquired by or on behalf of the Receiver or any Failed Bank by foreclosure, by deed in lieu of foreclosure, by power of sale or pursuant to the Uniform Commercial Code or otherwise (including where the foreclosure or other acquisition event occurs before the Cut-Off Date), but the title to which has not yet been transferred to an Ownership Entity by the Receiver (which shall include each Potentially Defectively Foreclosed Receiver Acquired Property, except where the context provides otherwise), and (ii) any other Collateral, the title to which has been acquired by or on behalf of the Receiver or any Failed Bank by foreclosure, by deed in lieu of foreclosure, by power of sale or pursuant to the Uniform Commercial Code or otherwise, if the foreclosure or other acquisition event occurs after the Cut-Off Date, or occurred on or before the Cut-Off Date but the Redemption Period had not expired on or before the Cut-Off Date, and the equity interests in any Ownership Entity (or other special purpose entity formed by or on behalf of the Receiver or any Failed Bank) holding any such Collateral.

"**Receiver's Deed**" means, with respect to any real property (and related personal property) Receiver Acquired Property (other than a Potentially Defectively Foreclosed Receiver Acquired Property), the title to which is held by the Receiver (rather than an Ownership Entity) as of the Closing Date, a special warranty deed in recordable form, in the form of Attachment J-1 to the Contribution Agreement.

"**Receiver's Quitclaim Deed**" means, with respect to any Potentially Defectively Foreclosed Receiver Acquired Property, the title (if any) to which is held by the Receiver (rather than an Ownership Entity) as of the Closing Date, a quitclaim deed in recordable form, in the form attached as Attachment J-3 to the Contribution Agreement.

"**Record Date**" means, with respect to any Distribution Date or Purchase Money Notes Maturity Date, the Business Day immediately preceding such Distribution Date or Purchase Money Notes Maturity Date, as applicable, for the purpose of determining the holders of the Purchase Money Note(s) entitled to receive a payment in respect of principal or other amounts on such Distribution Date or Purchase Money Notes Maturity Date, as applicable.

"**Recording Office**" means (i) the appropriate recording office of the jurisdiction in which the Mortgaged Property is located with respect to any given Asset (if such Asset is not Acquired Property) or in which the Acquired Property is located, and (ii) in the case of personal property (and without limitation, to the extent applicable to such personal property, of clause (i)) the appropriate recording or filing office(s) for the recordation or filing of a notice of a Lien on,

or Mortgage with respect to, or a document of assignment, conveyance or transfer of title to, such personal property.

"**Redemption Period**" means the statutory time period, if any, during which a foreclosed owner may buy back foreclosed real property from the foreclosure sale purchaser under the Law of the jurisdiction in which the property is located, which period (if the jurisdiction provides for the same) may vary among the jurisdictions that do provide for a Redemption Period.

"**Regulation AB**" means the regulations at 17 C.F.R. §§229.1100, et seq., as the same may be amended, supplemented or modified from time to time.

"**Regulation S**" means "Regulation S" promulgated pursuant to the Securities Act.

"**Regulation S Certificated Note**" has the meaning set forth in Section 2.4(d) of the Custodial and Paying Agency Agreement.

"**Reimbursable Company Administrative Expenses**" means (i) reasonable fees of outside auditors in connection with annual audits of the Company (and the Ownership Entities); (ii) the fees paid to MERS for the Company to become a MERS member or to maintain the Company as a MERS member in good standing; (iii) licensing, filing and similar fees paid to applicable authorities in connection with obtaining and maintaining applicable Company (or Ownership Entity) licenses or registrations, and reasonable attorneys' fees incurred in connection therewith, or with the preservation (and eventual dissolution) of the Company's (or any Ownership Entity's) existence in accordance with the LLC Operating Agreement (including for purposes of compliance with Section 4.3 of the LLC Operating Agreement); (iv) reasonable fees of the Manager incurred in complying with the provisions of Section 704(c) of the Code with respect to contributed property and preparing reports setting forth information, on an Asset-by-Asset basis, to enable the Company (and the Members) to properly track any gain or loss as required by Section 704(c) of the Code pursuant to Section 7.6(b) of the LLC Operating Agreement; (v) any and all fees, costs and expenses in connection with the registration of the Purchase Money Notes as described in Article 2 of the Custodial and Paying Agency Agreement, including the fees for the registration of the Purchase Money Notes with the DTC; and (vi) reasonable attorneys' fees of outside counsel incurred by the Company for the preparation and delivery of applicable legal opinions and review of relevant amendments requested by the FDIC (including as the Receiver) in connection with the performance by the Company of its obligations pursuant to Section 2.8 of the Custodial and Paying Agency Agreement or Section 8.4(b) or 8.4(c) of the Contribution Agreement, in all events excluding any such legal fees associated with changes, clarifications or amendments to documents requested by the Private Owner; provided, however, that in no event shall Reimbursable Company Administrative Expenses include (A) fees or costs in connection with audits, licenses or filings of or with respect to the Manager, the Servicer, any Subservicer or any other Person (other than the Company and the Ownership Entities), (B) any amounts qualifying as Excluded Expenses under clauses (i) through (v) or (vii) through (x) of the definition thereof, or (C) any overhead costs of the Company, the Manager, the Servicer or any Subservicer (including any (1) travel expenses, or (2) costs for office space, office equipment, supplies and related expenses, employee salaries, bonuses and other compensation and related expenses and similar internal costs and expenses,

together with any other expenses incurred by the Manager to comply with Section 3.3 of the LLC Operating Agreement (including any costs or expenses of engaging independent contractors to perform relevant services for the day-to-day operation of the Company in lieu of performance of the same by personnel required to be made available by Manager pursuant to such Section 3.3)).

"**Reimbursement, Security and Guaranty Agreement**" means the Reimbursement, Security and Guaranty Agreement dated as of the Closing Date among the FDIC, in its capacity as Receiver as the PMN Agent, the Initial Member, the Company, and the grantors party thereto.

"**Reissued Purchase Money Notes**" has the meaning set forth in Section 2.8 of the Custodial and Paying Agency Agreement.

"**Related Agreement**" means (i) any agreement, document or instrument (other than the Notes and Collateral Documents) relating to or evidencing any obligation to pay or securing any Asset (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 real property or rights in or to any real property (including leases, tenancies, concessions, licenses or other rights of occupancy or use and security deposits related thereto) related to any Asset, (iii) any collection, contingency fee, and Tax and other service agreements (including those referred to in Section 4.2 of the Contribution Agreement) that are specific to the Assets (or any of them) and that are assignable, (iv) any letter of assurance, letter of credit or similar instrument evidencing an obligation of any Failed Bank, the Receiver, the Company or any Ownership Entity that was issued for the benefit of any Person and relates in any way to an Asset or the acquisition, development or construction of any project with respect to which the proceeds of such Asset were used or were intended to be used, and (v) any interest rate swap arrangement between the Borrower and any Failed Bank, the Receiver or the Company (in each case as the applicable lender, agent or other creditor under an Asset) that relates to any Asset; provided, however, for the avoidance of doubt, that no contract or instrument that was disaffirmed or repudiated by the Receiver prior to the Cut-Off Date, and no Transferor Loan-Servicing Contract, shall constitute a Related Agreement.

"**Related Entities**" has the meaning set forth in Section 13.5(a) of the Reimbursement, Security and Guaranty Agreement.

"**Related Party**" means with respect to any Person, any party related to such Person 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, supplemented or modified from time to time.

"**Related Party Agreement**" means any current or future contract, agreement, commitment, arrangement or transaction (including any agreement to sell Company Property, incur any Debt or become bound by any Guarantee of any obligations) with or for the benefit of (including to pay any fee to) the Private Owner or any Affiliate of the Company or the Private Owner.

"**Related Persons**" means, with respect to any specified Person, any Affiliate of such specified Person, and any officer, director, stockholder, member, manager, partner, principal, employee, contractor, attorney, representative, agent, successor or assign of such specified Person or of any such Affiliate, provided, that, the Servicer and any Subservicer shall be deemed to constitute a "Related Person" of (i) the Company and (ii) during any period during which the Private Owner serves, or served, as the Manager, the Private Owner.

"**Release Price**" means, with respect to any parcel (or other severable portion that, pursuant to any Business Plan, could potentially be separately sold by the Company or an applicable Borrower) of Acquired Property or Mortgaged Property securing a Loan, the applicable release price as designated by the Manager, which release price:

(i) with respect to any such parcel (or other severable portion) comprising Acquired Property, shall be determined (and updated) by the Manager together with each determination (and update) of the Net Fair Value of such Acquired Property (with the applicable release prices to be set forth for such Acquired Property in each applicable Business Plan or other report including the Net Fair Value of such Acquired Property); provided that, the Manager shall at all times cause the aggregate amount of the release prices for each such parcel (or other severable portion) comprising such Acquired Property to be in an amount not less than the Net Fair Value of such Acquired Property (including with applicable reasonable allocations by the Manager of any increases or reductions in such Net Fair Value); and

(ii) with respect to any such parcel (or other severable portion) comprising Mortgaged Property securing a Loan, shall be as set forth in the applicable Asset Documents with respect to such Loan as in effect as of the Closing Date, or, to the extent not so set forth therein, as reasonably determined (and updated) by the Manager (with all such release prices to be set forth in each Consolidated Business Plan and in each Borrower-Business-Relationship Business Plan, if any, for such Loan); provided, that, to the extent any such determination is made by the Manager (as a result of no such release price being set forth in the applicable Asset Documents), the Manager shall cause the aggregated amount of the release prices for each parcel (and other severable portions) comprising all Mortgaged Property securing a Loan, as so set forth in each applicable Business Plan, to be in an amount not less than the Unpaid Principal Balance of such Loan (including with reasonable allocations by the Manager with respect to any increase in the Unpaid Principal Balance of such Loan).

"**Released Parties**" has the meaning set forth in Section 4.17(b) of the Contribution Agreement.

