SFG Transaction
EXECUTION COPY

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

2010-1 SFG VENTURE LLC

Dated as of May 18, 2010

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2010-1 SFG VENTURE LLC
AMENDED AND RESTATED
LIMITED LIABILITY COMPANY OPERATING AGREEMENT

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT (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 18th day of May, 2010 (the "**Closing Date**"), by and among the Federal Deposit Insurance Corporation (in any capacity, the "**FDIC**"), as the Receiver defined below (including its successors and assigns hereto, the "**Initial Member**"), Square Mile Lodging Recovery LLC, a Delaware limited liability company (the "**Private Owner**"), and 2010-1 SFG Venture LLC, a Delaware limited liability company (the "**Company**").

WHEREAS, the FDIC has been appointed receiver (in such capacity, the "**Receiver**") for Silverton Bank, N.A., a failed financial institution (the "**Failed Bank**");

WHEREAS, on May 6, 2010, the Initial Member formed the Company as a Delaware limited liability company and was admitted as its initial, and sole, member (owning a one hundred percent (100%) limited liability company interests), and the Initial Member and the Company entered into that certain Limited Liability Company Operating Agreement dated as of May 6, 2010 (the "**Original LLC Operating Agreement**") as the initial "limited liability company agreement" (as such term is defined in the Act) of the Company;

WHEREAS, the Initial Member and the Company have entered into a Loan Contribution and Sale Agreement dated of even date herewith (the "**Contribution Agreement**") pursuant to which (i) the Initial Member has sold in part and contributed in part, in each case to the Company, and the Company purchased and accepted such contribution from the Initial Member, all of the Initial Member's right, title and interest in and to the Loans, and assumed the Obligations (as defined in the Contribution Agreement), (ii) the Company has executed and delivered to the Initial Member (as the sole member of the Company at such time) those certain Purchase Money Notes for the benefit of the Initial Member and dated the date herewith (the "**Purchase Money Notes**"); and (iii) the FDIC, in its corporate capacity (the "**Purchase Money Notes Guarantor**") guaranteed payment of principal on the Purchase Money Notes pursuant to the terms of a Guaranty Agreement dated the date hereof between the FDIC, in its corporate capacity, and the Initial Member (the "**Purchase Money Notes Guaranty**"), and obtained a security interest in the Loans and Underlying Collateral under the Reimbursement, Security and Guaranty Agreement;

WHEREAS, the Initial Member has agreed to provide additional financing to the Company in the maximum amount not to exceed $30,000,000 to enable the Company to fund Working Capital Expenses in connection with the Loans (the "**Revolver**"), which funding shall be provided pursuant to, and in accordance with, the terms of that Revolving Credit Agreement dated of even date herewith (the "**Revolving Credit Agreement**") between the Initial Member, as lender (in such capacity, the "**Revolver Lender**"), and the Company, as borrower, with the repayment obligations under the Revolver being secured by the assets of the Company pursuant to the Revolving Credit Agreement and the other Revolver Documents;

WHEREAS, following closing of the transactions contemplated by the Contribution Agreement and the execution of the Original LLC Operating Agreement, the Initial Member agreed, pursuant to the terms of that certain Limited Liability Company Interest Sale and Assignment Agreement dated of even date herewith (the "**Transferred LLC Interest Sale Agreement**"), to sell to the Private Owner, effective as of the Closing Date an LLC Interest representing a forty percent (40%) equity interest in the Company;

WHEREAS, after giving effect to the transactions contemplated by the Transferred LLC Interest Sale Agreement, as of the Closing Date, the Initial Member and the Private Owner will own all the issued and outstanding limited liability company interests in the Company;

WHEREAS, upon the occurrence of the First Incentive Threshold Event, the Private Owner will own an LLC Interest representing a thirty-five percent (35%) equity interest in the Company and the Initial Member will own an LLC Interest representing a sixty-five percent (65%) equity interest in the Company; and upon the occurrence of the Second Incentive Threshold Event, the Private Owner will own an LLC Interest representing a thirty percent (30%) equity interest in the Company and the Initial Member will own an LLC Interest representing a seventy percent (70%) equity interest in the Company; and

WHEREAS, the parties desire to amend and restate the Original LLC Operating Agreement in its entirety in order to reflect the admission of the Private Owner as a Member of the Company and to set forth the terms and conditions on which the Company shall be owned and operated.

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, the parties hereto agree as follows:

ARTICLE I
Certain Definitions

1.1 Definitions. This Agreement constitutes the "limited liability company agreement" (as such term is defined in the Act) of the Company. For purposes of this Agreement, the following terms shall have the meanings and definitions hereinafter respectively set forth.

"**Acceptable Rating**" shall mean (i) a rating of "Average (Select Servicer List)" for construction loan servicers by Standard and Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc., (ii) a rating of "Acceptable" for construction loan servicers by Fitch, Inc., (iii) a rating of "Approved" for construction loan servicers by Moody's Investors Service, or (iv) a rating that complies with the standards set forth in the definition of "Qualified Servicer".

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

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

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

"**Act**" shall mean the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101 et seq.

"**Additional Security**" shall have the meaning given in Section 3.13(d).

"**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 with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"**Affiliate**" shall mean, with respect to any specified Person, (i) any other Person directly or indirectly Controlling or Controlled by or under common Control with such specified Person, (ii) any Person owning or Controlling ten percent (10%) or more of the outstanding voting securities, voting equity interests, or beneficial interests of the Person specified, (iii) any officer, director, general partner, managing member, trustee, employee or promoter of the Person specified or any Immediate Family Member of such officer, director, 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 ten percent (10%) or more of the outstanding voting securities, voting equity interests or beneficial interests of any Person described in clauses (i) through (iv); provided, however, that none of the Initial Member, the Revolver Lender (or any agent thereof) under the Revolver, the Purchase Money Notes Guarantor, the Collateral Agent 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.

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

"**Ancillary Documents**" shall mean the Contribution Agreement, the Servicing Agreement (including the Electronic Tracking Agreement), the Custodial and Paying Agency

Agreement, the Revolver Documents, the Private Owner Pledged Account Control Agreement, any Qualifying Letter of Credit, one or more Account Control Agreements, the Purchase Money Notes (and any promissory note reissued in respect thereof pursuant to Section 2.8 of the Custodial and Paying Agency Agreement), the Purchase Money Notes Guaranty, the Reimbursement, Security and Guaranty Agreement and the Transferred LLC Interest Sale Agreement, in each case once executed and delivered, and any and all other agreements and instruments executed and delivered in connection with the Closing or the transactions contemplated thereby.

"**Book Value**" shall mean, (i) with respect to contributed property, the initial Fair Market Value of such property, 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**" shall mean any borrower with respect to any Loan.

"**Bulk Sale**" shall mean 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 (2) or more related buyers) of two (2) or more assets (consisting of Loans, including any separate REO Property or other Acquired Property into which any Loan is converted) that (i) are not from a single borrower relationship or (ii) otherwise do not involve (or are not secured by) items of REO Property that are part of the same project and/or physically adjacent to one another; provided however, if multiple assets (including Loans) 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 (2) or more related buyers) provided that the single buyer's (or related buyer's) 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).

"**Business**" shall mean the acquisition of the Loans pursuant to the Contribution Agreement and the ownership, servicing, administration, management and liquidation of the Loans and Acquired Properties.

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

"**Business Plan**" shall have the meaning given in Section 7.7.

"**Buy-Out Closing**" shall have the meaning given in Section 3.14(a).

"**Buy-Out Closing Date**" shall have the meaning given in Section 3.14(b)(i).

"**Buy-Out Notice**" shall have the meaning given in Section 3.14(a).

"**Buy-Out Valuation Date**" shall have the meaning given in Section 3.14(a).

"**Capital Account**" shall mean 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 Section 6.2 and elsewhere in this Agreement.

"**Capital Contribution**" shall mean 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 this Agreement.

"**Certificate**" shall have the meaning given in Section 2.1(a).

"**Change of Control**" shall mean (a) with respect to the Private Owner, (i) the Private Owner's Specified Parent for any reason (x) failing or ceasing to Control the Private Owner or (y) failing or ceasing to own, beneficially and of record, and directly or indirectly (including through one or more Subsidiaries), at least fifty and one tenths percent (50.1%) in value of all of the equity interests in the Private Owner, or (ii) any Person other than the Private Owner's Specified Parent (and its wholly-owned Subsidiaries) at any time, when considered together with all of such Person's Affiliates (excluding, as applicable, the Private Owner's Specified Parent and its wholly-owned subsidiaries), directly or indirectly acquiring or holding, of record or beneficially, twenty-five percent (25%) in value of all of the equity interests in the Private Owner; and (b) with respect to the Servicer, (i) the Servicer's Specified Parent for any reason (x) failing or ceasing to Control the Servicer or (y) failing or ceasing to own, beneficially and of record, and directly or indirectly (including through one or more Subsidiaries), at least fifty and one tenths percent (50.1%) in value of all of the equity interests in the Servicer, or (ii) without limitation of clause (i), in the event the Servicer is (or at the time it became the Servicer, was) an Affiliate of the Private Owner, any Change of Control of the Private Owner.

"**Clean-up Call**" shall have the meaning set forth in Section 12.17(a).

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

"**Closing Date**" shall have the meaning given in the preamble.

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

"**Collateral Agent**" shall mean the FDIC, in its capacity as the Collateral Agent under (and as defined in) the Reimbursement, Security and Guaranty Agreement, and any successor Collateral Agent thereunder.

"**Collection Account**" shall mean a segregated trust or custodial account established and maintained at a branch of the Paying Agent (as the "Collection Account" defined therein) in accordance with, and for the purposes set forth in, the Custodial and Paying Agency Agreement.

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

"**Company Property**" shall mean all property, whether real or personal, tangible or intangible, owned by the Company, including the Loans contributed or sold by the Initial Member to the Company pursuant to the Contribution Agreement.

"**Consolidated Business Plan**" shall have the meaning given in Section 7.7.

"**Contract for Deed**" shall mean 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**" shall have the meaning given in the recitals.

"**Control**" (including the phrases "**Controlled by**" and "**under common Control with**") when used with respect to any specified Person shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

"**Covered Persons**" shall have the meaning given in Section 4.6(f).

"**Custodial and Paying Agency Agreement**" shall mean, initially, that certain Custodial and Paying Agency Agreement dated as of May 18, 2010, by and between the Company, the Purchase Money Notes Guarantor, the Revolver Lender and the initial Custodian and Paying Agent, and thereafter any replacement agreement entered into with a Custodian and Paying Agent pursuant to Section 3.7.

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

"**Custodian**" shall have the meaning given in Section 3.7.

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

"**Cut-Off Date**" shall have the meaning given in the Contribution Agreement.

"**Damages**" shall mean any and all damages, disbursements, suits, claims, liabilities, obligations, judgments, fines, penalties, charges, amounts paid in settlement, costs and expenses (including, without limitation, attorneys' fees and expenses) arising out of or related to litigation and interest on any of the foregoing.

"**Debt**" of any Person shall mean (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 herein and in the Ancillary Documents, that are expressly subordinated in writing to such Person's obligations under this Agreement and the Ancillary Documents on terms satisfactory to the Initial Member and, prior to the Purchase Money Notes Defeasance Date, the Purchase Money Notes Guarantor) 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 this 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), or (vii) all indebtedness or obligations of others of the kinds referred to in clauses (i) through (vi) above in respect of which such Person has entered into or issued any Guarantee.

"**Debtor Relief Laws**" shall mean 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.

"**Defeasance Account**" shall have the meanings given in Custodial and Paying Agency Agreement

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

"**Discretionary Funding Advance**" shall have the meaning given in Section 5.3(a).

"**Disposition**" shall mean any sale, assignment, alienation, gift, exchange, conveyance, transfer, pledge, hypothecation, granting of a security interest or other disposition or attempted disposition whatsoever, in each case, whether voluntary or involuntary, 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 term "**Dispose**" shall mean to make or consummate a "Disposition".

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

Each Member shall submit to the other, within five (5) 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 shall be the single proposal provided. If the higher of the two (2) proposals is not greater than one hundred ten percent (110%) of the lower proposal, then the amount shall be the average of such two (2) proposals. If the higher of such two (2) proposals is greater than one hundred ten percent (110%) of the lower amount then the Members shall, within seven (7) days of their submission of such proposals, jointly select a nationally recognized investment banking firm which shall, within fifteen (15) 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 this Agreement, and the proposal thus selected shall be considered the amount for purposes of this Agreement. If the Members fail to agree on such investment banking firm within such seven (7)-day period, then each Member shall nominate, within such seven (7)-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 (2) nominated firms promptly after the expiration of such seven (7)-day period; provided, that if either Member shall fail to nominate such an investment banking firm within such seven (7)-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 this 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**" shall mean, 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 (90) 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**" shall have the meaning given in Section 6.5.

"**Distribution Account**" shall mean a segregated trust or custodial account established and maintained under the Custodial and Paying Agency Agreement (as the "Distribution Account" is defined therein) at a branch of the Paying Agent for the sole purpose of holding and distributing Loan Proceeds in accordance with the Custodial and Paying Agency Agreement.

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

"**Distribution Date Report**" shall have the meaning given in the Custodial and Paying Agency Agreement, which report shall be prepared and distributed by the Manager to the Paying Agent as part of the Monthly Report in accordance with Section 7.4(b).

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

"**Electronic Tracking Agreement**" shall have the meaning given in the Servicing Agreement.

"**Embargoed Person**" shall mean any Person 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 amended), 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.

"**Environmental Hazard**" means the presence at, in or under any Underlying Collateral (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.

"**ERISA**" shall have the meaning given in Section 10.1(r).

"**Escrow Account**" shall have the meaning given in the Contribution Agreement.

"**Escrow Advance**" shall mean any advance made to pay Taxes or insurance premiums or any other cost or expense that, but for a shortfall in the Borrower's Escrow Account, is payable using funds in the Borrower's Escrow Account.

"**Event of Default**" shall mean any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the receipt by the Company of notice from the Revolver Lender (or any agent under the Revolver) that an Event of Default under and as defined in the Revolver has occurred, or from the Collateral Agent that an Event of Default under and as defined in the Reimbursement, Security and Guaranty Agreement, has occurred (in each case, unless such an Event of Default has not actually so occurred); or

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

(c) any failure of the Company to pay any Servicing Expense when due in accordance with Section 12.6 of this Agreement, which failure continues unremedied for a period of thirty (30) days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Initial Member to the Company; or

(d) the failure of the Company or the Private Owner (for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) to comply in any material respect with or enforce the provisions of this Agreement, which continues unremedied for a period of thirty (30) days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Initial Member to the Private Owner; or

(e) the occurrence of either (i) a failure by the Servicer to perform in any material respect its obligations under the Servicing Agreement, which continues unremedied for a period of thirty (30) days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Manager (in its individual capacity) or the Initial Member to the Servicer, or (ii) a failure by the Manager (in its individual capacity) to replace the Servicer upon the occurrence of either (x) an Event of Default under the Reimbursement, Security and Guaranty Agreement as a result of the Servicer's acts or omissions or (y) a material breach of or event of default under the Servicing Agreement by the Servicer, in either case which continues unremedied for a period of thirty (30) days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Initial Member to the Manager (in any capacity); or

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

(g) there shall be a change in the Private Owner or the Manager or there shall occur a Change of Control with respect to the Private Owner (other than as expressly permitted pursuant to Section 8.2) or any Restricted Servicer Change of Control; provided, that, any such Restricted Servicer Change of Control shall not be an Event of Default hereunder (but shall in all events by a default under the applicable Servicing Agreement) so long as the Manager shall have fully replaced (or caused the replacement of) such affected Servicer within thirty (30) days after the occurrence of such Restricted Servicer Change of Control; or

(h) the failure of the Company to remit or cause to be remitted all Loan Proceeds to the Paying Agent (or to the applicable account maintained with the Paying Agent) as and when required; or

(i) the failure of the Manager to cause the Company to repay (or remit available funds for the repayment of) Discretionary Funding Advances to the full extent Loan Proceeds from the applicable Loan are available for such repayment; or

(j) any failure, for any reason, of the amount of the Additional Security to be equal to or exceed Five Million Dollars ($5,000,000), or any failure by an Issuing Bank to comply with any terms, agreements or conditions of any Qualifying Letter of Credit.

"**Excess Working Capital Advance**" shall have the meaning given in Section 5.4.

"**Excluded Expenses**" shall have the meaning given in Section 12.7(b).

"**Existing Servicer**" shall have the meaning given in the Contribution Agreement.

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

"**Fair Market Value**" shall mean, 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 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 Transferred LLC Interest Sale Price, as set forth in the Transferred LLC 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.

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

"**Final Distribution**" shall have the meaning given in Section 6.6(f).

"**First Incentive Threshold Event**" shall have the meaning given in Section 6.6(b)(iii).

"**Fiscal Year**" shall have the meaning given in Section 7.1.

"**Funding Draw**" shall mean (i) any principal advance with respect to a Loan pursuant to the funding provisions of the applicable Loan Documents and in accordance with the Servicing Standard, in each case so long as (a) if required by applicable Law or if otherwise deemed necessary by the Manager or required hereunder, an endorsement to each applicable title policy insuring the Loan, which endorsement shall be in form and content acceptable to the Manager, is obtained that (1) brings down the effective date of the title policy to the date on which the applicable Funding Draw it covers is made, (2) increases the liability limit of the title policy by an amount equal to the principal amount of such Funding Draw, and (3) contains no new exceptions to title; (b) notwithstanding anything to the contrary contained in this Agreement, if the then outstanding unpaid principal balance of the Loan exceeds (or would, after taking into account the applicable Funding Draw, so exceed) the value of the Underlying Collateral, the Manager shall make or permit any such 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 Funding Draw is in the best interests (in terms of maximizing the value of the Loan) of the Company and the Initial Member, or that the Company is otherwise legally obligated to make such Funding Draw under the applicable Loan Documents; and (c) such advance is made in accordance with the terms of the Loan and the Loan Documents, provided, however, that if such advance would result in the principal amount of such Loan being in excess of the related unfunded commitment with respect thereto (as set forth in the Loan Documents) or if any term with respect to the Loan or the Loan Documents precludes such advance in the event of a Borrower default, the applicable unfunded commitment may be increased (and such advance 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 advance) 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 advance not contemplated in the existing Loan Documents), (x) such increased commitment and the related advance are evidenced by an applicable Note (or Notes) and amendments to the Loan Documents (including Underlying Collateral Documents) pursuant to which such increased commitment and advance shall be secured by all of the Underlying 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 Loan Documents as in effect prior to such amendment, and (y) the Manager complies with the requirements in item (i)(a) above; and (ii) payments of costs and expenses associated with the continued construction of REO Property (including the payment of so-called "soft costs" payable during construction (such as real estate Taxes, ground rents and insurance premiums)) as would typically have been paid out of funding of a construction loan relating to such 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 Loan and REO Property) of the Company and the Initial Member, and (y) in accordance with the Servicing Standard and the Loan Documents that were applicable to the REO Property before it became an REO Property (not including payment of debt service under the applicable Loan Documents, and without reference to the unfunded commitment, if any, having been in effect with respect to such REO Property under the Loan Documents); provided, that, in no event shall any such costs and expenses payable pursuant to any such Funding Draw include any Excluded Expenses.

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

"**Governmental Authority**" shall mean (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).

"**ground lease**" shall have the meaning given in Section 12.15(g).

"**Guarantee**" shall mean, 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.

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

"**Incentive Threshold**" shall have the meaning given in Section 6.6(b)(iv).

"**Incentive Threshold Base Amount**" shall have the meaning given in Section 6.6(b)(iv)(A).

"**Indemnified Parties**" shall have the meaning given in Section 4.6(a).

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

"**Initial Member Capital Contribution**" shall have the meaning given in Section 2.3(a)(i).

"**Initial Member LLC Interest**" shall mean, (i) the limited liability company interests 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, this 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, this Agreement.

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

1. the specified Person makes an assignment for the benefit of creditors;

2. the specified Person files a voluntary petition for relief in any Insolvency Proceeding;

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

4. 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;

5. the specified Person seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the specified Person or of all or any substantial part of the specified Person's properties;

6. 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 (1) through (5);

7. the specified Person becomes unable to pay its obligations (other than, with respect to the Revolver, the Company, the Purchase Money Notes unless a Purchase Money Note Trigger Event (as defined in the Reimbursement, Security and Guaranty Agreement) has occurred and is continuing and is not cured within ten (10) Business Days) 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

8. (i) at least sixty (60) 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 (ii)

(x) at least sixty (60) 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 (y) if such appointment has been stayed, at least sixty (60) days have passed following the expiration of the stay and such appointment has not been vacated.

"**Insolvency Proceeding**" shall mean 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.

"**Interim Management Fee**" shall have the meaning given in the Custodial and Paying Agency Agreement.

"**Interim Servicing Fee**" shall have the meaning given in the Contribution Agreement.

"**Interim Servicing Period**" shall have the meaning given in the Contribution Agreement.

"**Investment Company Act**" shall mean the Investment Company Act of 1940, as amended from time to time.

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

"**Law**" shall mean 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**" shall mean, 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 (60) 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 (10) 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 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 this Agreement with respect to Qualifying Letters of Credit) or otherwise provided Qualifying Cash Collateral in the full undrawn face amount of such Qualifying Letter of Credit.

"**LIBOR Rate**" shall mean, with respect to each Due Period (and interest accruing on Discretionary Funding Advances during such Due Period), the rate per annum equal to the British Bankers Association LIBOR Rate ("**BBA LIBOR**"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by the

Paying Agent from time to time), as determined at approximately 11:00 a.m. New York time two (2) Business Days prior to the first day of such Due Period, for U.S. Dollar deposits with a term of one month.

"**Lien**" shall mean 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.

"**LLC Interest**" shall mean, (i) the limited liability company interests in the Company held by the Members, 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 Members (under the Act, this Agreement or otherwise) in their capacity as Members, including rights to vote, consent and approve, and (iii) all other rights, benefits, privileges and claims (whether known or unknown) of the Members under, or arising under, this Agreement. For purposes of clarification, references in this Agreement to the term "limited liability company interest" shall mean a "limited liability company interest" as such term is defined in the Act.

"**Loan**" shall mean any loan, Loan Participation, Ownership Entity (including any cash and cash equivalents held directly or indirectly by such Ownership Entities) or Acquired Property listed on the Loan Schedule, and any loan into which any listed loan or Loan Participation is refinanced or modified, and includes with respect to each such loan, Loan Participation, Ownership Entity, Acquired Property or other related asset or Related Agreements: (i) any obligation evidenced by a Note; (ii) all rights, powers or Liens of the Company or any Ownership Entity in or under the Underlying Collateral and Underlying Collateral Documents and in and to Acquired Property (including all Ownership Entities and REO Property held by any Ownership Entity); (iii) all rights of the Company or any Ownership Entity pursuant to any Contract for Deed and in or to the real property that is subject to any such Contract for Deed; (iv) all rights of the Company or any Ownership Entity pursuant to any lease and in or to the related leased property; (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 Company or any Ownership Entity with respect to the Loans, the Underlying Collateral or the ownership, use, function, value of or other rights pertaining thereto, whether arising by way of counterclaim or otherwise, other than any claims retained by the Initial Member pursuant to Section 2.7 of the Contribution Agreement; (vi) all guaranties, warranties, indemnities and similar rights in favor of the Company or any Ownership Entity with respect to any of the Loans; (vii) all rights of the Company or any Ownership Entity under the Related Agreements; and (viii) all rights of the Initial Member, SFG or the Failed Bank to any Deficiency Balances (as defined in the Contribution Agreement).

"**Loan Documents**" shall have the meaning given in the Contribution Agreement.

"**Loan File**" shall have the meaning given in the Contribution Agreement.

"**Loan Participation**" shall mean any loan listed on the Loan Schedule subject to a shared credit, participation, co lending or similar inter-creditor agreement under which the

Initial Member, SFG, the 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 the Initial Member, SFG, the 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**" shall mean an agreement under which SFG 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 SFG or the Receiver was, or the Company is, a participating financial depository institution or purchased participations in a credit managed by another Person.

"**Loan Proceeds**" shall mean all of the following: (i) any and all proceeds with respect to any or all of the Loans and any or all of the Underlying 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 Underlying Collateral in accordance with the terms of the Loan Documents and the Ancillary Documents, and, with respect to any Acquired Property, operating cash flow realized from such Acquired Property net of 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 Loans (including Acquired Property) net of Servicing Expenses incurred in connection with such sale or other disposition or refinancing; (iii) any proceeds from making a draw under any letter of credit or certificate of deposit held with respect to any Loan, provided that such draw is permitted by the terms of the Loan Documents; (iv) any recoveries from any Borrowers or Obligors of any kind or nature with respect to the Loans; and (v) any interest or other earnings accrued and paid on any of the amounts described in the foregoing clauses (i) through (iv) while held in the Collection Account or any other account other than (or the Defeasance 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 Underlying Collateral relating thereto), the Loan Proceeds shall exclude any amounts payable to others under the applicable Loan Participation Agreement.

"**Loan Schedule**" shall have the meaning given in the Contribution Agreement.

"**Losses**" shall have the meaning given in Section 4.6(a).

"**Management Fee**" shall mean, with respect to each Due Period, a fee payable to the Manager for each Loan for which the Servicing Transfer Date has occurred as of (or occurs on) 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 shall be in the amount determined by multiplying (i) the adjusted Unpaid Principal Balance of such Loans calculated as of the first day of such Due Period by (ii) one-half of one percent (0.50%), and by (iii) 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 (360). For purposes of clarification, in no event shall any Servicing Expenses be included in the determination of the Unpaid Principal Balance for

purposes of calculation of the Management Fee, notwithstanding any provisions of the Loan Documents that would permit or require any such Servicing Expenses to be treated as advances (or otherwise as part of the principal amount of any such Loan).

"**Manager**" shall have the meaning given in Section 3.1(a).

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

"**Member Schedule**" shall mean the schedule attached hereto (and hereby incorporated in this Agreement) as Annex I, as amended, restated, supplemented or otherwise modified from time to time.

"**MERS**" shall mean Mortgage Electronic Registration Systems, Incorporated.

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

"**Monthly Adjusted Annualized Yield**" is (i) for purposes of the First Incentive Threshold Event, equal to 1.8769 percent, derived as follows: $(1 + \text{Annualized Yield Threshold})^{1/12} - 1$ or $(1 + 0.25)^{1/12} - 1$, where the Annualized Yield Threshold is 25%, and (ii) for purposes of the Second Incentive Threshold Event, equal to 2.5324 percent, derived as follows: $(1 + \text{Annualized Yield Threshold})^{1/12} - 1$ or $(1 + 0.35)^{1/12} - 1$, where the Annualized Yield Threshold is 35%.

"**Monthly Report**" shall mean a report in electronic format in the form set forth in Exhibit B hereto, which report shall be prepared and distributed by the Manager in accordance with Section 7.4(b).

"**Net Income and Net Loss**" shall mean, 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 this Agreement (including pursuant to Sections 6.2(b)(i) through (iv)) 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.

"**Note**" shall have the meaning given in the Contribution Agreement.

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

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

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

"**Participated Loan**" shall mean a Loan originated by the Initial Member, SFG or any of their predecessors-in-interest as lead lender, a portion of which was participated to one (1) or more Persons and with respect to which the Initial Member, SFG or any of their predecessors-in-interest is the lead lender.

"**Paying Agent**" shall mean have the meaning given in Section 3.7.

"**Percentage Interest**" shall mean, with respect to the LLC Interest held by the Initial Member prior to the Closing Date, one hundred percent (100%) and, with respect to the LLC Interests held by the Initial Member and Private Owner on and after the Closing Date, as set forth in Section 6.6(b)(ii).

"**Permitted Disposition**" shall have the meaning given in Section 8.1.

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

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

"**Plan Asset Regulation**" shall have the meaning given in Section 10.1(r).

"**Pre-Approved Charges**" shall have the meaning given in the Contribution Agreement.

"**Previously Approved Matters**" shall have the meaning given in Section 2.7.

"**Prior Servicer**" shall have the meaning given in Section 12.1(b)(xiii).

"**Priority of Payments**" shall have the meaning given in the Custodial and Paying Agency Agreement.

"**Private Owner**" shall have the meaning given in the preamble.

"**Private Owner LLC Interest**" shall mean, (i) the limited liability company interests 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, this 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 under, or arising under, this Agreement.

"**Private Owner Obligations**" shall have the meaning given in Section 3.13(c).

"**Private Owner Pledged Account**" shall mean a segregated trust or custodial account of the Private Owner established and maintained under the Custodial and Paying Agency Agreement (as the "Private Owner Pledged Account" defined therein) at a branch of the Paying Agent for the sole purpose of holding the Required Cash Collateral (as defined therein), which account is and remains pledged to (and under the control of) the Initial Member (for itself and for the benefit of the Company and the Indemnified Parties) as collateral for the Private Owner Obligations.

"**Private Owner Pledged Account Control Agreement**" shall mean that certain Account Control Agreement, dated as of the date hereof, among the Private Owner, the Paying Agent and the Initial Member, with respect to the Private Owner Pledged Account, as the same shall be amended, supplemented or otherwise modified from time to time.

"**Property**" shall mean any property contributed to, acquired by or otherwise owned by the Company, including, without limitation, any 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.