"**REO Collateral Documents**" means, with respect to each Acquired REO Property, to the extent applicable, the following: a deed in lieu of foreclosure, opinions of counsel, owner's policies of title insurance, amendments to the Transaction Documents deemed necessary or advisable by the PMN Agent to reflect the particular nature and characteristics of the Acquired REO Property in question and the requirements of local Law, and such additional items as an institutional lender would customarily require (other than an REO Mortgage, it being understood that no REO Mortgages shall be required in connection with REO Property) in a construction or permanent, as applicable, loan transaction involving a property similar to such Acquired REO

Property, in each case so as to cause legal title in such Acquired REO Property to vest, and thereafter remain, in the applicable Ownership Entity free and clear of all Liens other than Permitted Liens (with such Ownership Entity having applicable title and other insurance), such that such Ownership Entity (and the Secured Obligations as a result of the rights of the Secured Parties as against the Company, such Ownership Entity and such Acquired REO Property) shall receive the full benefit of the value of such Acquired REO Property (all of the foregoing to be in form and substance satisfactory to the PMN Agent).

"**REO Mortgage**" means, with respect to each Acquired REO Property, a mortgage, deed of trust, trust deed, deed to secure debt, or other recordable document granting a security interest in such Acquired REO Property as security for the Secured Obligations.

"**Reporting and Access Schedule**" means the Reporting and Access Schedule attached as Annex II to the LLC Operating Agreement.

"**Repurchase Price**" means, with respect to any Asset, an amount equal to the sum of (i) the Total Asset Value of such Asset, *plus* (ii) unreimbursed (by the applicable Borrower or other Obligor, or otherwise from applicable Asset Proceeds not applied in reduction of the Unpaid Principal Balance of such Asset) Servicing Expenses that have been advanced by the Company with respect to such Asset as of the date of the repurchase, and *minus* (iii) the result when the Unpaid Principal Balance of the Asset as of the date of repurchase is subtracted from the Adjusted Unpaid Principal Balance of the Asset (which result might be a negative number).

"**Required Consenting Parties**" means, at any date, (i) the Initial Member and (ii) until the occurrence of the PMN Satisfaction/Defeasance Date, the PMN Agent.

"**Required Funding Draw**" means a Funding Draw that the Company has an existing, affirmed obligation to fund (without regard to any waiver or amendment entered into after the Closing Date) subject to applicable limitations in the relevant Asset Documents.

"**Required PMN Consenting Parties**" means, unless and until modified as set forth in the following sentence of this definition (and subject to the last sentence of this definition), the Holders in the aggregate of a majority in principal amount of all of the Purchase Money Notes. Subject to the last sentence of this definition but otherwise any term of any Transaction Document to the contrary notwithstanding, the meaning of the term "Required PMN Consenting Parties" can be modified from time to time by (A) specification to such effect in any Purchase Money Notes Guaranty by, or (B) notice to such effect to the PMN Agent and the Company (in the manner set forth in the Reimbursement, Security and Guaranty Agreement) from, the Person or Persons then constituting the "Required PMN Consenting Parties" (subject to any restrictions on such modification as may be set forth in the definition of such term as then in effect (immediately prior to such modification)). For the avoidance of doubt, the term "Required PMN Consenting Parties" may consist of a Person or Persons other than a Holder (such as, without limitation, a Purchase Money Note Guarantor), and need not include any Holders, may consist of different Persons or sets of Persons in different contexts and may include restrictions on the further modification thereof (in addition to those set forth in the last sentence of this definition). Notwithstanding the foregoing, (i) any amendment, waiver or other modification of the terms of

any Class of Purchase Money Notes that would adversely affect the interests of the Holders of such Class of Purchase Money Notes in any material respect (after taking into account the existence of, and the terms of, any Purchase Money Notes Guaranty with respect to such Class) shall require, in addition to the consent of the "Required PMN Consenting Parties" as specified above in this definition, the consent of the Holders in the aggregate of a majority in principal amount of all of the Purchase Money Notes of such Class, and (ii) in any case where the consent of the "Required PMN Consenting Parties" is required for any amendment, waiver or other modification, of any Purchase Money Note or any other Transaction Document, that would (A) extend the due date for, or reduce the amount of any scheduled payment of principal of, any Purchase Money Note, (B) adversely affect the interests or rights of any Holder individually in comparison to any other Holder of the same Class of Purchase Money Notes, (C) impose any obligation on any Holder, (D) change any place of payment where, or the coin or currency in which, any Purchase Money Note is payable, or (E) amend, waive or otherwise modify this sentence, such consent requirement shall be satisfied only if, in addition to the consent of the "Required PMN Consenting Parties" as specified above in this definition, each such adversely affected Holder consents to such amendment, waiver or other modification.

"**RESPA**" means the Real Estate Settlement Procedures Act of 1974, as may be amended, supplemented or modified from time to time.

"**Responsible Officer**" means, in relation to any specified Person, the chief executive officer, president, chief operating officer, chief financial officer or treasurer of such specified Person (or, if applicable, of the Person having general management authority with respect to the business and affairs of such specified Person).

"**Restricted Servicer Change of Control**" means any Change of Control with respect to the Servicer or any Rated Subservicer, which Change of Control has not been approved in writing by the Manager and each Required Consenting Party (which approval shall not be unreasonably withheld).

"**Retained Closing Date Asset Litigation**" means (i) any Closing Date Asset Litigation, or any particular claim or claims asserted in any Closing Date Asset Litigation, expressly designated in writing by the Receiver in its absolute discretion as constituting "Retained Closing Date Asset Litigation" either (x) in the applicable written litigation reports, if any, provided by the Receiver to the Winning Bidder (and other applicable qualified bidders having successfully submitted a Bidder Qualification Application) prior to its Bid submission, (y) in the list of litigation prepared by the Initial Member and attached as Schedule I to the Transferee Acknowledgment and Certification delivered pursuant to Section 1(b)(vii) of the Private Owner Interest Sale Agreement, or (z) in a separate written notice by the Receiver delivered to the Company no later than thirty days after the last Servicing Transfer Date; and (ii) in any event, any Closing Date Asset Litigation, to the extent (and only to the extent) (A) asserting a claim for damages arising out of or resulting from a repudiation (effected pursuant to and in accordance with the FDIA and the internal policies and procedures of the FDIC) by the Receiver of a Liability, or challenging any prior decision with respect thereto, or (B) asserting a claim against or Liability of the Receiver that, under and in accordance with applicable Law, was asserted

through the receivership administrative claims processes administered by the Receiver pursuant to 12 U.S.C. § 1821(d)(3) through (13).

"**Review Criteria**" means the matters specified in Exhibit F to the Custodial and Paying Agency Agreement.

"**Rule 144A Certificated Note**" has the meaning set forth in Section 2.4(c) of the Custodial and Paying Agency Agreement.

"**Rule 144A Global Note**" has the meaning set forth in Section 2.4(b) of the Custodial and Paying Agency Agreement.

"**Rule 144A Information**" has the meaning set forth in Section 2.7(k) of the Custodial and Paying Agency Agreement.

"**Rules of Construction**" means, in relation to any agreement (for this purpose, the "specified agreement") that specifies that the "Rules of Construction" apply to such specified agreement, the following:

(a) Captions. Paragraph titles or captions contained in such specified agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of such specified agreement or the intent of any provisions of such specified agreement. All Section and paragraph references contained in such specified agreement shall refer to such specified agreement unless otherwise specified.

(b) References to Persons Exclusive. References in such specified agreement to "Affiliates" or "Subsidiaries" of a specified Person refer to, and include, only other Persons which from time to time constitute "Affiliates" or "Subsidiaries," as the case may be, 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," or "Subsidiaries," as the case may be, of such specified Person, except to the extent that any such reference specifically provides otherwise. A reference in such specified Agreement to a Member or other Person, in and of itself, does not, and shall not be deemed to, refer to or include any other Person having an interest in a Member or other Person (such as, without limitation, any stockholder or member of or partner in a Member, or other Person).

(c) Use of "Or". Any use of the term "or" in such specified agreement is not exclusive.

(d) References to Laws. Any reference in such specified agreement to a Law includes any amendment of, modification to, or replacement of, such Law.

(e) Use of Accounting Terms. Accounting terms used herein shall have the meanings assigned to them by GAAP applied on a consistent basis by the accounting entity to which they refer.

(f) References to Documents. References in such specified agreement to any other document, instrument or agreement shall, in each case, except as may be set forth otherwise in such specified agreement, be deemed (i) to include all appendices, exhibits, schedules and other attachments to such other document, instrument or agreement (as originally executed), (ii) to include all documents, instruments or agreements issued or executed (if such other document, instrument or agreement is a Transaction Document, in accordance with the terms of such Transaction Document) in replacement of such other document, instrument or agreement, and (iii) to mean such other document, instrument or agreement, or replacement thereof as specified in clause (ii), as amended, modified and supplemented from time to time in accordance with the terms of such other document, instrument or agreement; provided, that (x) any reference in such specified agreement to terms defined in the Agreement of Definitions shall mean such terms as amended, modified, supplemented or replaced in accordance with the Agreement of Definitions, and (y) with respect to any terms in such other document, instrument or agreement that are expressly incorporated by reference into such specified agreement, any such amendment, modification, supplement or replacement pursuant to the foregoing, shall, for purposes of such incorporation by reference, be deemed effective only to the extent such amendment, modification, supplement or replacement also complies with the terms of such specified agreement for the amendment of such specified agreement.

(g) Use of "Herein." Unless otherwise specified in such specified agreement, the words "hereof," "herein" and "hereunder" and words of similar import, as used in such specified agreement, shall refer to such specified agreement as a whole and not to any particular provision of such specified agreement.

(h) Use of "Including." The words "include" and "including" and words of similar import, as used in such specified agreement, 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.

(i) Use of "During." The word "during", as used in such specified agreement, 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.

(j) Singular/Plural Usage. Unless the context otherwise requires, singular nouns and pronouns when used in such specified agreement 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.

(k) The Servicer. Unless the context otherwise requires, during any period during which there is more than one Servicer, references (other than in any Servicing Agreement or Subservicing Agreement) to "the Servicer" or "the Servicing Agreement" shall refer to "the Servicers or any of them" and to "the Servicing Agreements or any of them", respectively.

(l) References to Indirect Ownership. With respect to any determination of any specified Person's (or Persons') indirect ownership in any other Person, unless otherwise specified as to any particular use, such indirect ownership shall be determined attributing to such

specified Person (or Persons) its (or their) actual ultimate indirect ownership in such other Person (for example, after taking into account the dilutive effect of intervening Persons that directly or indirectly own any Ownership Interest in such other Person but that are not wholly-owned subsidiaries of such specified Person (or Persons)).

"**Sale**" has the meaning set forth in Section 5.3(a) of the Reimbursement, Security and Guaranty Agreement.