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

"**Purchase Money Notes Defeasance Date**" shall mean the date on which the Defeasance Account has been fully funded pursuant to the terms of the Custodial and Paying Agency Agreement (in an amount sufficient to repay all obligations with respect to the Purchase Money Notes in full) such that no further funds are be required to be deposited therein on any subsequent Distribution Date pursuant to the Custodial and Paying Agency Agreement.

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

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

"**Purchaser Eligibility Certification**" shall mean, (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 this Agreement and the Ancillary 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**" shall mean 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 Custodian under the Custodial and Paying Agency Agreement, (iii) is qualified and licensed to do business in each such jurisdiction 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 the ability of the Custodian 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 Loan Documents and other Custodial Documents as required by the Custodial and Paying Agency Agreement, (vii) is not an Affiliate of the Company or the Servicer, and (viii) is acceptable to and approved by the Initial Member (such approval not to be unreasonably withheld, delayed or conditioned).

"**Qualified Issuer**" shall mean any FDIC-insured depository institution that is "well capitalized" as defined in 12 U.S.C. § 1831o (b)(1)(A), is in the business of issuing letters of credit and 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.

"**Qualified Servicer**" shall mean 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 of the Loans and management of the Underlying Collateral and the Acquired Property, (ii) has the management capacity and experience to service Loans of the type held by the Company, especially performing and non-performing construction loans secured by hotels or commercial properties, as applicable, including the number and types of loans serviced, and the ability to track, process and post payments, and to furnish tax reports to borrowers, to monitor construction and to approve and disburse construction draws, (iii) either (x) has an Acceptable Rating or (y) is approved by and continues to be acceptable to the Initial Member in its sole discretion, and (iv) 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**" shall have the meaning given in Section 10.1.

"**Qualifying Cash Collateral**" shall have the meaning given in Section 3.13(d).

"**Qualifying Letter of Credit**" shall mean an irrevocable standby letter of credit, substantially in the form of Exhibit D hereto (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 and delivered to the Initial Member, drawable at such Issuing Bank's offices in New York City, NY or Washington, D.C., and having an initial term of one (1) 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.

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

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

"**Reimbursable Company Administrative Expenses**" shall mean (i) reasonable fees of outside auditors in connection with annual audits of the Company (and the Ownership Entities); and (ii) licensing, filing, membership and similar fees paid to applicable authorities or organizations (including MERS) in connection with obtaining and maintaining applicable Company (or Ownership Entity) licenses, registrations or memberships (including the Company's MERS membership) or with the preservation (and eventual dissolution) of the Company's (or any Ownership Entity's) existence in accordance herewith (including for purposes of compliance with Section 4.3 hereof). For purposes of clarification, in no event shall Reimbursable Company Administrative Expenses include fees in connection with audits, licenses, filings or memberships of or with respect to the Manager, the Servicer, any Subservicer or any other Person (other than the Company and the Ownership Entities).

"**Reimbursement, Security and Guaranty Agreement**" shall mean that certain Reimbursement, Security and Guaranty Agreement dated as of the Closing Date among the FDIC, acting in its corporate capacity and as Receiver and as Collateral Agent and as the Revolver Lender, the Company, and the guarantors party thereto.

"**Related Agreement**" shall mean (i) any agreement, document or instrument (other than the Notes and Underlying Collateral Documents) relating to or evidencing any obligation to pay or securing any Loan (including any equipment lease, letter of credit, bankers' acceptance, draft, system confirmation of transaction, loan history, affidavit, general collection information, and correspondence and comments relating to any obligation), (ii) any agreement relating to 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), (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 Loans (or any of them) and that are assignable, (iv) any letter of assurance, letter of credit or similar instrument evidencing an obligation of SFG, the Failed Bank, the Initial Member, the Company or any Ownership Entity that was issued for the benefit of any Person and relates in any way to a Loan or the acquisition, development or construction of any project with respect to which the proceeds of such Loan were used or were intended to be used, and (v) any interest rate swap arrangement between the Borrower, SFG and the Failed Bank, the Initial Member or the Company (in each case as the applicable lender, agent or other creditor under the Loan) that relates to any Loan.

"**Related Party**" shall mean 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 from time to time.

"**Related Party Agreement**" shall have the meaning given in Section 3.5.

"**Related Persons**" shall have the meaning given in Section 4.5.

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

"**Restricted Servicer Change of Control**" shall mean any Change of Control with respect to the Servicer that has not been approved in writing by the Manager and the Initial Member (which approval shall not be unreasonably withheld).

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

"**Revolver Documents**" shall mean the Revolving Credit Agreement and all other agreements, instruments and other documents evidencing and/or securing the Revolver.

"**Revolver Lender**" shall have the meaning given in the recitals.

"**Revolving Credit Agreement**" shall have the meaning given in the recitals.

"**Second Incentive Threshold Event**" shall have the meaning given in Section 6.6(b)(iii).

"**Secured Assets**" shall have the meaning given in Section 3.13(c).

"**Securities Act**" shall mean Securities Act of 1933, as amended.

"**Servicer**" shall mean have the meaning given in Section 12.3(a).

"**Servicing Agreement**" shall mean, initially, the Servicing Agreement dated as of the date hereof, by and between the Manager (in its individual capacity) and Midland Loan Services, Inc., 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) and shall be acceptable to the Initial Member in all respects.

"**Servicing Expenses**" shall mean all customary and reasonable out-of-pocket fees, costs, expenses and indemnified amounts incurred in connection with servicing the Loans and the Acquired Property, including (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 Loan Documents, including Escrow Advances, (ii) any and all reasonable out-of-pocket expenses necessary to protect or preserve the value of the Underlying Collateral or the priority of the Liens and security interests created by the Loan 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 Loans, (iii) any and all direct expenses related to the preservation, operation, management, leasing, and sale of the Acquired Property (including real estate brokerage fees), (iv) Reimbursable Company Administrative Expenses, (v) subject to Section 4.6 (and excluding any amounts or claims the Private Owner is required to bear or indemnify pursuant to such Section 4.6), to the extent not covered by any of clauses (i) through (iv), legal fees and expenses (including judgments, settlements and reasonable attorneys fees) incurred by the Company (including to reimburse the Manager, including for the Manager's reimbursement of the Servicer, including for the Servicer's reimbursement of 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 Loans 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) 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 this Agreement or any Ancillary Document, and (2) (x) 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 (and the Manager and the Servicer, 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 (y) there is entered into a final settlement of any such claim with the prior written consent of the Initial Member, (vi) subject to Section 4.6 of this Agreement, (x) expenses incurred in accordance with Section 4.5(c) of the Contribution Agreement and (y) expenses incurred in connection with any litigation (including any bankruptcy action) included in the Obligations (as such term is defined in the Contribution Agreement) and assumed pursuant to Section 4.5(a) or (b) or Section 4.6 of the Contribution Agreement, (vii) 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 Depository Trust Company, and (viii) the costs of preparing, negotiating and recording any REO Mortgage (as defined in the Reimbursement, Security and Guaranty Agreement, including mortgage recording taxes) and the costs associated with the 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; provided, however, that Servicing Expenses shall not include any (A) Excluded Expenses or (B) costs or expenses to be funded (or which, assuming relevant conditions are satisfied, could be funded) using the proceeds available under the Revolver.

"**Servicing Obligations**" shall have the meaning given in Section 12.1(a).

"**Servicing Standard**" shall have the meaning given in Section 12.1(a).

"**Servicing Transfer Date**" shall have the meaning given in the Contribution Agreement.

"**SFG**" shall mean Specialty Finance Group, LLC, a Georgia limited liability company.

"**Single Purpose Entity**" shall mean

(A) with respect to an Ownership Entity, a corporation or limited liability company that (i) is organized under the Laws of any state of the United States or the District of Columbia, (ii) the equity of which is uncertificated, (iii) has no material assets other than the Acquired Property, (iv) is not engaged in any business operations except in connection with the Acquired Property and conducted pursuant to terms of this Agreement and the Ancillary Documents, (v) 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, (vi) at all times holds itself out to the public as a legal entity separate from any other Person (including any Affiliate), (vii) except as expressly contemplated by this Agreement, or the Ancillary Documents, does not commingle its assets with assets of any other Person, (viii) conducts its business in its own name and strictly complies with all organizational formalities to maintain its separate existence, (ix) 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, (x) has no Debt other than as expressly permitted by the Ancillary Documents and (xi) except as otherwise consented to in writing by the Initial Member, is a pass-through entity for Tax purposes;

(B) with respect to the Company, a limited liability company that (i) is organized under the Laws of Delaware, (ii) the equity of which is uncertificated, (iii) has no material assets other than the Loans, including the Underlying Collateral and Ownership Entities, and its rights, title and interest in, to, and under this Agreement and the Ancillary Documents, (iv) is not engaged in any significant business operations except in connection with the Loans, including the Underlying Collateral and Ownership Entities and conducted in accordance with the terms of this Agreement and the Ancillary Documents, (v) 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, (vi) at all times holds itself out to the public as a legal entity separate from any other Person (including any Affiliate), (vii) except as expressly contemplated by this Agreement or by any other Ancillary Documents, does not commingle its assets with assets of any other Person, (viii) conducts its business in its own name and strictly complies with all organizational formalities to maintain its separate existence, (ix) 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 this Agreement and the Ancillary Documents, (x) has no Debt other than as provided in this Agreement and the Ancillary Documents and (xi) except as otherwise consented to in writing by the Initial Member, is a pass-through entity for Tax purposes; and

(C) with respect to the Private Owner (or any Qualified Transferee thereof), a corporation or limited liability company that (i) is organized under the Laws of any state of the United States or the District of Columbia, (ii) the equity of which is uncertificated, (iii) has no material assets other than cash and cash equivalents and its rights, title and interest in, to, and under this Agreement and the Ancillary Documents, (iv) is not engaged in any significant business operations except in connection with the performance of its obligations under this Agreement and the Ancillary Documents, (v) 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, (vi) at all times holds itself out to the public as a legal entity separate from any other Person (including any Affiliate), (vii) except as expressly contemplated by this Agreement or the Ancillary Documents, does not commingle its assets with assets of any other Person, (viii) conducts its business in its own name and strictly complies with all organizational formalities to maintain its separate existence, (ix) 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 this Agreement and the Ancillary Documents, (x) has no Debt and (xi) except as otherwise consented to in writing by the Initial Member, is a pass-through entity for Tax purposes.

"**Site Assessment**" shall have the meaning given in Section 12.14(b).

"**Specified Parent**" shall mean (i) with respect to the Private Owner, (x) unless clause (i)(y) is applicable, collectively and individually (A) Square Mile Partners III TE LP, a Delaware limited partnership and (B) Square Mile Partners III LP, a Delaware limited partnership, or (y) any other Person or Persons that the Private Owner and the Initial Member may agree from time to time shall be designated as the "Specified Parent" for purposes of this Agreement; and (ii) with respect to the Servicer shall mean any Person or Persons that the Manager and the Initial Member may agree from time to time shall be designated as the "Specified Parent" with respect to the Servicer; provided, that, for any such Servicer, the Manager shall cause its initial Specified Parent (as approved by Manager and the Initial Member) to be expressly specified in the applicable Servicing Agreement.

"**Subservicers**" shall have the meaning given in Section 12.3(a).

"**Subservicing Agreement**" shall have the meaning given in Section 12.3(a).

"**Subsidiary**" shall mean, 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).

"**Successor**" shall mean, (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 Initial Member's rights or interests under this Agreement or any other Ancillary Document.

"**Tax**" shall mean 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 Tax, including any interest, penalties and additions imposed thereon or with respect thereto.

"**Tax Matters Member**" shall have the meaning given in Section 7.5.

"**Third Party Claim**" shall have the meaning given in Section 4.6(a).

"**Threshold Increase Amount**" as of any Distribution Date (and determined separately for purposes of the First Incentive Threshold Event and the Second Incentive Threshold Event) shall be equal to the product of (a) the applicable Incentive Threshold as of the preceding Distribution Date (or, in the case of the first Distribution Date, the Closing Date) and (b) the applicable Monthly Adjusted Annualized Yield.

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

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

"**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.

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

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

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

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

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

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

(iii) in the case of a Loan for which some or all of the related Underlying Collateral has been converted to Acquired Property (including REO Property), until such time as the Acquired Property (or any portion thereof) is liquidated, the unpaid principal balance of such Loan shall be deemed to equal the amount of the unpaid principal balance of such Loan (adjusted pro rata for debt forgiveness or retained indebtedness) at the time at which such Loan was converted to Acquired Property, plus, without duplication, any outstanding balance remaining on such Loan which is evidenced by a modification agreement or a replacement or successor

promissory note executed by the borrower, less the net proceeds of any sales of any portions of the Acquired Property effective after such conversion.

(iv) the Unpaid Principal Balance with respect to any Acquired Property will be increased by the amount of, without duplication, (A) any Funding Draws (or equivalent advances by the Initial Member during the Interim Servicing Period under the Contribution Agreement or under the Revolver) applied with respect thereto in accordance herewith (or with the Contribution Agreement, as applicable), (B) any Servicing Expenses capitalized thereto in accordance with applicable Law to the extent that capitalizing such Servicing Expenses would have been permitted under the applicable Loan Documents prior to the conversion of the Loan to the Acquired Property, and (C) Discretionary Funding Advances with respect to such Acquired Property.

"**Unreimbursable Expense**" shall have the meaning given in Section 4.6(e).

"**Working Capital Expenses**" shall mean any Servicing Expenses, Pre-Approved Charges, Funding Draws (or permitted uses thereof, as the context may require), Management Fee, Interim Management Fee, Interim Servicing Fee or fees of the Custodian and Paying Agent.

"$" shall mean lawful currency of the United States of America.

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

(b) References to Persons Exclusive. References 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 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". The term "or" is not exclusive.

(d) References to Laws. A reference in this Agreement to a Law includes any amendment, modification or replacement to 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 to any document, instrument or agreement (i) shall be deemed to include all appendices, exhibits, schedules and other attachments

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

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

(h) Use of "Including." The words "include" and "including" and words of similar import when used in this 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" when used in this Agreement 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.

ARTICLE II
Organization of the Company

2.1 Formation; Continuation and Admission of Members.

(a) On May 6, 2010, the Receiver caused the Certificate of Formation of the Company, in the form attached as Exhibit A hereto (the "**Certificate**"), to be filed in the office of the Secretary of State of the State of Delaware. The Certificate shall not be amended except to change the registered agent or office of the Company.

(b) The Company shall continue as a limited liability company under the Act and in accordance with the further terms and provisions of this Agreement.

(c) The Initial Member previously was, and the Private Owner hereby agrees to be, and is, admitted as a member of the Company such that, as of the Closing Date, the Initial Member and the Private Owner are the only members of the Company. Until the Company is dissolved pursuant to Section 9.1, and subject to the rights of the Initial Member under Section 13.5, the Company shall at all times have two, and only two (2), members.

2.2 Name.

(a) The name of the Company shall be "2010-1 SFG VENTURE LLC".

(b) The Business shall be conducted only under the name of the Company or such other name or names that comply with applicable Law as the Members may select from time to time.

2.3 Organizational Contributions and Related Actions.

(a) Prior to the execution of this Agreement, pursuant to the terms of the Contribution Agreement, the Initial Member:

(i) made a Capital Contribution to the Company in the form of certain Loans (the "**Initial Member Capital Contribution**"); and

(ii) sold and assigned to the Company, and the Company purchased and accepted such assignment from the Initial Member, Loans (other than that portion of the Loans comprising the Initial Member Capital Contribution) and assumed the Obligations (as defined in the Contribution Agreement) in exchange for the Purchase Money Notes.

(b) Contemporaneously with the execution of this Agreement, pursuant to the terms of the Transferred LLC Interest Sale Agreement, the Private Owner is acquiring from the Initial Member an LLC Interest representing forty percent (40%) of the issued and outstanding limited liability company interests in the Company for the Transferred LLC Interest Sale Price in accordance with the terms thereof.

(c) Upon the consummation of the transactions contemplated in Sections 2.3(a) and (b) and prior to the occurrence of the First Incentive Threshold Event as described in Section 6.6(b)(iii), the Private Owner shall own forty percent (40%) of the issued and outstanding LLC Interests and the Initial Member shall own sixty percent (60%) of the issued and outstanding LLC Interests. Following the occurrence of the First Incentive Threshold Event and prior to the occurrence of the Second Incentive Threshold Event as described in Section 6.6(b)(iii), the Private Owner shall own thirty-five percent (35%) of the issued and outstanding LLC Interests and the Initial Member shall own sixty-five percent (65%) of the issued and outstanding LLC Interests. Following the occurrence of the Second Incentive Threshold Event, the Private Owner shall own thirty percent (30%) of the issued and outstanding LLC Interests and the Initial Member shall own seventy percent (70%) of the issued and outstanding LLC Interests.

2.4 Registered Office; Chief Executive Office. The Company shall maintain a registered office and registered agent in Delaware to the extent required by the Act, which office and agent shall be as determined by the Manager from time to time and which shall be set forth in the Certificate. Initially (and until otherwise determined by the Manager), the registered office in Delaware shall be, and the name and address of the Company's registered agent in Delaware shall be, as specified in the Certificate as originally filed, which may be amended by the Manager from time to time as necessary to correctly reflect the name and address of the Company's registered agent. The chief executive office of the Company shall be located at 450 Park Avenue, New York, New York 10022, or such other place as shall be determined by the Manager from time to time.

2.5 Purpose; Duration.

(a) The purpose of the Company is to engage in and conduct the Business, directly or, to the extent specifically authorized in this Agreement, indirectly through other Persons. The Company shall not form or have any Subsidiaries other than Ownership Entities or as otherwise authorized in or pursuant to this Agreement. The Company shall have all powers necessary, desirable or convenient, or which the Manager deems necessary, desirable or convenient, and may engage in any and all activities necessary, desirable or convenient, or which

the Manager deems necessary, desirable or convenient, in each case to accomplish the purposes of the Company or consistent with the furtherance thereof.

(b) Subject to Section 9.1, the Company shall continue in existence perpetually.

2.6 Single Purpose Entity; Limitations on Company's Activities. Except to the extent expressly permitted by this Agreement or the Ancillary Documents, the following shall govern for so long as the Company is in existence:

(a) Subject to Section 9.1, the Manager shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises, and the Manager also shall cause the Company to:

(i) maintain financial statements separate from any Affiliate; provided, however, that each Ownership Entity shall be consolidated in the financial statements of the Company; and provided, further, that the assets, liabilities and results of operations of the Company may be included in the consolidated financial statements of its parent or ultimate parent in accordance with GAAP;

(ii) at all times hold itself out to the public as a legal entity separate from the Members and any other Person;

(iii) file its own Tax returns, as may be required under applicable Law, and pay any Taxes so required to be paid under applicable Law;

(iv) except as contemplated hereby or by the Ancillary Documents, segregate its assets and not commingle its assets with assets of any other Person;

(v) conduct the Business in its own name and strictly comply with all organizational formalities to maintain its separate legal existence;

(vi) pay its own liabilities only out of its own funds;

(vii) maintain an arm's length relationship with any Affiliate upon terms that are commercially reasonable and that are no less favorable to the Company than could be obtained in a comparable arm's length transaction with an unrelated Person;

(viii) subject at all times to Section 3.3, pay the salaries of its own employees, if any, and maintain, or cause to be maintained, a sufficient number of employees, if any, in light of the contemplated operation of the Business;

(ix) allocate, fairly and reasonably, shared expenses, including any overhead for shared office space;

(x) use separate stationery, invoices and checks;

(xi) correct any known misunderstanding regarding its separate identity; and

(xii) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities, if any.

(b) Neither the Manager nor the Private Owner may cause or permit a Dissolution Event or an Insolvency Event to occur with respect to the Company or any of its Subsidiaries to which the Initial Member has not provided its written consent, and neither the Manager nor the Private Owner may, without the written consent of the Initial Member, cause or permit the Company or any of its Subsidiaries to:

(i) except as contemplated hereby or by the Ancillary Documents, hold out its credit or assets as being available to satisfy the obligations of others, or become bound by any Guarantee of, or otherwise obligate itself with respect to, the Debts of any other Person, including any Affiliate;

(ii) except as contemplated hereby or by the Ancillary Documents (including the Revolver and the Purchase Money Notes (and any promissory note reissued in respect thereof pursuant to Section 2.8 of the Custodial and Paying Agency Agreement), the Purchase Money Notes Guaranty, and the Reimbursement, Security and Guaranty Agreement), pledge its assets for the benefit of any other Person, make any loans or advances to any other Person, or encumber or permit any Lien to be placed on the Loans, the Underlying Collateral, or the proceeds therefrom; provided that the Company may invest its funds in interest bearing accounts held by any bank that is not its Affiliate and make advances in accordance with Article XII;

(iii) own any assets, or engage in any business, unrelated to the Business;

(iv) incur, create or assume any Debt other than the Purchase Money Notes (and any promissory note reissued in respect thereof pursuant to Section 2.8 of the Custodial and Paying Agency Agreement), any Discretionary Funding Advance, any advances under the Revolver, any Excess Working Capital Advance or as otherwise expressly permitted hereby or by the Ancillary Documents to which the Initial Member is a party;

(v) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person (other than an Ownership Entity), except that the Company may invest in those investments permitted under the Ancillary Documents and may make any advance required or expressly permitted to be made pursuant to any provisions of Article XII or the Ancillary Documents and permit the same to remain outstanding in accordance with such provisions;

(vi) acquire any LLC Interest (or any portion of any LLC Interest);

(vii) consolidate or merge with or into any other Person, convert into any other type of Person (including into a limited liability company organized under the laws of a jurisdiction other than the State of Delaware), transfer, domesticate or continue the Company or any Subsidiary of the Company pursuant to Section 18-213 of the Act, or take any other action for which the consent of some or all of the members of a limited liability company is (unless otherwise provided in the limited liability company agreement of such limited liability company) required by the Act;

(viii) convey or transfer its properties and assets as an entirety or substantially as an entirety to any Person, transfer its ownership interests, or engage in any dissolution or liquidation, except in each case to the extent such activities are expressly permitted pursuant to any provision of this Agreement or the Ancillary Documents (and subject to obtaining any approvals required hereunder or thereunder, as applicable);

(ix) except as contemplated or permitted by this Agreement, form, acquire or, subject to the second proviso of the definition of Ownership Entity, hold any Subsidiary other than an Ownership Entity or form any trust for the purpose of holding Loans for the benefit of the Company; or

(x) breach or violate any representation, warranties, covenants or agreements contained in any of the Ancillary Documents.

(c) The failure of the Company, any Member and/or the Manager to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Members.

2.7 Ratification of Certain Actions. Prior to the Closing Date, the Company previously approved (a) each of the Ancillary Documents, (b) the issuance of the LLC Interests, and (c) the taking of all action reasonably necessary to effect the foregoing approvals, including without limitation the execution and performance of this Agreement and the Ancillary Documents (the "**Previously Approved Matters**"). The Previously Approved Matters, and all actions taken by the Company in furtherance of the Previously Approved Matters, are hereby ratified, approved and confirmed in their entirety by each Member and the Manager is hereby authorized and directed to execute and deliver, for and on behalf of the Company, any and all documents as may now or hereafter be reasonably required in order to effect the Previously Approved Matters.

ARTICLE III
Management and Operations of the Company

3.1 Management of the Company's Affairs.

(a) Subject to the terms and conditions of this Agreement, the management of the Company shall be vested exclusively in the Person appointed from time to time hereunder as the "Manager" of the Company (the "**Manager**"), which Manager may, but is not required to be, a

Member. Effective as of the Closing Date, the Private Owner is hereby appointed as the Manager. Subject to the terms and conditions of this Agreement, the Manager shall have full and exclusive power and discretion to, and shall, manage the business and affairs of the Company in accordance with this Agreement. The Private Owner may not resign as the Manager, may not Dispose of or delegate, in whole or in part, its rights, responsibilities or duties as the Manager to any other Person, and shall serve as Manager until such time as (i) the Private Owner's LLC Interest is Disposed of in accordance with the terms of this Agreement and the transferee is admitted as a Member of the Company and Successor to the Private Owner, in which case the transferee Member shall, effective upon such Disposition, be appointed as the "Manager" to the extent the Private Owner held such role immediately prior to such Disposition, (ii) the Private Owner is removed as the Manager by the Initial Member and replaced in accordance with Section 3.2 or Section 12.4 below; or (iii) the Company is dissolved, and the business and affairs of the Company are wound up, in accordance with the terms of this Agreement. The Manager shall devote such time to the affairs of the Company as is necessary to manage the Company as set forth in this Agreement. Without limitation of the foregoing, the Manager shall cooperate with the Tax Matters Member in all respects as reasonably requested by the Tax Matters Member, from time to time, in connection with the Tax Matters Member's performance of its obligations under this Agreement. The Private Owner (and any Successor to the Private Owner) hereby expressly acknowledges that (x) as it relates to its role as the Manager, this Agreement constitutes a personal services contract between the Private Owner and the Company, and (y) except as may otherwise expressly specified herein, it shall not be entitled to any salary, fees, reimbursement of costs or expenses, or other compensation with respect to its service as the Manager hereunder (including with respect to the Manager's Loan servicing and management obligations under Article XII).

(b) Except as otherwise specifically provided in this Agreement and without limitation of the powers expressly granted to the Manager under any other provision of this Agreement, the authority, duties (including fiduciary duties) and functions of the Manager shall be identical to the authority, duties (including fiduciary duties) and functions of the board of directors and the officers of a corporation organized under the Delaware General Corporation Law (and not electing to be governed by subchapter XIV thereof). The Manager shall have no authority to take or authorize the taking of any action in contravention of any express term of this Agreement.

(c) No Person dealing with the Company or the Manager shall be required to determine, and any such Person may conclusively assume and rely upon, the authority of the Manager to execute any instrument or make any undertaking on behalf of the Company. No Person dealing with the Company or the Manager shall be required to determine any facts or circumstances bearing upon the existence of such authority. Without limitation of the foregoing, any Person dealing with the Company or the Manager is entitled to rely upon a certificate signed by the Manager as to:

(i) the identity of the Members;

(ii) the existence or non-existence of any fact or facts that constitute a condition precedent to acts by the Manager or are in any other manner germane to the affairs of the Company;

(iii) the identity of Persons who are authorized to execute and deliver any instrument or document of or on behalf of the Company; or

(iv) any act or failure to act by the Company or any other matter whatsoever involving the Company or the Members.

(d) Notwithstanding anything to the contrary contained in this Agreement, the parties hereto acknowledge and agree that:

(i) nothing contained in this Agreement creates any fiduciary duty or similar obligation owed by the Initial Member;

(ii) the Private Owner and the Company each hereby expressly waives any fiduciary duties that may otherwise be deemed to be owed by the Initial Member to the Private Owner or the Company; and

(iii) the Initial Member shall be entitled to act and exercise any right of approval or consent that it has under this Agreement in its interest, in its sole and absolute discretion, without regard to and against the interests of the Private Owner or the Company.

(e) Unless and to the extent reimbursement is due under an express provision hereof or pursuant to a Related Party Agreement or any Ancillary Document, the Company shall not be liable for, and the Manager shall not seek reimbursement from the Company or any Member for, any expenses or costs incurred after the formation of the Company by the Manager and/or its Affiliates on behalf of or for the benefit of the Company.

(f) This Section 3.1 is subject to any express requirement of direct Initial Member consent set forth elsewhere in this Agreement, including in Sections 2.6, 3.4, 3.8, 8.1, 8.2, 8.8(a), 9.1, 12.3(g), and 12.7(b). Any purported action by the Company or the Manager requiring the consent of the Initial Member under this Agreement shall be null and void *ab initio* unless and until the Initial Member's consent is obtained.

3.2 Removal of Manager. Upon an Event of Default (and so long as the Private Owner is then the Manager), the Initial Member may remove the Private Owner as the Manager and appoint a successor Manager in the sole discretion of the Initial Member in accordance with Section 12.4, whereupon such successor Manager shall immediately succeed to all, or such portion as the Initial Member and successor Manager agree, of the rights, powers, duties and obligations of the "Manager" hereunder, and the predecessor Manager shall promptly take such actions as may be reasonably requested by the Initial Member to facilitate the transition to such successor Manager.

3.3 Employees and Services. After the Closing Date, the Manager shall cause to be made available to the Company, from time to time, employees, facilities and support services in a manner and to an extent reasonably required for it to fulfill its duties and obligations as the Manager and for the day-to-day operation of the Business, including the Manager's employees, facilities and support services. If necessary to meet the foregoing requirements, the Manager

shall enter into contractual arrangements to secure employees, facilities and support services from third parties (including its Affiliates); provided, however, that the Manager shall at all times provide for the servicing of the Loans through a Servicer under contract with the Manager (in its individual capacity) in accordance with Article XII and the safekeeping of the Notes and other Loan Documents by a Custodian under contract with the Company in accordance with the provisions of Section 3.7 below. Notwithstanding anything to the contrary contained in this Section 3.3, the Company shall not have any employees, no employees of the Manager or any third party (including any Affiliate) shall be deemed to be employees of the Company, any contractual relationships entered into by the Manager to provide employees, facilities or support services to the Company shall be relationships between the third parties (or Affiliates) and the Manager (and not the Company) and shall not relieve the Manager of its obligations or any liability hereunder, and no expenses incurred to secure or maintain employees, facilities or support services shall be an expense of the Company unless the same is expressly reimbursable by the Company pursuant to the provisions of Article XII below or is otherwise expressly set forth in this Agreement or in any Ancillary Documents to be an expense of the Company.