"**Secured Assets**" shall mean all right, title and interest of the Private Owner in and to (i) the Private Owner Pledged Account (and all funds therein and related rights thereto as more specifically described in the Private Owner Pledged Account Control Agreement), (ii) the Private Owner Interest, (iii) the Servicing Agreement, each Subservicing Agreement, each other Transaction Document, and each other agreement or document from time to time entered into by (or otherwise including rights in favor of) the Private Owner in its capacity as the Manager, and (iv) all proceeds of any of the foregoing at any time (including distributions thereon or other income in respect thereof).

"**Secured Obligations**" means, collectively, (i) (x) the due and punctual payment of the principal of each Purchase Money Note, when such principal shall become due and payable in accordance with the terms of such Purchase Money Note (whether at stated maturity, by acceleration or otherwise), and (y) all other debts, Liabilities, obligations (including any obligation to pay principal, interest, charges, expenses, fees, attorney costs, indemnities and other amounts), covenants and duties of the Company or any Subsidiary Grantor to any Secured Party under, or arising under, any Purchase Money Note, the Reimbursement, Security and Guaranty Agreement (including Section 2.1 of the Reimbursement, Security and Guaranty Agreement) or any other Secured Parties Collateral Document, and (ii) any fees, expenses or indemnity payments payable to the Custodian/Paying Agent, in its capacity as such (i.e., for the Custodian/Paying Agent's own account and not for the account of other Persons) pursuant to the Custodial and Paying Agency Agreement (other than any fees or expenses in connection with the Private Owner Pledged Account) (provided that, upon the indefeasible satisfaction and discharge of the Secured Obligations described in clause (i) other than pursuant to the exercise of remedies pursuant to Article V of the Reimbursement, Security and Guaranty Agreement, the obligations described in this clause (ii) automatically shall cease to constitute "Secured Obligations" (other than, for the avoidance of doubt and solely with respect to any amount then remaining to be applied in accordance with Section 5.2 of the Reimbursement, Security and Guaranty Agreement, for purposes of said Section 5.2)), in the each case of each of (i) and (ii), whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including in the case of (i) and (ii) interest that accrues after the commencement by or against the Company or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest is an allowed claim in such proceeding.

"**Secured Parties**" means, collectively, the PMN Agent, each co-agent or sub-agent appointed by the PMN Agent from time to time pursuant to the Reimbursement, Security and Guaranty Agreement, each Purchase Money Notes Guarantor, each Holder, the Custodian/Paying Agent (solely in relation to the amounts described in clause (ii) of the

definition of the term "Secured Obligations") and (in their capacities as such) the Indemnified Parties (as such term is defined in the Reimbursement, Security and Guaranty Agreement).

"**Secured Parties Collateral**" has the meaning set forth in Section 3.1 of the Reimbursement, Security and Guaranty Agreement.

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

"**Securities Act**" means the Securities Act of 1933, as may be amended, supplemented or modified from time to time.

"**Seller Financed Loan Note**" has the meaning set forth in Section 12.22 of the LLC Operating Agreement.

"**Seller Financed Loans**" has the meaning set forth in Section 12.22 of the LLC Operating Agreement.

"**Servicer**" means the Person retained by the Manager (in its individual capacity) to service, manage or administer any of the Assets or the Collateral in accordance with the LLC Operating Agreement. As of the Closing Date, the initial Servicer is Colony AMC 2012 CRE ADC, LLC, a Delaware limited liability company.

"**Servicer Advances**" means advances made by or on behalf of the Servicer to fund Servicing Expenses.

"**Servicing**" means servicing, administering, managing and disposing of the Assets and the Collateral.

"**Servicing Agreement**" means, initially, the Servicing Agreement dated as of the Closing Date, by and between the Manager (in its individual capacity) and the Servicer, and thereafter any replacement agreement entered into between the Manager (in its individual capacity) and the Person designated as the Servicer therein, which servicing agreement shall satisfy the requirements of Section 12.1(b) of the LLC Operating Agreement and shall be acceptable to each Required Consenting Party in all respects.

"**Servicing Expenses**" means any of the following (in each case subject to the proviso set forth in the last full paragraph of this definition):

(i) for an Asset which is a Loan, any and all customary, reasonable and necessary "out-of-pocket" costs and expenses incurred on or after the Closing Date (or, for purposes of item (vii) below, as may otherwise be payable pursuant to such item) by or on behalf of the Manager, the Servicer, or any Subservicer in connection with Servicing of such Asset (A) incurred to protect, restore or preserve the value of the Collateral or the priority of the Liens and security

interests created by the Asset Documents relating thereto (such as Taxes, home owners' association fees, insurance premiums (including "forced placed" insurance premiums), ground rent, fees to Governmental Authorities to preserve or retain entitlements granted to and benefitting the Asset, costs to prevent waste, routine repairs and maintenance, foreclosure expenses and reasonable, independent, outside counsel legal fees and expenses relating to foreclosure or other litigation with respect to the Asset), or (B) routinely incurred in connection with a permitted sale of such Loan or applicable Collateral with respect thereto (such as brokerage fees, appraisals, marketing and advertisement costs and closing costs);

(ii) for an Asset which is Acquired Property, any and all customary, reasonable and necessary "out-of-pocket" costs and expenses incurred on and after the Closing Date (or, for purposes of item (vii) below, as may otherwise be payable pursuant to such item) by or on behalf of the Manager, the Servicer, or any Subservicer in connection with Servicing of such Asset (A) incurred in connection with the direct, property level financial operation of such property (such as, for any specific Acquired Property, collection, deposit and remittance of rent and other property level receipts, implementation of financial controls on operating income and expenses, documentation of and record keeping for operating income and expenses, preparation of monthly operating statements, preparation of operating budgets, and verification that expenses do not exceed the approved line item limits of the annual operating budget with respect to such specific Acquired Property), in each case limited to such activities as performed by (or otherwise of such nature as would so be performed by) an on-site property manager for such Acquired Property (and in all events excluding any expenses incurred for oversight of any such financial operation, or for preparation of Business Plans, Development Plans, Monthly Reports or other reports required to be provided by the Manager, the Servicer or any Subservicer pursuant to the Transaction Documents); (B) routinely incurred in connection with the physical aspects of such property (such as insurance, security, utilities, fees to Governmental Authorities to preserve, restore, protect or retain entitlements granted to, and benefitting, such property, property level administration and services, home owners' association fees, enforcement of leases and property rules and regulations, daily upkeep and maintenance, emergency responses and limited capital improvements such as replacing kitchen cabinets, upgrading bathrooms, refinishing wooden floors, painting, HVAC repairs and minor tenant improvements) for maintenance, protection, preservation or restoration thereof; (C) routinely incurred in connection with the sale of such Acquired Property (such as brokerage fees, appraisals, marketing and advertisement costs and closing costs); (D) if the Asset is Acquired Property held for lease, routinely incurred in connection with leasing activity (such as brokerage fees and marketing and advertisement costs); (E) in accordance with the Servicing Standard, incurred to obtain any insurance proceeds or any liquidation proceeds; (F) incurred to obtain an appraisal (including any Appraisal as required pursuant to the Transaction Documents and the definition of Net Fair Value); or (G) incurred to perform (in accordance with the Servicing Standard) obligations that run with (or are otherwise imposed by operation of Law on the owner of) such Acquired Property or contractual obligations (in favor of Persons other than the Company, the Failed Bank or any other predecessor in interest to the Company) arising under agreements (to which the applicable Borrower or Obligor was a party) relating to or affecting such Acquired Property as in effect prior to the foreclosure or other event pursuant to which the applicable Ownership Entity acquired title to such Acquired Property, in each case (under this clause (G)) to the extent such obligations rightfully (and with

the Company having exercised applicable remedies in accordance with the Servicing Standard) remain binding on such Acquired Property or Ownership Entity;

(iii) Reimbursable Company Administrative Expenses;

(iv) subject to Section 4.6 of the LLC Operating Agreement (and excluding any amounts or claims the Private Owner is required to bear or indemnify pursuant to such Section 4.6 of the LLC Operating Agreement), to the extent not covered by any of clauses (i) through (iii), legal fees and expenses of (including judgments, settlements and reasonable attorneys' fees of independent outside counsel) incurred by the Company (including to directly or, through the Manager, the Servicer or any Subservicer, indirectly reimburse the Manager, the Servicer or any Subservicer) in its (or the Manager's, the Servicer's or any Subservicer's) defense of claims asserted against the Company or any Ownership Entity (or the Manager, the Servicer or any Subservicer) that relate to one or more Assets or the conduct of the Business, and allege, as the basis for such claims, any act or omission of the Company or any Ownership Entity (or the Manager, the Servicer or any Subservicer) or of any Failed Bank, the Receiver, any Existing Servicer or any other Person acting as servicer for any of the Assets at any time prior to the Cut-Off Date, but only if (1) such claims are not attributable to any act or omission of the Company, the Manager, the Servicer or any Subservicer in a manner inconsistent with, or in violation of, the Servicing Standard or any of the provisions of the LLC Operating Agreement or any Transaction Document, and (2) (A) such claims are decided and there are final non appealable orders or judgments (unless the Initial Member has agreed in writing that no appeal needs to be taken) in favor of the Company or an Ownership Entity, as applicable (and the Manager, the Servicer and any Subservicer, to the extent any such claim has been asserted against the same), or if decided against the Company (or the Manager or the Servicer or any Subservicer) without any finding of bad faith, gross negligence or willful misconduct on the part of any of the foregoing or (B) there is entered into a final settlement of any such claim with the prior written consent of the Initial Member;

(v) subject to Section 4.6 of the LLC Operating Agreement (and excluding any amounts or claims the Private Owner is required to bear or indemnify pursuant to such Section 4.6 of the LLC Operating Agreement), (A) expenses specified in Sections 4.5 or 4.6 of the Contribution Agreement to constitute Servicing Expenses and (B) expenses incurred in connection with any litigation (including any bankruptcy action) included in the Obligations and assumed pursuant to Section 4.5(a), Section 4.5(b) or Section 4.6 of the Contribution Agreement;

(vi) the costs of preparing, negotiating and recording any additional documentation required pursuant to Section 8.11 of the Reimbursement, Security and Guaranty Agreement, in each case pursuant to Section 8.11 of the Reimbursement, Security and Guaranty Agreement; and

(vii) amounts required for the Company to discharge (in accordance with the Transaction Documents) the Obligations as they become due, and to make applicable indemnification and/or reimbursement payments (other than for Pre-Approved Charges) owing by the Company to the Initial Member, the Transferor, the PMN Agent or any other Indemnified Party under the Transaction Documents;

provided, however, that Servicing Expenses shall not include any (A) Excluded Expenses; (B) Development expenses (other than applicable expenses under the foregoing clause (ii)(B) or (ii)(G) that the Manager reasonably determines should rightfully be classified as Servicing Expenses notwithstanding that the same include Development; and, with respect to any such amounts so reasonably determined by the Manager to be Servicing Expenses, the applicable specific uses thereof shall be deemed excluded from the definition of Development for all purposes with respect to the applicable Asset); (C) any Funding Draws or other principal advances to a Borrower (provided this clause (C) shall not be deemed to exclude, with respect to any Loan, amounts otherwise constituting Servicing Expenses paid by the Company (and not advanced to or at the request of the Borrower), but that qualify as Funding Draws as a result of the right of the Company under the applicable Asset Documents to add the same to the principal amount of the Loan); or (D) any costs or expenses that are excluded pursuant to any of the foregoing clauses (i) through (vii) (including any such costs or expenses of a type or nature generally described in any such clause that are so excluded as a result of a failure to satisfy any express condition, limitation or requirement set forth in such clause), except to the extent the same qualify as Servicing Expenses under another of such clauses (i) through (vii).

"**Servicing Obligations**" has the meaning set forth in the LLC Operating Agreement (except as used in the Servicing Agreement, wherein such term is separately defined).

"**Servicing Standard**" has the meaning set forth in the LLC Operating Agreement (except as used in the Servicing Agreement, wherein such term is separately defined).

"**Servicing Transfer Date**" means, with respect to any Group of Assets, the date on which the transfer of the loan servicing records for such Group of Assets to the Servicer's system of records is completed and the Servicer (including through any applicable Subservicer) begins to service such Group of Assets, as determined in accordance with Section 3.3 of the Contribution Agreement, it being understood and agreed that (i) the loan servicing records for each Group of Assets will be transferred to the Servicer's system of records at the same time, but not necessarily at the same time as the loan servicing records for any other Group of Assets are transferred to the Servicer's system of records, and (ii) the Transferor (and the Initial Member) and the Company will proceed (and the Manager is to cause the Servicer and any applicable Subservicer to proceed) with all commercially reasonable diligence to effect such transfer of loan servicing records as soon as is practicable after the Closing.

"**SFL Borrower**" has the meaning set forth in Section 12.22 of the LLC Operating Agreement.

"**SFL Collateral**" has the meaning set forth in Section 12.22 of the LLC Operating Agreement.

"**SFL Obligor**" has the meaning set forth in Section 12.22 of the LLC Operating Agreement.

"**SFL Proposal**" has the meaning set forth in Section 12.22 of the LLC Operating Agreement.

"**SFR Assets**" means (i) the Assets (including any Loans or Receiver Acquired Property) listed under the heading "SFR Assets" in the Asset Schedule, and (ii) any additional Assets included in the Asset Schedule (whether or not so identified as "SFR Assets" on the Asset Schedule) to the extent consisting of (x) one to four family residential properties or (y) Loans secured by one to four family residential properties (and no other real property) or otherwise subject to, or intended to be covered by, any of the HFSH Act, HAFA, HAMP or RESPA, and in each case for (i) and (ii) above shall include, as to any such Loan, any Acquired REO Property resulting from any exercise of remedies against the applicable Collateral, but only to the extent such Acquired REO Property consists of one to four family residential properties.

"**SFR Loan**" means any Loan included in the SFR Assets.

"**Similar Law**" means any non-U.S., or any U.S. federal, state or local, Law that is substantially similar to Section 406 of ERISA or Section 4975 of the Code.

"**Site Assessment**" either (i) a Transaction Screen Process consistent with ASTM Standard E 1528-06, conducted by an environmental professional, or (ii) a Phase I environmental site assessment consistent with ASTM Standard E 1527-05, and which is consistent with customary industry standards for such Phase I environmental site assessments, conducted by an environmental professional, as would customarily be undertaken or obtained by a prudent lender in order to ascertain whether there are any actual or threatened Environmental Hazards.

"**Special Purpose Entity**" means

(i) with respect to an Ownership Entity, a corporation or limited liability company (a) that is organized under the Laws of any state of the United States or the District of Columbia, (b) the equity of which is uncertificated (and, in the case of a limited liability company, does not by its terms expressly provide that such equity shall be governed by Article 8 of the UCC), (c) has no material assets other than Acquired Property, (d) that is not engaged in any business operations except in connection with the Acquired Property and conducted pursuant to terms of the LLC Operating Agreement and the Transaction Documents, (e) that does or causes to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises, (f) that at all times holds itself out to the public as a legal entity separate from any other Person (including any Affiliate), (g) that except as expressly contemplated by the LLC Operating Agreement, or the Transaction Documents, does not commingle its assets with assets of any other Person, (h) that conducts its business in its own name and strictly complies with all organizational formalities to maintain its separate existence, (i) that maintains an arm's length relationship with any Affiliate upon terms that are commercially reasonable and on terms no less favorable to it than could be obtained in a comparable arm's length transaction with an unrelated Person, (j) that has no Debt other than as expressly permitted by the Transaction Documents, (k) in the case of a limited liability company, the management of which is vested either in the Company (as the sole member thereof) and/or in one or more managers each of which can be removed or replaced at any time, with or without cause, by the Company (as the sole member thereof), and (l) except as otherwise consented to in writing by the Initial Member, is a pass-through or disregarded entity for Tax purposes;

(ii) with respect to the Company, a limited liability company (a) that is organized under the Laws of Delaware, (b) the equity of which is uncertificated, (c) that has no material assets other than the Assets, including Collateral and Ownership Entities, and its rights, title and interest in, to, and under the LLC Operating Agreement and the Transaction Documents, (d) that is not engaged in any significant business operations except in connection with the Assets, including the Collateral and Ownership Entities and conducted in accordance with the terms of the LLC Operating Agreement and the Transaction Documents, (e) that does or causes to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises, (f) that at all times holds itself out to the public as a legal entity separate from any other Person (including any Affiliate), (g) that except as expressly contemplated by the LLC Operating Agreement or by any other Transaction Documents, does not commingle its assets with assets of any other Person, (h) that conducts its business in its own name and strictly complies with all organizational formalities to maintain its separate existence, (i) that maintains an arm's length relationship with any Affiliate upon terms that are commercially reasonable and on terms no less favorable to it than could be obtained in a comparable arm's length transaction with an unrelated Person other than as expressly provided by the LLC Operating Agreement and the Transaction Documents, (j) that has no Debt other than as provided in the LLC Operating Agreement and the Transaction Documents, (k) in the case of a limited liability company, the management of which is vested either in the Company (as the sole member thereof) and/or in one or more managers each of which can be removed or replaced at any time, with or without cause, by the Company (as the sole member thereof), and (l) except as otherwise consented to in writing by the Initial Member, is a pass-through entity for Tax purposes; and

(iii) with respect to the Private Owner (or any Qualified Transferee thereof), a corporation or limited liability company (a) that is organized under the Laws of any state of the United States or the District of Columbia, (b) the equity of which is uncertificated (and, in the case of a limited liability company, does not by its terms expressly provide that such equity shall be governed by Article 8 of the UCC), (c) that has no material assets other than cash and cash equivalents and its rights, title and interest in, to, and under the LLC Operating Agreement and the Transaction Documents, (d) that is not engaged in any significant business operations except in connection with the performance of its obligations under the LLC Operating Agreement and the Transaction Documents, (e) that does or causes to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises, (f) that at all times holds itself out to the public as a legal entity separate from any other Person (including any Affiliate), (g) that except as expressly contemplated by the LLC Operating Agreement or the Transaction Documents, does not commingle its assets with assets of any other Person, (h) that conducts its business in its own name and strictly complies with all organizational formalities to maintain its separate existence, (i) that maintains an arm's length relationship with any Affiliate upon terms that are commercially reasonable and on terms no less favorable to it than could be obtained in a comparable arm's length transaction with an unrelated Person other than as otherwise expressly provided by the LLC Operating Agreement and the Transaction Documents, (j) that has no Debt and, except as expressly permitted or required pursuant to the Transaction Documents, does not make any loans or advances to any other Person, (k) that except as otherwise consented to in writing by the Initial Member, is a pass-

through or disregarded entity for Tax purposes, (l) that maintains its own separate books and records and its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person, (m) that maintains separate financial statements, (n) that allocates fairly and reasonably any shared expenses, including any overhead for shared office space, (o) that uses separate stationary, invoices and checks in its own name, (p) that maintains adequate capital in light of its contemplated business operations, and (q) that includes in its Organizational Documents applicable provisions and limitations requiring compliance with all the foregoing requirements in this clause (iii), including an express requirement for the written consent of the Company (which consent of the Company in turn shall require the written consent of Required Consenting Parties) to any amendment or modification that would result in such Organizational Documents failing or ceasing to be in compliance with all such requirements in this clause (iii).

"**Specified Date**" shall mean the 10th day of each month, or such other day as is agreed to by the Servicer and the Manager; provided, however, that, in any case, if such day is not a Business Day, the Specified Date shall be the immediately preceding Business Day.

"**Specified Parent**" means (i) with respect to the Private Owner, (x) subject to clause (i)(y), ColFin 2012 CRE ADC Holdco, LLC and/or (y) any additional or substitute Person or Persons owning, directly or indirectly, more than 25% in value of all of the Ownership Interests in the Private Owner as the Required Consenting Parties may approve (in their sole discretion) in writing from time to time after the Closing Date as being designated a "Specified Parent" of the Private Owner for purposes of the LLC Operating Agreement; and (ii) with respect to the Servicer, (x) subject to clause (ii)(y), Colony Financial AMC, LLC, a Delaware limited liability company and CDCF II 2012 CRE ADC Holdco, LLC, a Delaware limited liability company and/or (y) any additional or substitute Person or Persons that the Manager and the Required Consenting Parties may agree from time to time after the Closing Date shall be designated as a "Specified Parent" with respect to the Servicer. For avoidance of doubt, in each case, any such Specified Parent shall include any successor by operation of law.