3.4 Restrictions on Manager and Private Owner. Neither the Private Owner nor, notwithstanding any delegation of authority to it hereunder, the Manager may or shall in any event (x) do, or cause the Company to do, any act or take, or cause the Company to take, any action in contravention of any Law, or (y) take any of the following actions on behalf of, or with respect to, the Company, or otherwise cause the Company to take any of the following actions, in the case of all of the foregoing without the prior written approval of the Initial Member, the Revolver Lender and, until occurrence of the Purchase Money Notes Defeasance Date, the Purchase Money Notes Guarantor, which approval may be withheld or conditioned in the Initial Member's, the Revolver Lender's and the Purchase Money Notes Guarantor's sole and absolute discretion:

(i) admitting additional or substitute members of the Company, except in accordance with Article VIII;

(ii) changing the legal form of the Company to other than a limited liability company;

(iii) taking any action that would cause the Company to be treated as other than a partnership for federal tax purposes;

(iv) taking any action that would make it impossible to carry on the ordinary business of the Company;

(v) conducting Bulk Sales during any of (A) the first three (3) successive 12-month periods after the Closing Date, or (B) any of the subsequent successive 12-month periods thereafter until the occurrence of the Purchase Money Notes Defeasance Date, in each case in an aggregate amount (for such 12-month period) in excess of thirty-five percent (35%) of the aggregate Unpaid Principal Balance of all Loans as at the beginning of such 12-month period (or, for such first 12-month period, as at the Cut-Off Date as indicated on the Loan Schedule); provided, however that, for purposes of the foregoing (A) the amount

of any Bulk Sale shall be determined (1) for Loans, or any Bulk Sale of all or substantially all of the remaining Underlying Collateral (including any REO Property or other Acquired Property) with respect to any Loan, based on the aggregate Unpaid Principal Balance (including, as applicable, taking into account clauses (iii) and (iv) of the definition thereof) as of the time of such Bulk Sale, and (2) for Acquired Property (including REO Property) or any portion thereof where such Bulk Sale does not involve all or substantially all of the related Loan or other remaining Underlying Collateral (including any REO Property or other Acquired Property) with respect to such Loan, based on the value thereof as of the time of such sale or disposition, including, where available, based on the most recent appraisal price or broker opinion, and (B) the sale or other disposition of an Ownership Entity (or any voting or equity interest therein) shall constitute a sale or other disposition of the Acquired Property (including any REO Property) held directly or indirectly by such Ownership Entity; and provided further that, for purposes of this Section 3.4(v) and notwithstanding subsection (i) of the definition of Unpaid Principal Balance, the Unpaid Principal Balance of any Loan Participation (and any related Acquired Property) shall be the entire Unpaid Principal Balance of the whole loan to which the participation interest relates;

(vi) incurring any liability on behalf of the Company (other than liabilities to trade creditors in the ordinary course of the Business and such other liabilities as may be permitted by this Agreement or any Ancillary Document);

(vii) possessing or transferring Company Property for other than Company purposes;

(viii) taking any action that would require the Company to register as an "investment company" (as defined in the Investment Company Act);

(ix) selling or otherwise transferring any Loan, Underlying Collateral or Acquired Property (or any portion thereof) to the Manager, the Private Owner, any Servicer, any Subservicer, or any Affiliate of any of the foregoing or of the Company;

(x) financing the sale or other transfer of any Loan, Underlying Collateral or Acquired Property (or any portion thereof);

(xi) selling any Loan, Underlying Collateral or Acquired Property (or any portion thereof) in a transaction that provides for any recourse against the Company, the Initial Member or the FDIC, in any capacity, or against the LLC Interest held by the Initial Member or any share of the Loan Proceeds allocable to the Initial Member;

(xii) disbursing funds from the Collection Account or other accounts created under this Agreement, the Custodial and Paying Agency Agreement, the Revolver or any Servicing Agreement other than in accordance with (and without violation of any requirement contained in) the provisions of this Agreement, the

Custodial and Paying Agency Agreement, the Revolver, the applicable Servicing Agreement and the Reimbursement, Security and Guaranty Agreement;

(xiii) advancing additional funds that would increase the Unpaid Principal Balance of any Loan other than (A) Funding Draws or (B) Servicing Expenses to the extent that capitalizing such Servicing Expenses is or would have been, prior to the conversion of the Loan to Acquired Property, permitted under the applicable Loan Documents;

(xiv) reimbursing the Manager for any expense or cost incurred by (or paid by) any Affiliate of any of the Company, the Private Owner or the Manager, the Servicer or any Subservicer;

(xv) taking any action or omitting to take any action that causes the Company to breach any representation, warranty, covenant or other agreement contained herein or in any Ancillary Document (for avoidance of doubt, nothing in this clause (xv) shall require the Private Owner or the Manager to make any capital contribution or advances which are not otherwise required of it under the express terms of this Agreement or any Ancillary Document);

(xvi) taking any action for which the consent of some or all of the members of a limited liability company is (unless otherwise provided in the limited liability company agreement of such limited liability company) required by the Act; or

(xvii) selling (or causing the Disposition) of any Participated Loan to a Borrower or a Related Party of the Borrower, whether directly or indirectly, without obtaining the prior written consent of the other participants in such Loan.

3.5 Related Party Agreements. Neither the Company nor any of its Subsidiaries shall enter into 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, or pay any fee to, the Private Owner or any Affiliate of the Company or the Private Owner (a "**Related Party Agreement**"), except for the Purchase Money Notes or any promissory note reissued in respect thereof in accordance with Section 2.8 of the Custodial and Paying Agency Agreement or as may otherwise be expressly provided herein or in any Ancillary Document to which the Initial Member is a party or as may be approved by both Members.

3.6 Real Property. The Company shall not take title in its own name to any REO Property, and any ownership of any such REO Property shall be governed by Section 12.14 and the relevant terms of the Servicing Agreement.

3.7 Custodian and Paying Agent. The Manager shall cause the Company to retain and enter into and, at all times, be a party to written custodial agreement with a document custodian (the "**Custodian**") that is a Qualified Custodian and approved by the Initial Member, and such Custodian shall at all times have custody and possession of the Notes and other

Custodial Documents. The Manager shall also cause the Company to retain and enter into and, at all times, be a party to written paying agency agreement with a paying agent selected by the Company (the "**Paying Agent**"), which Paying Agent shall receive and distribute Loan Proceeds in accordance with the applicable Custodial and Paying Agency Agreement. Except as may be determined by the Initial Member in connection with an exercise of its rights under Section 13.5 below, the Custodian and the Paying Agent shall be the same; and the custodial and paying agency functions shall be performed on the terms set forth in a Custodial and Paying Agency Agreement that is acceptable to the Initial Member. At no time shall the Company have more than one (1) Custodian or one (1) Paying Agent. The fees and expenses paid to the Custodian and Paying Agent shall be no more than market rates and the Custodian and Paying Agent may be terminated by the Company upon no more than thirty (30) days notice provided to either, without cause under the Custodial and Paying Agency Agreement. In the event that the Manager removes, or causes the Company (or any Servicer) to remove, any Notes or other Custodial Documents from the possession of the Custodian (which shall be done only in accordance with the relevant Custodial and Paying Agency Agreement), (i) any loss or destruction of or damage to such Notes or Custodial Documents shall be the personal liability of the Manager (who, along with the relevant Servicer(s), shall be responsible for safeguarding such Notes and Custodial Documents when not in the possession of the Custodian), and (ii) such Notes shall be returned to the Custodian within the time provided under the applicable Uniform Commercial Code to maintain the perfection of the secured party's security interest therein by possession. If any Notes or other Custodial Documents are removed in connection with the modification or restructuring of a Loan, the Notes and other Custodial Documents removed in connection therewith shall be returned to the Custodian as soon as possible following the completion of the restructuring or modification (and, in any event, in accordance with clause (ii) of the immediately preceding sentence). The Manager shall ensure that the Initial Member receives a copy of each demand, notice or other communication given by the Manager under the Custodial and Paying Agency Agreement at the time that such notice or other communication is given by the Manager thereunder.

3.8 Relationships with Borrowers, etc. Except as otherwise consented to by the Initial Member, neither the Private Owner nor the Manager shall, at any time, (a) be an Affiliate of or a partner or joint venturer with any Borrower, (b) be an agent of any Borrower, or allow any Borrower to be an agent of the Manager or the Company, or (c) except as is otherwise contemplated by the Company's ownership of the Loans and its right to hold Acquired Property, have any interest whatsoever in any Borrower, Obligor or other obligor with respect to any Loan or any of the Underlying Collateral.

3.9 No Conflicting Obligations. The Manager shall cause the Company to comply with the Ancillary Documents in accordance with their terms, and shall not, at any time, enter into or become a party to any agreement that would conflict with the terms of this Agreement.

3.10 Compliance with Law. The Manager shall, and shall cause the Company to, at all times, comply with applicable Law in connection with the performance or exercise of its rights, powers, duties or obligations under this Agreement.

3.11 No Bankruptcy Filing. Neither the Manager nor the Private Owner may cause or permit the Company to: (a) file a voluntary petition for bankruptcy, (b) file a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law, (c) make an assignment for the benefit of creditors, (d) seek, consent or acquiesce in the appointment of a trustee, receiver or liquidator or of all or any substantial part of its properties, (e) file an answer or other pleading admitting or failing to contest the material allegations of (i) a petition filed against it in any proceeding described in clauses (a) through (d), or (ii) any order adjudging it a bankrupt or insolvent or for relief against it in any bankruptcy or Insolvency Proceeding, or (f) allow itself to become unable to pay its obligations as they become due.

3.12 No Liens. The Manager shall not cause the Company to place, or voluntarily permit to be placed, any Lien on any of the Loans, the Underlying Collateral, the Loan Documents, or the Loan Proceeds, except, in the case of Underlying Collateral, such Liens caused or permitted by the Manager (i) as permitted under the Loan Documents where the applicable Borrower is not in default thereunder and (ii) as permitted by the terms of the Revolver or the Reimbursement, Security and Guaranty Agreement; and the Manager shall not take any action to interfere with the Collateral Agent's rights as a secured party with respect to Loans, the Underlying Collateral and the Loan Proceeds.

3.13 Remedies Upon an Event of Default; Security Interest.

(a) Upon the occurrence of an Event of Default, in addition to all other remedies available hereunder or under the Ancillary Documents upon such an Event of Default, the Initial Member shall be entitled to (i) remove the Private Owner as the Manager or Servicer pursuant to Sections 3.2 and 12.4, (ii) remove the Private Owner as a Member, (iii) purchase (or cause a designee to purchase) the LLC Interest of the Private Owner pursuant to Section 3.14, (iv) designate itself or any applicable transferee Member as the Manager hereunder, and/or (v) with or without notice to or demand upon the Private Owner (except as may be required by Law), exercise any or all rights and remedies with respect to the Secured Assets and any Qualifying Letter of Credit, specifically including the right (A) to foreclose on the LLC Interest held by the Private Owner and transfer such LLC Interest to a third party (it being agreed that none of the Private Owner, the Manager or any of their Affiliates shall participate in any sale of the Private Owner's LLC Interest without the written consent of the Initial Member); (B) to draw upon any or all Qualifying Letters of Credit, by presenting to the applicable Issuing Bank one or more drafts or demands and any other necessary documents, and to receive (in a lump sum or in several sums from time to time at the sole discretion of the Initial Member) any or all amounts available for drawing under each such Qualifying Letter of Credit, and/or (C) to exercise any rights under the Private Owner Pledged Account Control Agreement (or otherwise) with respect to the Private Owner Pledged Account, including the right to assume exclusive control over the Private Owner Pledged Account and to cause the funds therein to be remitted (in a lump sum or in several sums from time to time at the sole discretion of the Initial Member) to or at the direction of the Initial Member. The removal of the Private Owner as Member shall be subject to Section 8.4.

(b) For the avoidance of doubt, in the event that the Initial Member determines to exercise its remedies against any Secured Assets or any Qualifying Letter of Credit,

it shall have the absolute right to deduct from the proceeds of such exercise of remedies (including proceeds of any foreclosure sale with respect to the LLC Interests, any drawing on a Qualifying Letter of Credit and any receipt of funds from the Private Owner Pledged Account), any Losses arising out of or resulting from such Event of Default incurred by the Indemnified Parties, together with all costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by the Initial Member in connection with enforcing its rights and remedies hereunder and under the Ancillary Documents; and any Private Owner Obligations then due and payable (in each case in such order as the Initial Member may determine in its sole discretion); provided that the Initial Member may, in its sole discretion, hold any such proceeds as additional security for any existing or future Private Owner Obligations. Without limitation of the foregoing, in no event shall the Initial Member have any obligation (but it shall at all times have the right in its sole discretion) to use or apply any proceeds of the Secured Assets toward payment of any Private Owner Obligations owing to the Company (whether or not the same are due and payable), and the Private Owner shall remain fully obligated to pay and perform all such Private Owner Obligations owing to the Company notwithstanding any such election by the Initial Member to so refrain from applying such proceeds toward payment of the same; and, in the event that, for any reason, any such proceeds of the Secured Assets are used for payment of any Private Owner Obligations owing to the Company, any and all rights of the Private Owner to payments, reimbursements or distributions from the Company on account of any such payment to the Company (including rights to any repayment of any deemed Excess Working Capital Advances, to the extent any such proceeds are used to fund the same), shall be considered as part of the Secured Assets and shall, to the extent paid or payable by the Company, be paid directly to the Initial Member (and the Initial Member shall have the right to direct the Paying Agent to so remit to the Initial Member any applicable distributions or payments by the Paying Agent with respect thereto) to be held and applied by the Initial Member as part of the proceeds of the Secured Assets (as collateral for the Private Owner Obligations). Any Secured Assets or proceeds thereof as held by the Initial Member may be commingled with the Private Owner's own funds, without any need to pay interest or income thereon. Upon indefeasible payment and performance in full all of the Private Owner Obligations (following the dissolution of the Company), any remaining unapplied proceeds (from an exercise of remedies by the Initial Member against the rights of the Private Owner to the Secured Assets or any Qualifying Letter of Credit) so held by the Initial Member, shall be released to the Private Owner (or such other Person as may have applicable rights therein in accordance with applicable Law). In any event, the Private Owner shall remain liable for any deficiency in payment of the Private Owner Obligations.