"**Specified Proceeding**" means (i) any Insolvency Proceeding with respect to the Company or the Private Owner or any of their respective Subsidiaries or (ii) any proceeding for the appointment of a receiver, liquidator, conservator, custodian, trustee, sequestrator, rehabilitator or similar official for, or for any part of the property of, the Company or the Private Owner or any of their respective Subsidiaries, or for the ordering of the dissolution, winding-up or liquidation of the affairs of the Company or the Private Owner or any of their respective Subsidiaries.

"**Subsequent Class Purchase Money Notes**" means (i) (x) from and after any issuance of any particular class of Reissued Purchase Money Notes pursuant to Section 2.8 of the Custodial and Paying Agency Agreement, any of such Reissued Purchase Money Notes, or (y) from and after any issuance of any particular class of replacement or reissued notes issued pursuant to Section 8.4(b) or 8.4(c) of the Contribution Agreement, any of such replacement or reissued notes, or (ii) with respect to any class of notes described in clause (i)(x) or (i)(y), any note or notes executed and delivered upon registration of transfer of, or in exchange for, or in lieu of, any note of such class.

"**Subservicer**" means (a) any Person retained by the Servicer (in its individual capacity) to perform any of the Servicer's obligations (with respect to Servicing) under the Servicing Agreement, and (b) in the event the Servicer is not a Rated Servicer, any other Person retained by such Person so retained by the Servicer pursuant to the foregoing clause (a) to perform any of such obligations (with respect to Servicing), in each case (for clause (a) and clause (b)), which retention shall be subject to applicable provisions in the LLC Operating Agreement and the Servicing Agreement (and any applicable Subservicing Agreement).

"**Subservicing Agreement**" means any agreement whereby the Servicer or an applicable Subservicer (having been retained by a Servicer that is not a Rated Servicer) retains a Subservicer, which Subservicing Agreement shall be subject to applicable provisions in the LLC Operating Agreement and the Servicing Agreement and, if for engagement of a Rated Subservicer, shall further be acceptable to each Required Consenting Party in all respects.

"**Subsidiary**" means, with respect to any specified Person, each of (i) any other Person not less than a majority of the overall economic equity in which is owned, directly or indirectly through one of more intermediaries, by such specified Person, and (ii) without limitation of clause (i), any other Person who or which, directly or indirectly through one or more intermediaries, is Controlled by such specified Person (it being understood with respect to clause (i) that a pledge for collateral security purposes of an equity interest in a Person shall not be deemed to affect the ownership of such equity interest by the pledgor so long as such pledgor continues to be entitled, in all material respects, to all the income with respect to such equity interest).

"**Subsidiary Grantor**" and "**Subsidiary Grantors**" has the meaning set forth in the Reimbursement, Security and Guaranty Agreement.

"**Substantially Complete**" means, with respect to Vertical Development proposed by the Manager to be completed with respect to any Asset (whether by the Borrower under an existing Loan or by the Company with respect to Acquired REO Property), that as of the applicable date of such proposal by the Manager (i) for any real property securing a Loan, the work related to 75% of the aggregate budgeted expenses set forth in the construction budget for such real property pursuant to the applicable Asset Documents (as in effect as of the Closing Date) has, as of such date of such proposal, been completed and paid for in accordance with the construction requirements in the applicable Asset Documents, or (ii) for any Acquired REO Property, the work related to 75% of the aggregate budgeted expenses set forth in the construction budget for such real property as in effect prior to the applicable foreclosure or acceptance of a deed in lieu (or, if such foreclosure or acceptance occurs after the Closing Date, as was in effect with respect to such Acquired REO Property as real property securing the applicable Loan pursuant to clause (i) above) has, as of such date of such proposal, been completed and paid in accordance with the construction requirements in the applicable Asset Documents or other loan documents in effect prior to such foreclosure or deed in lieu.

"**Substantially Complete Vertical Development**" means the completion, in accordance with the Transaction Documents, of Vertical Development of any real property securing a Loan or any Acquired REO Property in each case where such Vertical Development is already

Substantially Complete as of the date the Manager proposes to complete such Vertical Development.

"**Successor**" means, (i) with respect to a Member, any future Member which is a direct or indirect transferee (whether by Permitted Disposition, merger, consolidation or otherwise) of the LLC Interest of such Member; (ii) with respect to any former Member, the current Member which is the direct or indirect transferee (whether by Permitted Disposition, merger, consolidation or otherwise) of the LLC Interest of such former Member and (iii) with respect to the Initial Member, any Person that is a direct or indirect transferee (whether by Disposition, merger, consolidation or otherwise) of any of the Initial Member's rights or interests under the LLC Operating Agreement or any other Transaction Document.

"**Successor Servicer**" has the meaning set forth in the Reimbursement, Security and Guaranty Agreement.

"**Supplemental Delivery Certificate**" has the meaning set forth in Section 6.1(d) of the Custodial and Paying Agency Agreement.

"**Tax**" means any federal, state, county, local, or foreign tax, charge, fee, levy, duty, or other assessment, including any income, gross receipts, transfer, recording, capital, withholding, property, ad valorem, or other tax or governmental fee of any kind whatsoever, imposed or required to be withheld by any Governmental Authority having jurisdiction over the assessment, determination, collection, or other imposition of any of the foregoing, including any interest, penalties and additions imposed thereon or with respect thereto.

"**Tax Matters Member**" has the meaning set forth in Section 7.5 of the LLC Operating Agreement.

"**Termination**" has the meaning set forth in Section 8.1 of the Custodial and Paying Agency Agreement.

"**Termination Notice**" shall mean any written notice of termination required pursuant to Article VII of the Servicing Agreement.

"**Third Party Claim**" has (i) for purposes of the Reimbursement, Security and Guaranty Agreement, the meaning given therein, (ii) for purposes of the LLC Operating Agreement, the meaning given therein, (iii) for purposes of the Contribution Agreement, the meaning given therein, and (iv) for purposes of the Servicing Agreement, the meaning given therein.

"**Total Asset Value**" means, with respect to any Asset, an amount equal to the sum of (a) the Equity Asset Value (or, in the event of any Excess Principal or Principal Deficiency, the Adjusted Equity Asset Value) *plus* (b) the Purchase Money Notes Asset Value.

"**Transaction Documents**" means the Agreement of Definitions, LLC Operating Agreement, the Contribution Agreement, the Servicing Agreement, the Electronic Tracking Agreement, the Custodial and Paying Agency Agreement, the Private Owner Pledged Account Control Agreement, any Qualifying Letter of Credit, one or more Account Control Agreements,

the Purchase Money Notes, the Reimbursement, Security and Guaranty Agreement and the Private Owner Interest Sale Agreement, in each case once executed and delivered, and any and all other agreements and instruments executed and delivered by, or executed and delivered to, the FDIC in connection with the Closing or the transactions contemplated thereby as contemplated by any Core Agreement.

"**Transaction Termination Date**" means the later of (i) the indefeasible payment, satisfaction and discharge in full of all of the Secured Obligations and (ii) the Final Distribution.

"**Transfer Documents**" means the endorsements and allonges to Notes, Assignment and Lost Instrument Affidavits (if applicable), Mortgage Assignments, Receiver's Deeds, Omnibus Assignments, Receiver's Quitclaim Deeds, assignment of leases, assignments of Ownership Entity interests, UCC financing statements (and assignments) and other documents of assignment, conveyance or transfer required pursuant to any applicable Law to evidence the transfer to the Company (or, as applicable, to an Ownership Entity) of the Assets, the Collateral and the Collateral Documents and the Transferor's rights with respect to the Assets and the Collateral. The form Allonge to be used in preparation of the Transfer Documents is attached to the Contribution Agreement as Attachment E, the form of Assignment and Lost Instrument Affidavit to be used in preparation of the Transfer Documents is attached to the Contribution Agreement as Attachment F, the forms of Assignment of Real Estate Mortgage and Assignment of Real Estate Deed of Trust to be used in the preparation of the Transfer Documents are attached to the Contribution Agreement as Attachments G-1 and G-2, respectively, the form of the Assignment of Assignment of Leases and Rents and Other Loan Documents to be used in the preparation of the Transfer Documents is attached to the Contribution Agreement as Attachment H, the form of the Assignment and Acceptance of Limited Liability Company Interest to be used in the preparation of the Transfer Documents is attached to the Contribution Agreement as Attachment I, the form of the Receiver's Deed to be used in the preparation of the Transfer Documents is attached to the Contribution Agreement as Attachment J-1, the form of the Omnibus Assignment to be used in the preparation of the Transfer Documents is attached to the Contribution Agreement as Attachment J-2, and the form of the Receiver's Quitclaim Deed is attached to the Contribution Agreement as Attachment J-3.

"**Transfer Documents Preparation/Submission Deadline**" means six months after the Closing Date, provided that such six-month period shall be extended with respect to any particular Transfer Document if the delay in meeting such six-month deadline is due to a matter (other than the absence of, or the failure properly to record, a Transfer Document) noted as an Exception on the initial Collateral Certificate, but only for so long as the Private Owner is working diligently to locate the missing information or otherwise take such steps as may be necessary or appropriate to complete the preparation, and submission for recordation or filing, of the Transfer Documents.

"**Transfer Taxes**" means any Taxes, assessments, levies, imposts, duties, deductions, fees, withholdings or other charges of whatever nature (other than any taxes imposed on or measured by net income or any franchise Taxes), including interest and penalties thereon, required to be paid to any taxing authority with respect to the transfer of the Assets, the

Collateral and the Collateral Documents or the rights in the Collateral or the assignment and assumption of the Obligations thereunder.

"**Transferee Certificate**" has the meaning set forth in Section 2.7(j) of the Custodial and Paying Agency Agreement.

"**Transferor**" means the Receiver as the "Transferor" under the Contribution Agreement.

"**Transferor Loan-Servicing Contract**" means any contract between the Receiver and any third-party (including any Existing Servicer other than the Receiver) for the provision of loan-servicing services with respect to the Loans (or any portion thereof).

"**Transferred Contract**" means (i) any Note, any Asset Document, any Collateral Document, any Related Agreement or any other contract or instrument defined as included within any Loan or Acquired Property, or (ii) any operating or similar agreement with respect to any Entity formed by the Receiver or any predecessor in interest and transferred to the Company on the Closing Date pursuant to the Contribution Agreement; provided, however, that no contract or instrument that was disaffirmed or repudiated by the Receiver prior to the Cut-Off Date, and no Transferor Loan-Servicing Contract, shall constitute a Transferred Contract.

"**Treasury Regulations**" shall mean the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code, and all references to sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, substitute, proposed or final Treasury Regulations, as may be amended, supplemented or modified from time to time.