(c) This Agreement shall constitute a security agreement under applicable Law for the benefit of the Initial Member and, in furtherance thereof, the Private Owner (in all of its capacities) and the Company (as applicable) shall be deemed to have granted, and each does hereby grant, to the Initial Member, for itself (and its assignees), a valid and continuing first priority Lien on and security interest in all of the Private Owner's right, title and interest in, to and under, the Secured Assets, whether now owned or existing, or hereafter acquired and arising in, to and under the Secured Assets and all of the proceeds of the foregoing, as security for the payment and performance (when due) by the Private Owner (including in its roles as the Manager and the Tax Matters Member) of its duties, liabilities and obligations under this Agreement and the Ancillary Documents and the compliance by the Private Owner (including as the Manager and the Tax Matters Member) with the terms and conditions of this Agreement and the Ancillary

Documents (collectively, the "**Private Owner Obligations**"). For the avoidance of doubt, the parties acknowledge that the Secured Assets are not, pursuant to the foregoing, collateral for the separate payment obligations of the Company except to the extent that, pursuant to this Agreement or the Ancillary Documents, the Private Owner, in any capacity, is required to pay (or advance applicable funds to pay) or otherwise bear such obligations (and in such case, such Secured Assets secure such obligations of the Private Owner to the Company and, if applicable, the Initial Member and the Indemnified Parties only, and not any such separate obligations of the Company to any other Persons), such that the Secured Assets do not secure the Company's payment obligations under the Purchase Money Notes. For purposes of this Agreement, the term "**Secured Assets**" shall mean (x) all right, title and interest of the Private Owner in and to 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), (y) the LLC Interest held by the Private Owner and all other rights of the Private Owner (in any capacity) under this Agreement and the Ancillary Documents (including rights to 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), and (z) all proceeds of any of the foregoing at any time (including distributions thereon or other income in respect thereof).

(d) As additional security for the Private Owner Obligations (and, as applicable, as part of the Secured Assets), the Private Owner shall deliver on the Closing Date and at all times thereafter cause to be maintained additional collateral (the "**Additional Security**") consisting of either (i) cash and any interest earned thereon (and Permitted Investments with respect thereto) in the Private Owner Pledged Account in an aggregate amount at least equal to Five Million Dollars ($5,000,000) ("**Qualifying Cash Collateral**") or (ii) undrawn (and available) amounts under one or more Qualifying Letters of Credit in an aggregate amount at least equal to Five Million Dollars ($5,000,000). In the event that the Private Owner determines to fulfill its obligation to provide the Additional Security by issuance of a Qualifying Letter of Credit, the Private Owner shall cause the issuance and delivery to the Initial Member, on the Closing Date, of a single Qualifying Letter of Credit in the full amount of such Additional Security. The Initial Member shall have the unilateral right to draw on any such Qualifying Letter of Credit and to provide instructions to the Paying Agent for the disposition of the Qualifying Cash Collateral in the Private Owner Pledged Account, in each case without any requirement for any further consent, confirmation or instructions from the Private Owner; provided, however, that as between the Initial Member and the Private Owner (and without creating any right or obligation of the Paying Agent or any Issuing Bank to refuse to honor, or inquire as to the accuracy or sufficiency of, any applicable instructions from the Initial Member), the Initial Member agrees that (i) it shall not exercise such rights to so draw on any such Qualifying Letter of Credit unless there shall have occurred an Event of Default (whether or not relating to any Qualifying Letter of Credit) or an LC Reissuance/Extension Failure (with respect to such Qualifying Letter of Credit), and (ii) it shall not exercise such rights to so unilaterally direct the disposition of the Qualifying Cash Collateral from the Private Owner Pledged Account unless there shall have occurred an Event of Default.

(e) On the Closing Date (and whether or not the Private Owner has elected to provide Additional Security in the form of Qualifying Cash Collateral), the Private Owner shall establish the Private Owner Pledged Account with the Paying Agent for the exclusive purpose of holding Qualifying Cash Collateral (including in the form of any proceeds from a drawing on a

Qualifying Letter of Credit at any time deposited in the Private Owner Pledged Account in accordance herewith). The Private Owner Pledged Account (and all funds and financial assets therein) shall be subject to the security interest granted herein for the benefit of the Initial Member pursuant to the terms of this Agreement, the Custodial and Paying Agency Agreement and the Private Owner Pledged Account Control Agreement. Funds in the Private Owner Pledged Account may be invested at the direction of the Private Owner from time to time in Permitted Investments in accordance with the Custodial and Paying Agency Agreement; provided, however that all such Permitted Investments shall remain in the Private Owner Pledged Account as Qualifying Cash Collateral, and in no event shall the Private Owner have any right or authority to withdraw any funds from such Private Owner Pledged Account.

(f) Upon the occurrence of any LC Reissuance/Extension Failure, the Initial Member shall have the right (but not the obligation) to draw on all or any part of the undrawn amount of any Qualifying Letter of Credit subject to such LC Reissuance/Extension Failure; and in such case the funds received by the Initial Member as a result of any such draw shall be deposited in the Private Owner Pledged Account (as Qualifying Cash Collateral) and such LC Reissuance/Extension Failure shall not be deemed an Event of Default hereunder, in each case only so long as (i) there shall not have occurred any Event of Default (other than such LC Reissuance/Extension Failure), (ii) the Private Owner Pledged Account shall then be and remain open and subject to the Private Owner Pledged Account Control Agreement, and (iii) upon such deposit in the Private Owner Pledged Account (of the funds received by the Initial Member from such draw), the aggregate amount of the Additional Security (disregarding such affected Qualifying Letter of Credit) shall be in an amount not less than Five Million Dollars ($5,000,000), it being understood that, in the event the foregoing conditions are not satisfied, the Initial Member shall have the right to hold and apply such funds pursuant to Section 3.13(b) above.

(g) The Private Owner hereby authorizes the filing by the Initial Member and its assignees of such financing or continuation statements in such jurisdictions as the Initial Member or its assignees deem appropriate (in their sole and absolute discretion) to perfect and continue their first priority Lien and security interest with respect to the Secured Assets. The Private Owner shall deliver to the Initial Member an assignment and assumption agreement with respect to the LLC Interest held by it, in the form attached hereto as Exhibit C, endorsed in blank, and executed by the Private Owner. The Initial Member may use the assignment and assumption agreement to effect the assignment of the LLC Interest held by the Private Owner at any time if an Event of Default occurs and is continuing.

(h) After all of the obligations secured by the Secured Assets have been indefeasibly paid and performed in full (following the dissolution of the Company), the Initial Member shall, upon the request of the Private Owner, release any then outstanding Qualifying Letters of Credit and consent to the termination of the Private Owner Pledged Account Control Agreement.

(i) The Initial Member's rights and remedies under this Agreement, any Ancillary Document or otherwise are cumulative and may be exercised singularly (and in such order as the Initial Member may determine in its sole discretion) or concurrently. Neither any failure nor delay on the part of the Initial Member to exercise any other right or remedy shall

operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or of any other right or remedy howsoever arising. In no event shall the Initial Member have any obligation to seek or exhaust any particular remedy prior to exercising any other remedy, and the Private Owner hereby waives any and all right to require the marshalling of assets in connection with any exercise by the Initial Member of its remedies hereunder or under any Ancillary Document. Under no circumstances shall the Initial Member be deemed or construed to have waived its right to draw upon any Qualifying Letter of Credit, to proceed against the Private Owner Pledged Account, to foreclose upon the LLC Interest of the Private Owner or to exercise any of its other rights or remedies unless such waiver is in writing and executed by a duly authorized representative of the Initial Member. A waiver of any right or remedy on any one occasion shall not operate as a waiver of such right or remedy on any future occasion or as a waiver of any other right or remedy.

3.14 Purchase Right of Initial Member. Without prejudice to the rights of the Initial Member to foreclose on the LLC Interest of the Private Owner in accordance with Section 3.13:

(a) Upon the occurrence and during the continuance of an Event of Default, the Initial Member may at any time, by notice (a "**Buy-Out Notice**") to the Private Owner, elect to purchase (or cause one or more designees to purchase) the Private Owner LLC Interest for an amount, payable in cash, equal to (x) the fair market value of such LLC Interest (determined, if necessary, in accordance with Section 3.14(b)(iv)) as of a date (the "**Buy-Out Valuation Date**") selected by the Initial Member in its discretion between the date of the Buy-Out Notice and the closing of such purchase (the "**Buy-Out Closing**"), less (y) any amounts owed by the Private Owner pursuant Section 3.14(b)(v), and less (z) any distributions paid by the Company to or for the account of the Private Owner between the date of the Buy-Out Valuation Date and the Buy-Out Closing.

(b) If the Private Owner receives a Buy-Out Notice, the Buy-Out Closing shall be consummated as follows:

(i) The Buy-Out Closing shall be held at the principal offices of the Company on a day selected by the Initial Member, which day shall, subject to Section 3.14(b)(iv), be no later than six (6) months after the Buy-Out Notice was delivered to the Private Owner or at such other place or on such other date as the Members may agree (the "**Buy-Out Closing Date**").

(ii) The Initial Member shall purchase (and/or cause one or more designees to purchase in the aggregate) all but not less than all of the of the Private Owner LLC Interest for the consideration set forth in Section 3.14(a), and against delivery of such consideration, the Private Owner shall deliver all such documents and instruments as are necessary to transfer to the Initial Member (and/or its designee(s)), and in any event shall be deemed to have transferred, and to have represented and warranted to the Initial Member (and/or its designee(s)) that it has transferred, to the Initial Member (and/or its designee(s)), good title to (and, in any event, all right, title and interest of the Private Owner in and to) the entire Private Owner LLC Interest, free and clear of all Liens other than those created by this Agreement and the Ancillary Documents.

(iii) The Private Owner shall obtain all material consents, approvals or waivers (including expiration or termination of a specified waiting period) of any Governmental Authority or Person that may be required in connection with the purchase and sale of the Private Owner LLC Interest (other than any such consent, approval or waiver which has, if permitted by Law, been waived by the Initial Member).

(iv) In the event of the delivery of a Buy-Out Notice, the Members shall attempt to agree on the fair market value of the Private Owner LLC Interest as of the Buy-Out Valuation Date. If the Members are unable to agree on such value within fifteen (15) days after the date of delivery of the Buy-Out Notice (or, if sooner, by the Buy-Out Closing Date), then such value shall be determined immediately thereafter in accordance with the Dispute Resolution Procedure, and, if applicable, the Buy-Out Closing Date shall be delayed until such date (after completion of the applicable valuation) as may be selected by the Initial Member. For the avoidance of doubt, in no event shall the right under this Section 3.14 or any valuation resulting from a Dispute Resolution Procedure create any obligation with respect to, or otherwise limit the rights of the Initial Member in connection with, any concurrent or subsequent foreclosure (or sale) of the Private Owner's LLC Interest pursuant to Section 3.13 and/or exercise of relevant rights under the Uniform Commercial Code or otherwise, and the Private Owner acknowledges and agrees that any foreclosure and sale pursuant to Section 3.13 and relevant rights under the Uniform Commercial Code or otherwise may result in a sale price for the LLC Interest that is significantly lower than the fair market value of the Private Owner LLC Interest potentially (or having actually been) determined pursuant to this Section 3.14(b)(iv) or other price set out in any Buy-Out Notice.

(v) All out-of-pocket costs and expenses incurred by the Initial Member in connection with the exercise of its rights under this Section 3.14 and the sale of the LLC Interest by the Private Owner (including fees of any investment banking firm retained in connection with the Dispute Resolution Procedure and legal fees and expenses incurred in connection with obtaining any necessary consents, approvals or waivers (including expiration or termination of a specified waiting period) of Governmental Authorities) shall be borne by the Private Owner and may be deducted from the purchase price otherwise payable by the Initial Member (or its designee(s)) for the Private Owner LLC Interest.

(c) The failure of the Initial Member to exercise its rights under this Section 3.14 in connection with any Event of Default shall in no way affect or limit the exercise of such rights in connection with any other Event of Default by the Private Owner.

(d) At any time prior to the Buy-Out Closing, the Initial Member may elect not to proceed with the Buy-Out Closing (without any liability or further obligation with respect thereto), and the Private Owner shall remain responsible for amounts owed under Section 3.14(b)(v) notwithstanding any such election by the Initial Member.

(e) Any distributions payable by the Company to the Private Owner after the Buy-Out Valuation Date shall, at the option of the Initial Member, be paid to and held by the Initial Member (or, if permitted by the Paying Agent, held by the Paying Agent in the Distribution Account) and, at the Buy-Out Closing or a reasonable time thereafter, be released to the Private Owner less, without duplication, any amounts owed by the Private Owner pursuant to this Agreement (including costs and expenses pursuant to Section 3.14(b)(v)). For the avoidance of doubt, neither the Initial Member nor the Paying Agent shall have any obligation to segregate, or pay interest or other income in respect of, any sums held pursuant to this Section 3.14(e).

3.15 No ERISA Plan Assets. The Manager shall use its reasonable best efforts to ensure that the Company's assets are not deemed to be "plan assets" within the meaning of Section 3(42) of ERISA and the Plan Asset Regulation.

ARTICLE IV
Membership Interests; Rights and Duties of, and Restrictions on, Members

4.1 General. The membership of the Company shall consist of the Members listed from time to time in the Annex I (the Member Schedule), and such substituted Members as may be admitted to the Company pursuant to Article VIII. The Manager shall cause Annex I (the Member Schedule) to be amended from time to time to reflect the admission of any additional Members, additional Capital Contributions of the Members, the issuance of additional limited liability company interests, transfers of LLC Interests, repurchases, redemptions or cancellations of LLC Interests, the cessation or withdrawal of a Member for any reason or the receipt by the Company of notice of any change of name or address of a Member.

4.2 LLC Interests.

(a) Creation and Issuance. The Company is only authorized to issue the LLC Interests that exist as of the date hereof, and the Company may not hereafter create or issue any limited liability company interest, provided that nothing in this sentence restricts the Disposition of any outstanding LLC Interest by any Member (which matter is governed by Article VIII). The Company's LLC Interests shall be uncertificated. The LLC Interests shall have the relative rights, powers, duties and obligations specified in this Section 4.2. As of the Closing Date, the LLC Interests are owned by the Initial Member and the Private Owner, as set forth in Annex I (the Member Schedule). Other than as set forth in this Agreement, each LLC Interest shall be identical in all respects to each other outstanding LLC Interest.

(b) Distributions. Subject to Sections 6.6, distributions to the holders of LLC Interests shall be made as provided in Section 6.6(b) and Section 9.2.

(c) No Retirement Fund or Conversion. The LLC Interests shall not be subject to the operation of a retirement or sinking fund to be applied to the purchase or redemption thereof for retirement and shall not be convertible into any other class of limited liability company interests.