"**Ultimate Parent Entity**" means (i) (x) in relation to ColFin 2012 CRE ADC Holdco, LLC, a Delaware limited liability company, Colony Financial, Inc., a Maryland corporation, Colony Distressed Credit Fund II, L.P., a Delaware limited partnership and ColHM Strategic Partners, L.P., a Delaware limited partnership and (y) in relation to Colony AMC 2012 CRE ADC, LLC, a Delaware limited Liability Company, CDCF II 2012 CRE ADC Holdco, LLC, a Delaware limited liability company and Colony Financial AMC, LLC, a Delaware limited liability company, and (ii) in relation to any Person becoming a "Specified Parent" pursuant to clause (i)(y) of the definition of such term, the ultimate parent entity(ies) of such Person as agreed by the Private Owner and the Required Consenting Parties in connection with the consent to such Person becoming a "Specified Parent".

"**Underlying Loan**" means, with respect to any Receiver Acquired Property (and except as otherwise provided on the Asset Schedule or the Ownership Entity and Receiver Acquired Property Schedule), any and all remaining right, title and interest of the Receiver, any Failed Bank or an Ownership Entity in and to the applicable Loan or Loan Participation (or other applicable loan, note and related documents) having been secured by such Receiver Acquired Property and with respect to which title to such Receiver Acquired Property has transferred to the Receiver, any Failed Bank or an Ownership Entity pursuant to a foreclosure sale, deed in lieu of foreclosure or any other exercise of remedies (in addition to any related Deficiency Balance).

"**Uniform Commercial Code**" or "**UCC**" means the Uniform Commercial Code as in effect in any applicable jurisdiction, as may be amended, supplemented or modified from time to time.

"**United States**" and "**U.S.**" mean the United States of America.

"**United States Person**" means a "United States person" as defined in Section 7701(a) of the Code.

"**Unpaid Principal Balance**" means, as of any date of determination, (a) when used in connection with multiple Assets (or multiple Loans and/or Acquired Property), an amount equal to the sum of the aggregate then outstanding principal balance of each such Asset (or Loan and/or Acquired Property), (b) when used with respect to a single Asset (or Loan and/or Acquired Property), an amount equal to the then outstanding principal balance of such Asset (or Loan and/or Acquired Property), and (c) when used with respect to one or more Assets including Loan and Acquired Property components, an amount equal to the sum of the Unpaid Principal Balance of such Loan and the Unpaid Principal Balance of such Acquired Property; provided, however, that:

(i) with respect to any Loan Participation (and any related Acquired Property), the Unpaid Principal Balance of such Loan Participation shall include only the Company's (or, with respect to any period prior to the effectiveness of the transfer of such Loan Participation to the Company on the Closing Date, the Receiver's, or any Failed Bank's, as applicable) allocable share thereof in accordance with the applicable Loan Participation Agreement;

(ii) for purposes of all determinations in connection with or relating to either a repurchase of an Asset pursuant to Article VI of the Contribution Agreement or any adjustment pursuant to Section 2.4 of the Contribution Agreement:

(A) with respect to any Acquired Property that is included among the Assets on the Closing Date, the Unpaid Principal Balance of such Acquired Property shall initially be the book value set forth on the Asset Schedule, as adjusted to its Adjusted Unpaid Principal Balance pursuant to the Contribution Agreement, and thereafter as further adjusted pursuant to item (ii)(C) below;

(B) in the case of an Asset (that was a Loan as of the Cut-Off Date) for which some or all the Collateral has been converted to Acquired Property, the unpaid principal balance of such Asset (including the resulting Loan and Acquired Property, which shall be considered as a single Asset for purposes of determination of the Unpaid Principal Balance under this item (ii)) shall, until such time as the Acquired Property is liquidated, be deemed to equal the amount of the unpaid principal balance of such Loan at the time at which such Asset was so converted (in whole or in part) to Acquired Property, as such unpaid principal balance with respect to such Loan may be adjusted in accordance with the applicable Asset Documents (but disregarding any credit on account of the applicable conversion of such Collateral to Acquired Property and any value (or

Net Fair Value) of such Acquired Property, other than further adjustments pursuant to item (ii)(C) below) and, as to Acquired Property included in such Asset, as further adjusted pursuant to item (ii)(C) below;

(C) in the case of item (ii)(A) above (after the adjustment to the Adjusted Unpaid Principal Balance) and (ii)(B) above (following any applicable conversion), the unpaid principal balance of any such Acquired Property or Asset including such Acquired Property shall be reduced by the net proceeds of any sales of any portions of such Acquired Property, and increased, without duplication, by the amount of (1) any advances or Interim Servicing Expenses by the Transferor (or the Initial Member) during the Interim Servicing Period under or as described in the Contribution Agreement (and applicable provisions of the LLC Operating Agreement) made with respect thereto and capitalized thereto in accordance with GAAP (and applicable Law), and (2) any Permitted Development Expenses (or other expressly permitted expenditures for Development pursuant to Section 12.14 of the LLC Operating Agreement, or Servicing Expenses for any construction or development (pursuant to clause (B) of the proviso appearing as the last paragraph of the definition of "Servicing Expenses"), in each case paid with respect thereto and capitalized thereto in accordance with GAAP (and applicable Law);

(iii) for all purposes other than determinations in connection with or relating to either a repurchase of an Asset pursuant to Article VI of the Contribution Agreement or any adjustments pursuant to Section 2.4 of the Contribution Agreement:

(A) the Unpaid Principal Balance of Acquired Property shall be the Net Fair Value of such Acquired Property; and

(B) the Unpaid Principal Balance of any Loan (including any such Loan as to which the Collateral has been converted in part to Acquired Property, it being understood that the Unpaid Principal Balance of any Loan converted in whole to Acquired Property shall be zero) shall be the unpaid principal balance of such Loan, as adjusted from time to time in accordance with the applicable Asset Documents (including as initially adjusted to the Adjusted Unpaid Principal Balance), subject to the following limitations and other applicable provisions of the Transaction Documents:

(1) in connection with any partial release or sale of the Mortgaged Property securing such Loan, the Unpaid Principal Balance of such Loan shall be permanently reduced by the Release Price for such Mortgaged Property (notwithstanding that the net proceeds received and applied to such Loan in respect of such release or sale may be in a different amount);

(2) in connection with any partial conversion of such Loan to Acquired Property, the Unpaid Principal Balance of such Loan shall be permanently reduced by the applicable Release Price for such Mortgaged Property (notwithstanding that the applicable amount credited to or otherwise deducted from the Loan balance owing by the applicable Borrower in respect of such partial conversion may be in a

different amount); provided that, in all instances, the sum of the Unpaid Principal Balance of such Loan and the Net Fair Value of such Acquired Property, as determined immediately after such conversion, shall be in an amount not in excess of the Unpaid Principal Balance of such Loan immediately prior to giving effect to such conversion (and the Unpaid Principal Balance of the Loan shall be deemed permanently reduced by the amount of any such excess);

(3) the Unpaid Principal Balance (or applicable outstanding principal amount for purposes of determination of such Unpaid Principal Balance) of any Loan or of any portion of such Loan constituting a charge-off (including as to amounts having been charged off by the Failed Bank or the Receiver prior to the Cut-Off Date), a Deficiency Balance or a Deficiency Judgment Claim, or of any Loan following (I) the conversion or disposition of all or substantially all in value of the Mortgaged Property (or other applicable Collateral) securing the same, or (II) a determination by the Manager, the Servicer or any Subservicer (including any such determination for purposes of financial statements of the Company, or in connection with any audit thereof) that no further payments or recoveries (other than purely *de minimis* payments or recoveries) will be ultimately recoverable by the Company with respect to such Loan, shall in each case be deemed to be zero; and

(4) in no event shall the Unpaid Principal Balance of such Loan (as calculated subject to the foregoing provisions) exceed the actual outstanding principal amount owing by the Borrower under the Loan in accordance with the applicable Asset Documents (and the Unpaid Principal Balance of such Loan shall be deemed permanently reduced by the amount of any such excess).

"**Unreimbursable Expenses**" has the meaning set forth in Section 4.6(e) of the LLC Operating Agreement.

"**USPAP**" means the Uniform Standards of Professional Appraisal Practices promulgated by the Appraisal Standards Board of the Appraisal Foundation.

"**U.S. Person**" has the meaning ascribed to the term "U.S. person" in Regulation S.

"**Verification Contractor**" means any Person retained by the Initial Member to provide the administrative and verification functions described in the LLC Operating Agreement.

"**Verification Contractor Amounts**" means, collectively, the fees and expenses of the Verification Contractor payable to it pursuant to the agreement(s) under which such Verification Contractor was retained by the Initial Member.

"**Vertical Development**" means all of the construction, design, planning and other work performed on or with respect to the Acquired REO Property or real estate securing a Loan (other than Horizontal Development), which shall include without limitation, the construction of (i) foundations, columns, girders, beams, supports, exterior and main walls, interior walls, structural columns, concrete floor slabs and structural floors, exterior ceilings, roofs, stairs, stairways, glass

facades, fire stairs, stairs and entrances and exits; (ii) within the building, central, and to the extent applicable, individual unit and appurtenant installations for services and utilities such as power, light, hot and cold water, heating, refrigeration, air-conditioning, ventilating and pipes, wires, conduits, ducts, vents and other services and utility lines which are used in connection therewith; and (iii) elevators, fire-safety and other emergency systems, tanks, pumps, motors, fans, compressors and ducts and similar apparatus and installations; provided, that in all events "Vertical Development" shall exclude applicable uses of Servicing Expenses to the extent required in accordance with clause (B) of the proviso appearing as the last paragraph of the definition of "Servicing Expenses".

"**WCR Account Deposit**" has the meaning set forth in the Private Owner Interest Sale Agreement.

"**Winning Bidder**" has the meaning set forth in the Recitals of the Private Owner Interest Sale Agreement.

"**Working Capital Expenses**" means any Servicing Expenses, Interim Servicing Expenses, Pre-Approved Charges, Required Funding Draws, Interim Servicing Fees, Verification Contractor Amounts, or fees of the Custodian and Paying Agent.

"**Working Capital Reserve**" means a working capital reserve to be (i) funded initially on the Closing Date (in an aggregate amount equal to the WCR Account Deposit) pursuant to the LLC Operating Agreement and the payments contemplated in the Private Owner Interest Sale Agreement, and (ii) thereafter held (in the Working Capital Reserve Account), used and replenished from time to time pursuant to the applicable provisions in the LLC Operating Agreement and the Custodial and Paying Agency Agreement.