(d) Voting Rights. Except to the extent otherwise required by the Act or expressly provided in this Agreement, the holders of the LLC Interests shall be entitled to vote on

all matters upon which the Members have the right to vote as set forth in this Agreement or provided in the Act. Except as expressly set forth elsewhere in this Agreement (including Section 3.1 and Section 3.4), the voting rights of each holder of LLC Interests shall be based on such holder's Percentage Interest.

4.3 Filings; Duty of Members to Cooperate. The Manager shall promptly cause to be executed, delivered, filed, recorded or published, as appropriate, and the Private Owner will, as requested by the Manager from time to time, execute and deliver, (a) all certificates, documents and other instruments that the Manager deems necessary or appropriate to form, qualify or continue the existence or qualification of the Company as a limited liability company in the State of Delaware or as a foreign limited liability company in all other jurisdictions in which the Company may, or may desire to, conduct business or own Company Property, (b) any amendment to the Certificate or any instrument described in clause (a) required because of, or in order to effectuate, an amendment to this Agreement, or any change in the membership of the Company, in accordance with the terms hereof, (c) all certificates, documents and other instruments (including conveyances and a certificate of cancellation) that the Manager deems necessary or appropriate to reflect the dissolution and liquidation of the Company pursuant to the terms of this Agreement, and (d) such other certificates, documents and other instruments as are required by Law or by any Governmental Authority to be executed by them in connection with the Business as conducted or proposed to be conducted by the Company from time to time. As soon as reasonably practical after the date hereof, the Manager shall cause the Company to apply for, and thereafter use its reasonable best efforts to obtain, as quickly as possible, and maintain, all such licenses as are required to conduct the Business, including qualifications to conduct business in jurisdictions other than Delaware and licenses to purchase, own or manage the Loans, if the failure to so obtain such licenses would reasonably be expected to result in the imposition of fines, penalties or other liabilities on the Company, claims and defenses being asserted against the Company (including counterclaims and defenses asserted by any Borrower under the Loans), or materially adversely affect the Company or the Company's ability to foreclose on the Underlying Collateral securing any Loan or otherwise realize the full value of any Loan or Acquired Property.

4.4 Certain Restrictions and Requirements.

(a) No Member may use or possess Company Property other than for a Company purpose, except as provided under license or other contractual arrangements. No Member shall have authority to bind, or otherwise to act on behalf of, the Company except pursuant to authority expressly granted herein or pursuant to authority granted by the Manager in accordance with the terms hereof.

(b) From and after the Closing Date, no Person may or shall be admitted as a member of the Company except pursuant to and in accordance with Article VIII hereof.

(c) Each Member, other than the Initial Member, shall at all times meet the qualifications of a Qualified Transferee.

4.5 Liability of Initial Member. Neither the Initial Member nor any of its Affiliates, nor any officer, director, stockholder, member, manager, employee, agent or assign of the Initial

Member or any of its Affiliates (all of the foregoing, collectively, the "**Related Persons**"), shall be liable, responsible or accountable, whether directly or indirectly, in contract or tort or otherwise, to the Company, any other Person in which the Company has a direct or indirect interest or any Member (or any Affiliate of any of the foregoing), for any Damages asserted against, suffered or incurred by the Company, any Person in which the Company has a direct or indirect interest or any Member (or any Affiliate of any of the foregoing) arising out of, relating to or in connection with this Agreement or any act or failure to act pursuant to this Agreement or otherwise with respect to:

(a) the management or conduct of the business and affairs of the Company or any Person in which the Company has a direct or indirect interest or any of their respective Affiliates (including, without limitation, actions taken or not taken by any Related Person as an officer or director of any Person in which the Company has a direct or indirect interest or any Affiliates of such Person);

(b) the offer and sale of limited liability company interests in the Company (including the LLC Interests) or the issuance of Purchase Money Notes; and

(c) the management or conduct of the business and affairs of any Related Person insofar as such business or affairs relate to the Company or any Person in which the Company has a direct or indirect interest or to any Member in its capacity as such, including, all:

(i) activities in the conduct of the Business, and

(ii) activities in the conduct of other business engaged in by any Related Person which might involve a conflict of interest vis-à-vis the Company or any Person in which the Company has a direct or indirect interest or any Member (or any of their respective Affiliates) or in which any Related Person realizes a profit or has an interest;

except, in each case, Damages resulting from acts or omissions of such Related Person which were taken or omitted which constituted fraud, gross negligence, willful misconduct, or an intentional material breach of this Agreement or any Ancillary Document.

4.6 Indemnification.

(a) The Private Owner shall indemnify and hold harmless the Initial Member and the Initial Member's Affiliates, and their respective officers, directors, employees, partners, principals, agents and contractors (all of the foregoing, collectively, the "**Indemnified Parties**"), from and against any losses, Damages, liabilities, costs and expenses (including reasonable attorneys' fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating, defending, asserting or preparing the defense or assertion of any of the foregoing), deficiencies, claims, interest, awards, judgments, penalties and fines (collectively, "**Losses**"), arising out of or resulting from (i) any breach after the Closing Date, by (x) the Company (during any period when the Private Owner is the Manager, and subject to the clarification set forth below in this Section 4.6(a)), the Private Owner (in any capacity, including as the Manager) or any of their respective Affiliates or (y) any of the respective officers, directors, employees, partners,

principals, agents or contractors of any Person described in sub-clause (x), of the obligations of the Company or the Private Owner (in any capacity, including as the Manager) under, or any other covenants, agreements or other terms and conditions contained in this Agreement or any Ancillary Document (including Losses relating to (1) the Company's obligations with respect to litigation referred to in Section 4.5 of the Contribution Agreement to the extent provided therein, (2) the Company's obligations under Sections 3.1 and 3.2 of the Contribution Agreement (including all costs and expenses of the Initial Member in completing any applicable transfers pursuant to exercise of rights under such section), and (3) any claim asserted by the Initial Member against the Company or the Private Owner (in any capacity, including as the Manager) to enforce its rights hereunder or by any third party), or any third-party allegation or claim based upon facts alleged that, if true, would constitute such a breach; (ii) any gross negligence, bad faith or willful misconduct (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law) on the part of any Person described in sub-clause (i)(x) or (i)(y); or (iii) any Losses with respect to which the Initial Member was released, or with respect to which the Company should have obtained a release from the applicable Borrowers or other Obligors, in accordance with Section 4.17(b) of the Contribution Agreement. Such indemnity shall survive the termination of this Agreement. Each Indemnified Party shall deliver notice of a Loss or a claim or demand made by any Person against the Indemnified Party (a "**Third Party Claim**") to the Private Owner promptly after receipt by such Indemnified Party of written notice of the Third Party Claim, describing in reasonable detail the facts giving rise to any claim for indemnification hereunder, the amount of such claim (if known) and such other information with respect thereto as is available to the Indemnified Party and as the Private Owner may reasonably request. The failure or delay to provide such notice, however, shall not release the Private Owner from any of its obligations under this Section 4.6 except to the extent that it is materially prejudiced by such failure or delay. The Private Owner acknowledges and agrees that it shall have no recourse against the Company for any amounts the Private Owner is required to pay pursuant to this Section 4.6. For the purposes of this Section 4.6, the term "Initial Member" shall be deemed to include any Person at any time constituting the "Initial Member" hereunder (other than for purposes of this Section 4.6) and (without limitation of the foregoing) any Person at any time holding all or any portion of the LLC Interest initially held by the Initial Member immediately after the Closing, in each case even if such Person has since ceased to be a member of the Company or to hold any limited liability company interest in the Company. For purposes of clarification, with respect solely to the obligations of the Private Owner under this Section 4.6(a) in connection with a breach by the Company (during any period when the Private Owner is the Manager), the Private Owner shall not be responsible for any Losses arising out of or resulting from any failure by the Company to pay its separate payment obligations (including such payment obligations under the Purchase Money Notes), to the extent that all of the following are satisfied: (1) such failure is the result of the Company having insufficient available funds notwithstanding the servicing of the Loans and management of the Company by the Manager (and, as applicable, the Servicer and any Subservicers) in accordance with this Agreement and the Ancillary Documents (including through exercise of any discretionary authority with respect to incurrence of payment obligations and maintenance and application of applicable reserves in a manner so as to reasonably avoid any such breach), (2) such failure and resulting Losses are not attributable in whole or in part to any breach (or other action or omission in violation of the Servicing Standard or any provision of this Agreement or any Ancillary Document) by the Private Owner (in any capacity, including as Manager) or any of its Affiliates (other than the Company), or by any of the

respective officers, directors, employees, partners, principals, agents or contractors of any of the foregoing, and (3) the Private Owner (in any capacity) is not required to pay (or advance applicable funds to the Company for payment of) or otherwise bear such payment obligations pursuant to the terms of this Agreement or any Ancillary Document.

(b) If for any reason the indemnification provided for herein is unavailable or insufficient to hold harmless the Indemnified Parties, the Private Owner shall contribute to the amount paid or payable by the Indemnified Parties as a result of the Losses of the Indemnified Parties in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties, on the one hand, and the Private Owner (in any capacity, including as the Manager) (including the Servicer or any Subservicer), on the other hand, in connection with the matters that are the subject of such Losses.

(c) If the Private Owner confirms in writing to the Indemnified Party within fifteen (15) days after receipt of a Third Party Claim, the Private Owner's responsibility to indemnify and hold harmless the Indemnified Party therefor, the Private Owner may elect to assume control over the compromise or defense of such Third Party Claim at the Private Owner's sole expense and with counsel selected by the Private Owner, which counsel must be reasonably satisfactory to the Indemnified Party, provided that (i) the Indemnified Party may, if such Indemnified Party so desires, employ counsel at such Indemnified Party's own expense to assist in the handling (but not control the defense) of any Third Party Claim; (ii) the Private Owner shall keep the Indemnified Party advised of all material events with respect to any Third Party Claim; (iii) the Private Owner shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any Third Party Claim or entering into any settlement, adjustment or compromise of such Third Party Claim involving injunctive or similar equitable relief being imposed upon the Indemnified Party or any of its Affiliates; and (iv) the Private Owner will not, without the prior written consent of the Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened action in respect of which indemnification may be sought hereunder (whether or not any such Indemnified Party is a party to such action), unless such settlement, compromise or consent by its terms obligates the Private Owner to satisfy the full amount of the liability in connection with such Third Party Claim and includes an unconditional release of such Indemnified Party from all liability arising out of such Third Party Claim.

(d) Notwithstanding anything contained herein to the contrary, the Private Owner shall not be entitled to control (and if the Indemnified Party so desires, it shall have sole control over) the defense, settlement, adjustment or compromise of (but the Private Owner shall nevertheless be required to pay all Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise): (i) any Third Party Claim that seeks an order, injunction or other equitable relief against the Indemnified Party or any of its Affiliates; (ii) any action in which both the Private Owner (in any capacity, including as the Manager) or any Affiliate of the Private Owner, on one hand, and the Indemnified Party, on the other hand, are named as parties and either the Private Owner (or such Affiliate) or the Indemnified Party determines with advice of counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the other party or that a conflict of interest between such parties may exist in respect of such action; and (iii) any matter that raises or implicates any issue relating

to any power, right or obligation of the FDIC under any Law. If the Private Owner elects not to assume the compromise or defense against the asserted liability, fails to timely and properly notify the Indemnified Party of its election as herein provided, or, at any time after assuming such defense, fails to diligently defend against such Third Party Claim in good faith, the Indemnified Party may pay, compromise or defend against such asserted liability (but the Private Owner shall nevertheless be required to pay all Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise). In connection with any defense of a Third Party Claim (whether by the Private Owner or the Indemnified Party), all of the parties hereto shall, and shall cause their respective Affiliates to, cooperate in the defense or prosecution thereof and to in good faith retain and furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested by a party hereto in connection therewith.

(e) In the event the Company is reimbursed for or uses funds drawn under the Revolver or Excess Working Capital Advances to pay costs or expenses of the type referred to in clause (v) or (vi) of the definition of Servicing Expenses and it is subsequently determined that the Company was not entitled to reimbursement for (or to use Revolver funds or Excess Working Capital Advances to pay) all or any portion of such costs and expenses because the Company did not satisfy the requirements of Section 4.6(c) or clause (v) of the definition of Servicing Expenses (such costs and expenses, the "**Unreimbursable Expenses**"), the Manager shall, in addition to any other Losses for which the Manager may be liable with respect to the claim to which such costs and expenses relate, reimburse the cost of such Unreimbursable Expenses to each Member based on such Member's Percentage Interest as set forth below, except to the extent such Unreimbursable Expenses were funded through Excess Working Capital Advances that remain outstanding (in which case the portion of any such outstanding Excess Working Capital Advance that was so used for Unreimbursable Expenses shall itself become unreimbursable and be deemed forgiven with no further right of the Manager to collect or receive the same). Any such reimbursement by the Manager pursuant to the foregoing shall be as follows: within ten (10) Business Days after written demand therefor from either Member, the Manager shall pay each Member by wire transfer of immediately available funds to an account specified by each Member an amount equal to such Member's Percentage Interest (as of the later of (x) the date of such demand or (y) the date of such payment) multiplied by the amount of all such Unreimbursable Expenses.

(f) The Company shall indemnify and hold harmless each Member and each Member's respective officers, directors, employees and members (all of the foregoing collectively, the "**Covered Persons**") for any Losses incurred by such Covered Person by reason of a Third Party Claim relating to any act or omission by or of such Covered Person in connection with the exercise or performance of the rights, powers, responsibilities and obligations of such Covered Person (or, if such Covered Person is other than a Member, of the Member in respect of which such Covered Person so constitutes a Covered Person) regarding the Company except for (i) any Third Party Claim or Losses resulting from fraud, gross negligence, willful misconduct or an intentional breach of this Agreement or any Ancillary Document by such Covered Person (or if such Covered Person is other than a Member, by the Member in respect of which such Covered Person so constitutes a Covered Person), and (ii) in the case of the Private Owner (in any capacity, including as the Manager), (x) any claim or demand by any Servicer or Subservicer (or, for the

avoidance of doubt, any Losses arising out of or related to such claim or demand) and (y) any Third Party Claim or Losses that is in whole or in part covered by or subject to an indemnification obligation of the Private Owner (in any capacity, including as the Manager) under any provision of this Agreement or any Ancillary Document, including the foregoing provisions of Section 4.6(a).

(g) Tax Liability of Ownership Entity. Notwithstanding anything to the contrary contained herein, if any Ownership Entity is not a pass-through entity with no entity-level income tax obligations, distributions to the Initial Member pursuant to Section 6.6 (including for the purposes of Section 9.2(c)) shall be allocated before accrual or payment of any income tax payable by such Ownership Entity, and the Private Owner (or its successors or assigns) shall indemnify and hold harmless the Initial Member from and against any liability for any income taxes payable by the Ownership Entity; provided, however, that the foregoing special allocation and indemnity shall not apply if (i) the Private Owner (and each of its successors and assigns) has taken all steps necessary to secure pass-through treatment of the Ownership Entity and (ii) the liability for income taxes payable by the Ownership Entity arises solely as a result of a change in Law applicable to pass-through entities occurring after the date hereof and not as a result of action (or inaction) by the Private Owner (or its successors or assigns).