"**Working Capital Reserve Account**" means the segregated trust or custodial account designated as the "Working Capital Reserve Account" pursuant to Section 3.6(a) of the Custodial and Paying Agency Agreement.

"**Working Capital Reserve Floor**" means $2,000,000.00, or, in the event of an applicable written approval from the Required Consenting Parties pursuant to Section 12.11(b) of the LLC Operating Agreement, such other amount as may be applicable pursuant to such written approval.

"**Working Capital Reserve Replenishment Cap**" means $5,000,000.00, or, in the event of an applicable written approval from the Required Consenting Parties pursuant to Section 12.11(b) of the LLC Operating Agreement, such other amount as may be applicable pursuant to such written approval.

"**Working Capital Reserve Target**" means the targeted amount of Working Capital Reserve as determined by the Manager with respect to each Distribution Date, to be not less than the Working Capital Reserve Floor and not more than the Working Capital Reserve Replenishment Cap, or, in the event of an applicable written approval from the Required

Consenting Parties pursuant to Section 12.11(b) of the LLC Operating Agreement, such other amount as may be applicable pursuant to such written approval.

Section 1.2. Rules of Construction. The Rules of Construction apply to this Agreement (other than the definitions set forth in Section 1.1 hereof), and clauses (b), (c), (d), (e), (f), (h), (i), (j), (k) and (l) of the Rules of Construction apply to the definitions set forth in Section 1.1 hereof.

ARTICLE II

Miscellaneous

Section 2.1. Enforceability of this Agreement. Notwithstanding that this Agreement has not been executed by all parties described in this Agreement, this Agreement is enforceable against each party that has executed this Agreement. The parties that execute this Agreement acknowledge that the Transaction Documents are being (or were) executed by certain Persons, including, but not limited to, the parties hereto, simultaneously or otherwise in connection with the execution of this Agreement, and that notwithstanding any failure by any party hereto to execute this Agreement, such agreements shall be effective and binding on the parties thereto in accordance with the terms thereof.

Section 2.2. Expenses. Except as might be expressly provided otherwise herein or in any Transaction Document, each party shall pay its own expenses (including legal, accounting investment banker, broker or finder's fees) incident to the negotiation and execution of this Agreement and the Transaction Documents, and the performance of its obligations hereunder.

Section 2.3. Waivers and Amendments. This Agreement may be amended or modified, and the terms hereof may be waived, only by a written instrument signed by (i) all parties signatories to this Agreement, and (ii) from and after the Guaranty Issuance Date, each Purchase Money Notes Guarantor (for so long as it is a third party beneficiary hereof). In no event shall any such amendment or waiver limit or affect (including through any amendment or elimination of this sentence) the rights of the Receiver or the FDIC (in each case, as a third party beneficiary of any applicable provisions herein) without the express written consent of the Receiver or the FDIC, respectively. Notwithstanding anything to the contrary contained elsewhere in this Agreement, (x) nothing in this Agreement governs, or modifies in any respect, the requirements for amending any Core Agreement (or other Transaction Document that includes definitions by reference to this Agreement), including with respect to any of the definitions included therein by reference to this Agreement, (y) with respect to any Transaction Document, any terms defined herein may be amended (for purposes of usage thereof in such Transaction Document) pursuant to an applicable amendment to such Transaction Document (complying with the requirements therein for amendments), and (z) this Agreement is subject to amendment and modification pursuant to Section 8.4 of the Contribution Agreement.

Section 2.4. Counterparts; Facsimile Signatures.

(a) This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all parties hereto.

(b) 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 unified 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 2.5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto which have executed this Agreement and their respective successors and assigns. Without limiting the generality of the preceding sentence, this Agreement shall be binding on and inure to the benefit of (i) any successor "PMN Agent" under, and in accordance with, the Reimbursement, Security and Guaranty Agreement, (ii) any successor "Initial Member" under, and in accordance with, the LLC Operating Agreement and (iii) any successor "Private Owner" under, and in accordance with, the LLC Operating Agreement. Furthermore, in each case subject to, and without modifying rights or obligations under, Sections 2.1 and 2.3, (i) each Purchase Money Notes Guarantor (and its successors and assigns) is hereby constituted (until the Guaranteed Purchase Money Notes Satisfaction Date with respect to such Purchase Money Notes Guarantor) an express third party beneficiary of this Agreement in its entirety, and, as such, each Purchase Money Notes Guarantor (and its successors or assigns) is entitled to enforce the provisions of this Agreement to the same extent as if such Person were a party hereto, and (ii) to the extent that this Agreement (including as a result of terms defined herein being used in applicable Transaction Documents) confers directly any rights, remedies or other benefits upon the FDIC, any Holder or any other Person (not a party to this Agreement, but otherwise a party to, or express third party beneficiary of, any Transaction Document) (other than any Purchase Money Notes Guarantor), this Agreement (subject to Sections 2.7, 2.8 and 2.9 hereof as if such other Person was a party hereto) also shall inure to the benefit of, and may be enforced by, such Person.

Section 2.6. Compliance With Law; Severability.

(a) Compliance With Law. Except as otherwise specifically provided herein, each party to this Agreement shall obey and comply with all applicable Laws, as they may pertain to such party's performance of its obligations hereunder.

(b) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (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 might 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, (I) 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 (II) enforce such provision, as so modified pursuant to clause (I), in such proceeding.

Section 2.7. Jurisdiction; Venue and Service.

(a) Each of (x) the Company, the Private Owner and the Bank, in each case on behalf of itself and its Affiliates, and (y) the Initial Member, hereby irrevocably and unconditionally:

(i) consents to the jurisdiction of the United States District Court for the Southern District of New York and to the jurisdiction of the United States District Court for the District of Columbia for any suit, action or proceeding against it or any such Affiliate commenced by the Initial Member, the PMN Agent, any Purchase Money Notes Guarantor or the Transferor arising out of, relating to, or in connection with this Agreement or any Transaction Document, and waives any right to:

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

(2) 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

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

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

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

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

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

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

(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 2.7(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, the PMN Agent, the relevant Purchase Money Notes Guarantor or the Transferor, as applicable; and

(v) agrees, in any suit, action or proceeding that is brought in the Supreme Court of the State of New York for New York County in accordance with the above provisions of this Section 2.7(a), to request that such suit, action or proceeding be referred to the Commercial Division of such Court.

(b) Each of the Company, the Private Owner and the Bank, in each case 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 2.7(a) may be enforced in any court of competent jurisdiction.

(c) Subject to the provisions of Section 2.7(d), each of the Company, the Private Owner and the Bank, in each case on behalf of itself and its Affiliates, hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or

proceeding pursuant to Section 2.7(a) or Section 2.7(b) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 2.10 (and the Notice Schedule) (with copies to such other Persons as specified therein); provided, however, that the foregoing shall not affect the right of any party to serve process in any other manner permitted by Law. Each of the Company, the Private Owner and the Bank, in each case on behalf of itself and its Affiliates, further agrees that any such service of writs, process or summonses in any suit, action or proceeding pursuant to Section 2.7(a) or Section 2.7(b) on FDIC (in any capacity) shall be in accordance with requirements of applicable Law (including 12 CFR section 309.7(a)), with additional delivery of a copy of such writ, process or summons to the FDIC (in its applicable capacity(ies)) pursuant to the notice provisions in Section 2.10 (and the Notice Schedule).

(d) Nothing in this Section 2.7 shall constitute (i) consent to jurisdiction in any court by the FDIC (in any capacity), other than as expressly provided in Section 2.7(a)(iii) and Section 2.7(a)(iv), or (ii) a waiver or limitation of any provision in the Federal Deposit Insurance Act or other applicable law relating to commencement, jurisdiction, venue, limitations, administrative exhaustion, judicial review, removal, remand, continuation or enforcement (including as to limitations on attachment or execution upon assets in the possession of the FDIC) of actions by or against the FDIC (in any capacity), or in which the FDIC (in any capacity) is a party, including 12 U.S.C. § 1819(b), 1821(c), 1821(d), and 1821(j).

Section 2.8. Waiver of Jury Trial. EACH OF THE COMPANY, THE PRIVATE OWNER AND THE BANK, FOR ITSELF AND ITS AFFILIATES, AND EACH OF THE INITIAL MEMBER, THE PMN AGENT AND THE TRANSFEROR, 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 2.9. Governing Law. EACH PARTY TO THIS AGREEMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS AGREEMENT IS TO GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAWS OF ANOTHER JURISDICTION, AND EACH PARTY TO THIS AGREEMENT UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL REQUIRE ANY UNLAWFUL ACTION OR INACTION BY ANY PARTY TO THIS AGREEMENT.

Section 2.10. 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 delivered in accordance with (and subject to) the provisions of the Notice Schedule (which Notice Schedule is hereby incorporated by reference); provided, that, service of any writ, process or summons in any suit, action or proceeding arising out of, relating to, or in

connection with this Agreement or any Transaction Document shall be subject to the applicable provisions in Section 2.7(c).

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized on the date first above written.

Transferor

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER (AS DEFINED HEREIN), as Transferor

By: [redacted]
Name: Parichart Thepvongs
Title: Attorney-in-Fact

Initial Member

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER (AS DEFINED HEREIN), as Initial Member

By: [redacted]
Name: Parichart Thepvongs
Title: Attorney-in-Fact

Company

CRE/ADC VENTURE 2012-1, LLC

By: Federal Deposit Insurance Corporation in its capacity as Receiver (as defined herein), as Sole Member and Manager

By: [redacted]
Name: Parichart Thepvongs
Title: Attorney-in-Fact

[Signature Page to Agreement of Definitions - Page 1 of 2]

Private Owner

COLFIN 2012 CRE ADC Funding, LLC, a Delaware limited liability company

By: [redacted]
Name: Mark H. Hedstrom
Title: Vice President

Paying Agent and Custodian

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Paying Agent and Custodian

By: _____
Name: Amy Mofsenson
Title: Vice President

PMN Agent
FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER (AS DEFINED HEREIN), as PMN Agent

By: [redacted]
Name: Parichart Thepvongs
Title: Attorney-in-Fact

Private Owner

COLFIN 2012 CRE ADC Funding, LLC, a Delaware limited liability company

By: _____
Name: Mark H. Hedstrom
Title: Vice President

Paying Agent and Custodian

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Paying Agent and Custodian

[redacted]

By: _____
Name: Amy Mofsenson
Title: Vice President

PMN Agent
FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER (AS DEFINED HEREIN), as PMN Agent

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

[Signature Page to Agreement of Definitions - Page 2 of 2]

Schedule I

CRE/ADC Venture 2012-1 Structured Transaction

Notice Schedule

For purposes of each Transaction Document and any reference to (or incorporation of) all or any portion of this Notice Schedule therein, references in this Notice Schedule to this "Agreement" shall mean and refer to such Transaction Document.

Notices.

(a) Subject to Sections (d) (as to reports to be uploaded) and (e) (as to service of writs, process and summonses) below, all notices, requests, demands and other communications required or permitted to be given or delivered to any Person listed (or otherwise referenced) in Section (b) below under or by reason of the provisions of this Agreement (and each other applicable Transaction Document, except as otherwise provided therein) shall be in writing and shall be delivered (i) by certified or registered mail, postage prepaid, (ii) by nationally recognized courier service, or (iii) by electronic mail (followed up by a hard copy delivered through an alternate manner permitted under this Notice Schedule, or by U.S. mail, postage prepaid), in each case directed to the applicable address or electronic mail address specified in (or updated pursuant to) this Notice Schedule. All such notices, requests, demands and other communications to any such Person pursuant to the foregoing shall be deemed delivered upon the earlier to occur of (A) actual receipt (or refusal thereof) by such Person, and (B) (1) if delivered by certified mail or by nationally recognized courier service, when signed for (or refused) by or on behalf of such Person, and (2) if delivered by electronic mail (which form of delivery is subject to the provisions of this paragraph), when delivered; provided, however, that any notice, request, demand or other communication that is delivered to any such address or electronic mail address other than during regular business hours of the recipient shall be deemed to have been delivered at the opening of business on the next Business Day. In no event shall a voice mail message or any electronic communication (other than as expressly provided pursuant to the foregoing or pursuant to Section (d) below) be effective as a notice, confirmation or other communication hereunder.

(b) For purposes of the foregoing, such notices, requests, demands and other communications should, as to each Person listed below, be sent to its respective address as follows:

If to the Company (including as the "Issuer" of any Purchase Money Note and as the "Debtor" under the Reimbursement, Security and Guaranty Agreement) after the Closing or to any Subsidiary Grantor, to:

c/o 2012 CRE ADC-1, LLC
2450 Broadway
6th Floor
Santa Monica, CA 90404
Attention: Paul Fuhrman
E-mail Address: [redacted]

with a copy to:

Colony Capital LLC
660 Madison Avenue
New York, New York 10065
Attention: Ronald M. Sanders
E-mail Address: [redacted]

If to the Private Owner (including in its role as Manager and/or as Tax Matter Member), to:

ColFin 2012 CRE ADC Funding, LLC
2450 Broadway
6th Floor
Santa Monica, CA 90404
Attention: Paul Fuhrman
E-mail Address: [redacted]

with a copy to:

Colony Capital LLC
660 Madison Avenue
New York, New York 10065
Attention: Ronald M. Sanders
E-mail Address: [redacted]

If to the Company (including as the "Issuer" of any Purchase Money Note) before Closing, the Transferor, the PMN Agent, the Initial Holder or the Initial Member, to:

Federal Deposit Insurance Corporation
Reference: CRE/ADC Venture 2012-1 Structured Transaction
550 17th Street, NW (Room F-8014)
Washington, D.C. 20429-0002
Attention: Associate Director, Asset Management
Division of Resolutions and Receiverships
E-mail Address: [redacted]
E-Mail Reference: CRE/ADC Venture 2012-1 Structured Transaction

with a copy to:

FDIC Legal Division
Litigation and Resolutions Branch, Receivership Section, Special Issues Unit
Reference: CRE/ADC Venture 2012-1 Structured Transaction
3501 Fairfax Drive (Room E-7098)
Arlington, VA 22226-3599
Attention: Kathleen Russo
E-mail Address: [redacted]
E-mail Reference: CRE/ADC Venture 2012-1Structured Transaction

If to the Bank (including as Custodian and/or as Paying Agent):

For purposes of designating the Custodian as the return addressee on Transfer Documents:
Wells Fargo Bank, National Association
9062 Old Annapolis Road
Columbia, Maryland 21045
Attention: Client Services Manager
Reference: CRE/ADC Venture 2012-1 Structured Transaction
E-mail Addresses: [redacted]

For purposes of cancellation and presentment of Purchase Money Notes:
Wells Fargo Bank, National Association
6th Street & Marquette Avenue
Minneapolis, Minnesota 55479
Attention: Corporate Trust Services Bondholder Communications
Reference: CRE/ADC Venture 2012-1 Structured Transaction
E-mail Addresses: [redacted]

For purposes of transfer and/or exchange of Purchase Money Notes:
Wells Fargo Bank, National Association
6th Street & Marquette Avenue
Minneapolis, Minnesota 55479
Attention: Corporate Trust Services Bondholder Communications
Reference: CRE/ADC Venture 2012-1 Structured Transaction
E-mail Addresses: [redacted]

For all other purposes:

Wells Fargo Bank, National Association
9062 Old Annapolis Road
Columbia, Maryland 21045
Attention: Client Services Manager
Reference: CRE/ADC Venture 2012-1 Structured Transaction
E-mail Addresses: [redacted]

If to the Servicer:

To the address set forth for the Servicer in the Servicing Agreement.

If to any PO Owner:

To the address set forth for such PO Owner in its PO Owner Undertaking.

If to any Purchase Money Notes Guarantor:

To the address set forth in the relevant Purchase Money Notes Guaranty.

If to any other party to this Agreement (for purposes of any Transaction Document not otherwise specified above):

To the address set forth for such party in this Agreement.

(c) From time to time any Person listed (or referenced) above may revise its address for delivery hereunder by providing notice to such effect to the other applicable parties in the manner set forth in this Notice Schedule. Each party to this Agreement agrees that, as to all Transaction Documents to which it is a party (and except as may be expressly set forth otherwise therein), (i) any Person listed above may revise its applicable notice address (or, as to any applicable report to be delivered to the FDIC (in any capacity), the recipient may provide applicable instructions pursuant to Section (d) below) as to any or all Transaction Documents (or applicable reports) by means of a single notice delivered (in accordance with the foregoing) to any or all other applicable parties to such Transaction Documents (and such address or changes to report delivery instructions, as applicable, as revised shall be effective as to each such party to whom such notice is so delivered in accordance herewith), and (ii) subject to the foregoing, as to any Person listed above, the address or other means of delivery herein for such Person (as the same may be updated pursuant to the foregoing) shall apply with respect to all Transaction Documents to which such Person is a party (or express third party beneficiary).

(d) Anything in the foregoing to the contrary notwithstanding (and in each case unless otherwise directed by the applicable recipient by written notice delivered pursuant to the foregoing provisions of this Notice Schedule), each of (i) each Monthly Report and other periodic report required to be delivered by the Manager pursuant to the Reporting and Access Schedule, (ii) such other reports required to be uploaded pursuant to the applicable instructions made available by the FDIC through the website indicated below, and (iii) such other reports to the FDIC (in any capacity) as the recipient may from time to time request (by written notice delivered pursuant to the foregoing provisions of this Notice Schedule) to receive via such uploading, in each case shall be delivered exclusively by uploading the same to the applicable electronic portal (presently known as "FDIConnect") maintained by the FDIC (through its Asset Management Division), as described in greater detail in the structured transaction reporting requirements available on the FDIC's website at:

http://www.fdic.gov/bank/individual/failed/lossshare/structured_transaction_DataSpecs.html (or such successor online address as may be designated from time to time by the FDIC for such reporting requirements).

Any such report to be uploaded pursuant to the foregoing shall be deemed delivered when so uploaded (in accordance with the applicable instructions available through the above-referenced website), with applicable online confirmation of successful completion of such upload.

(e) Anything in the foregoing to the contrary notwithstanding, service of writs, process and summonses in any suit, action or proceeding arising out of, relating to, or in connection with this Agreement or any other Transaction Document shall be subject to any express provisions set forth in this Agreement or such other Transaction Document.

Schedule II

CRE/ADC Venture 2012-1 Structured Transaction

List of Various Failed Financial Institutions

Bank Name	City	State	Fund ID	Closing Date
Montgomery Bank & Trust	Ailey	GA	10448	7/6/2012
Carolina Federal Savings Bank	Charleston	SC	10441	6/8/2012
Bank of the Eastern Shore	Cambridge	MD	10434	4/27/2012
Fort Lee Federal Savings	Fort Lee	NJ	10433	4/20/2012
Premier Bank	Wilmette	IL	10431	3/23/2012
New City Bank	Chicago	IL	10429	3/9/2012
Global Commerce Bank	Doraville	GA	10428	3/2/2012
Home Savings of America	Little Falls	NM	10427	2/24/2012
Shelby County Bank	Shelbyville	IN	10425	2/10/2012
Community Bank of Rockmart	Rockmart	GA	10412	11/10/2011
Country Bank	Aledo	IL	10402	10/14/2011
Bank of Whitman	Colfax	WA	10387	8/05/2011
Integra Bank, NA	Evansville	IN	10384	7/29/2011
Bank of Choice	Greeley	CO	10380	7/22/2011
One Georgia Bank	Atlanta	GA	10378	7/15/2011
First Chicago Bank & Trust	Chicago	IL	10374	7/8/2011
First Georgia Banking Company	Franklin	GA	10366	5/20/2011
The Park Avenue Bank	Valdosta	GA	10363	4/29/2011
American Trust Bank	Roswell	GA	10336	2/4/2011
FirsTier Bank	Louisville	CO	10334	1/28/2011
First Community Bank	Taos	NM	10333	1/28/2011
United Western Bank	Denver	CO	10331	1/21/2011
The Bank of Asheville	Asheville	NC	10330	1/21/2011
First National Bank	Savannah	GA	10251	6/25/2010
CF Bancorp	Davenport	IA	10226	4/30/2010
Appalachian Community Bank	Ellijay	GA	10199	3/18/2010
Community Bank & Trust	Cornelia	GA	10180	1/29/2010
Platinum Community Bank	Rolling Meadows	IL	10115	9/4/2009
First State Bank of Altus	Altus	OK	10093	7/31/2009
ANB Financial, N.A.	Bentonville	AR	10005	5/9/2008