(h) Offsets. Without limiting any other rights of the Initial Member hereunder, in the event the Initial Member exercises any rights or remedies as a result of or in connection with a breach hereunder or the occurrence of an Event of Default (including relating to a breach of Section 4.6), all costs and expenses (including reasonable attorneys' fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating, defending, asserting or preparing the defense or assertion of any claim) incurred by the Initial Member with respect thereto may be offset by the Initial Member against any payment or distribution otherwise payable to the Private Owner (including any Interim Management Fee or Management Fee), whether in its capacity as a Member or as the Manager (in each case except to the extent such breach or Event of Default is attributable exclusively to a Manager having been appointed by the Initial Member following removal of the Private Owner in such capacity, or to any applicable Servicer (and any of its Subservicers) having been engaged by the Initial Member, the Company or the applicable replacement Manager following such removal of the Private Owner as the Manager, in each case that is not an Affiliate of the Private Owner). For the avoidance of doubt, the effects of any of this Section 4.6(h) and Section 4.6(g) above shall be disregarded for purposes of calculations with respect to the First Incentive Threshold Event and the Second Incentive Threshold Event.

ARTICLE V
Capital Contributions; Discretionary Funding Advance; Excess Working Capital Advance

5.1 Capital Contributions.

(a) Members' Contribution. Pursuant to the Contribution Agreement, the Initial Member made a Capital Contribution to the Company in an amount equal to the Initial Member Capital Contribution. In connection with the Transferred LLC Interest Sale Agreement, the Private Owner acquired from the Initial Member the Transferred LLC Interest representing a forty percent (40%) equity interest in the Company in exchange for the Transferred LLC Interest Sale Price. After giving effect to the foregoing transactions, (and to the Capital Contributions

referenced in Section 6.2 below), the respective Capital Accounts of the Initial Member and the Private Owner as of the Closing Date are as set forth in the Annex I (the Member Schedule).

(b) From and after the Closing Date (and except as provided in Section 5.2 below), the Members shall have no obligation to make any additional Capital Contributions to the Company.

5.2 Intentionally Omitted.

5.3 Discretionary Funding Advance.

(a) In the event there are (X) insufficient funds in the Collection Account to make Funding Draws or (Y) one (1) or more participants fails to fund its share of a Funding Draw with respect to a Participated Loan, in each case with respect to specific Loans (and related Acquired Property), the Manager may, in its discretion, make an advance to the Company (the "**Discretionary Funding Advance**"), to the extent (i) not otherwise available under the Revolver Documents (unless the Revolver Lender fails to fund an Advance Loan requested by the Company, as the borrower, under the Revolving Credit Agreement), and (ii) permitted by the other Ancillary Documents, which Discretionary Funding Advance shall be reimbursable (and shall accrue interest as set forth herein) only to the extent used exclusively for the applicable Funding Draws for specified Loans (or related Acquired Property). In no event may Discretionary Funding Advances be used for payment of any Working Capital Expenses other than Funding Draws. The proceeds of Discretionary Funding Advances shall be deposited into the Collection Account for disbursement therefrom for the making of the applicable Funding Draws. All Discretionary Funding Advances, together with a detailed statement of the sources and uses thereof (which shall be broken out by the reimbursable and unreimbursable portions thereof) and description of the allocation to the Loans for which such Discretionary Funding Advance was made, shall be reflected in the Monthly Report with respect to the calendar month during which the relevant Discretionary Funding Advance was made.

(b) Discretionary Funding Advances shall bear interest on the outstanding principal amount thereof at a rate per annum equal to the LIBOR Rate in effect from time to time, plus three percent (3.0%). Interest shall be calculated on the basis of a 360 day year and actual days elapsed. Interest shall accrue on each Discretionary Funding Advance for the day on which the Discretionary Funding Advance is made, and shall not accrue on a Discretionary Funding Advance, or any portion thereof, for the day on which the Discretionary Funding Advance or such portion is paid. Each Discretionary Funding Advance, including interest accrued with respect thereto, shall be repaid in accordance with Sections 3.1 and 5.1 of the Custodial and Paying Agency Agreement, it being agreed that, as to any specific amounts to be so applied to the repayment of one or more Discretionary Funding Advances relating to the same Loan, such amounts shall be applied first to outstanding interest on such Discretionary Funding Advances (on a pro rata basis as among such Discretionary Funding Advances, if applicable) and then to the principal amount (on a pro rata basis as among such Discretionary Funding Advances, if applicable). The Manager may not assign, sell, transfer, participate, pledge, or hypothecate, in whole or in part, its interest in any Discretionary Funding Advances without the consent of the Initial Member, and until the Purchase Money Notes Defeasance Date, the Purchase Money Notes Guarantor.

5.4 Excess Working Capital Advances. In the event there are insufficient funds in the Collection Account and also insufficient available funds under the Revolver (including, as applicable, by a permitted release of such funds to the Collection Account or as otherwise permitted in the Custodial and Paying Agency Agreement) to (a) pay any Working Capital Expenses other than Funding Draws, or (b) fund the Defeasance Account by such amount as may be required to cure a Purchase Money Notes Trigger Event (as defined in the Reimbursement, Security and Guaranty Agreement), then the Manager (x) shall, except as otherwise provided in Section 12.6, make an advance of its own funds to the Company to be used by the Company for payment of such permitted (or required, as applicable) Working Capital Expenses and (y) may (but shall not have an obligation to) make an advance of its own funds to the Company to be used by the Company for such funding of the Defeasance Account (any such advance to the Company pursuant to the foregoing, an "**Excess Working Capital Advance**"). In no event may Excess Working Capital Advances be used for the making of any Funding Draws. No Excess Working Capital Advance shall accrue any interest thereon. Excess Working Capital Advances shall be repaid in accordance with Section 5.1 of the Custodial and Paying Agency Agreement. The proceeds of Excess Working Capital Advances for payment of Working Capital Expenses shall be deposited into the Collection Account for disbursement therefrom for the payment of such permitted Working Capital Expenses. The proceeds of any Excess Working Capital Advance for an applicable funding of the Defeasance Account shall be deposited into (and the Manager shall remit such proceeds to the Paying Agent for such deposit into) the Defeasance Account. To the extent multiple Working Capital Expenses (payment of which is permitted to be made using such Excess Working Capital Advance) are outstanding, any funding or use by the Manager of Excess Working Capital Advances for payment of all or any of the same shall follow the relevant priorities as set forth in the Priority of Payments and in Section 3.1 of the Custodial and Paying Agency Agreement, as applicable. All Excess Working Capital Advances, together with a detailed statement of the sources and uses thereof (which shall be broken out by the reimbursable and unreimbursable portions thereof), shall be reflected in the Monthly Report with respect to the calendar month during which the relevant Excess Working Capital Advance was made. The Manager may not assign, sell, transfer, participate, pledge, or hypothecate, in whole or in part, its interest in any Excess Working Capital Advances without the consent of the Initial Member.

ARTICLE VI
Capital Accounts; Allocations; Priority of Payments; Distributions

6.1 Capital Accounts. A Capital Account shall be established and maintained for each Member to which shall be credited the Capital Contributions made by such Member and such Member's allocable share of Net Income (and items thereof), and from which shall be deducted distributions to such Member of cash or other Property and such Member's allocable share of Net Loss (and items thereof). As to the Private Owner, the initial Capital Account shall be equal to the Transferred LLC Interest Sale Price. A Member's Capital Account also shall be adjusted for items specially allocated to such Member under this ARTICLE VI. The Capital Accounts of the Members generally shall be adjusted and maintained in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv); provided, however, that such adjustments to, and maintenance of, the Capital Accounts shall not adversely affect the manner in which distributions are to be made to the Members under Section 6.6.

6.2 Allocations to Capital Accounts. Allocation of Net Income and Net Loss shall be made as provided in this Article VI.

(a) Except as otherwise provided in this Agreement, Net Income and Net Loss (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of the Company shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in Section 6.2(b), the Capital Account balance of each Member, immediately after making such allocation, is, as nearly as possible, equal to (i) the distributions that would be made to such Member pursuant to Section 6.6 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Book Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the tax bases of the assets securing such liability), and the net assets of the Company were distributed, in accordance with Section 9.2(c), to the Members immediately after making such allocation, minus (ii) such Member's share of "partnership minimum gain" and "partner nonrecourse debt minimum gain" (as such terms are used in Treasury Regulations Section 1.704-2), computed immediately prior to the hypothetical sale of assets.

(b) Allocations in Special Circumstances. The following special allocations shall be made in the following order:

(i) *Minimum Gain Chargeback.* Notwithstanding any other provision of this ARTICLE VI, if there is a net decrease in minimum gain (as it corresponds to the definition of "partnership minimum gain" in Treasury Regulations Section 1.704-2(b)(2) and (d)) during any Fiscal Year, the Members shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to the portion of such Member's share of the net decrease in minimum gain, determined in accordance with Treasury Regulations Section 1.704-2(f) and (g). This Section 6.2(b)(i) is intended to comply with the "minimum gain chargeback" requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.

(ii) *Member Minimum Gain Chargeback.* Notwithstanding any other provision of this ARTICLE VI other than Section 6.2(b)(i), if there is a net decrease in minimum gain attributable to a Member nonrecourse debt (as it corresponds to the definition of "partnership nonrecourse debt minimum gain" in Treasury Regulations Section 1.704-2(i)) during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to the portion of such Member's share of the net decrease in such minimum gain attributable to such Member's nonrecourse debt, determined in accordance with Treasury Regulations Section 1.704-2(i). This Section 6.2(b)(ii) is intended to comply with the "partner minimum gain chargeback" requirement in such section of the Treasury Regulations and shall be interpreted consistently therewith.

(iii) *Qualified Income Offset.* In the event any Member, for any reason, whether expected or not, has an Adjusted Capital Account Deficit, items of

Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, such Adjusted Capital Account Deficit as quickly as possible, provided that an allocation pursuant to this Section 6.2(b)(iii) shall be made only if and to the extent that such Member would have such Adjusted Capital Account Deficit after all other allocations provided for in Section 6.2 have been tentatively made as if this Section 6.2(b)(iii) were not in this Agreement. This Section 6.2(b)(iii) is intended to comply with the "qualified income offset" provisions in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(iv) *Nonrecourse Deductions*. Any nonrecourse deductions attributable to a Member nonrecourse debt (as described in Treasury Regulations Section 1.704-2(i)) shall be allocated to the Member who bears the economic risk of loss with respect to such nonrecourse debt. Otherwise, nonrecourse deductions shall be allocable in accordance with the Members' respective Percentage Interests.

(v) *Loss Allocation Limitation*. No allocation of Net Loss (or any item thereof) shall be made to any Member to the extent that such allocation would create or increase a Member's Adjusted Capital Account Deficit. If, in the allocation of Net Loss (or any item thereof), less than all Members would have an Adjusted Capital Account Deficit as a result of such allocation, then any Net Loss (or item thereof) not allocable to any such Member(s) as a result of such limitation shall be allocated (subject to such limitation) to the other Member so as to allocate the maximum permissible Net Loss to each Member under Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(vi) *Curative Allocations.* The allocation provisions of this Section 6.2(b) are intended to comply with certain requirements of the Treasury Regulations. Notwithstanding any other provisions of this Article VI, any allocation effected pursuant to this Section 6.2(b) shall be taken into account in allocating Net Income and Net Loss among the Members such that the cumulative effect of all such allocations achieves the fundamental purpose of Section 6.2(a), so that the Capital Account balances correspond to the amounts distributable to the Members.

(c) Transfer of or Change in LLC Interests. The Tax Matters Member is authorized to adopt any convention or combination of conventions likely to be upheld for federal income tax purposes regarding the allocation of items of Company income, gain, loss, deduction and expense with respect to a transferred LLC Interest. A transferee of an LLC Interest in the Company shall succeed to the Capital Account of the transferor Member to the extent it relates to the transferred LLC Interest.

6.3 Tax Allocations.

(a) General Rules. Except as otherwise provided in Section 6.3(b), for each Fiscal Year, items of Company income, gain, loss, deduction and expense shall be allocated, for federal, state and local income tax purposes among the Members in the same manner as the Net Income (and items thereof) or Net Loss (and items thereof) of which such items are components were allocated pursuant to Section 6.2.

(b) Section 704(c) of the Code. Income, gains, losses and deductions with respect to any property (other than cash) contributed or deemed contributed to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Fair Market Value at the time of the contribution or deemed contribution in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder. Such allocations shall be made in such manner and utilizing such permissible tax elections as determined in good faith by the Tax Matters Member, following consultation with the Initial Member. In the event of a revaluation of Property pursuant to the definition of Book Value, subsequent allocations of income, gains, losses or deductions with respect to such Property shall take account of any variation between the Book Value and Fair Market Value of such Property, as so determined from time to time, in accordance with Section 704(c) of the Code and the Treasury Regulations promulgated thereunder. Such allocations shall be made in such manner and utilizing such permissible Tax elections as determined in good faith by the Tax Matters Member, following consultation with the Initial Member. For the avoidance of doubt, any losses recognized by the Company that are attributable to property acquired by the Company pursuant to the Contribution Agreement and that are deferred pursuant to Section 707(b)(1) or Section 267(a) of the Code shall, solely for income tax purposes, be allocated to the Initial Member.

(c) Capital Accounts Not Affected. Allocations pursuant to this Section 6.3 are solely for federal, state and local tax purposes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or allocable share of Net Income (or items thereof) or Net Loss (or items thereof).

(d) Tax Allocations Binding. The Members acknowledge that they are aware of the Tax consequences of the allocations made by this Section 6.3 and hereby agree to be bound by the provisions of this Section 6.3 in reporting their respective shares of items of Company income, gain, loss, deduction and expense.

6.4 Determinations by Tax Matters Member. All matters concerning the computation of the Capital Accounts, the allocation of items of Company income, gain, loss, deduction and expense and the adoption of any accounting procedures not expressly provided for by the terms of this Agreement shall be determined by the Tax Matters Member in good faith, following consultation with the Initial Member. Following such consultation, such determinations shall be final and conclusive as to all the Members. Without in any way limiting the scope of the foregoing, if and to the extent that, for income tax purposes, any contribution to or distribution by the Company or any payment by any Member or by the Company is recharacterized, the Tax Matters Member may, in good faith following consultation with the Initial Member, specially allocate items of Company income, gain, loss, deduction or expense and/or make correlative

adjustments to the Capital Accounts of the Members in a manner so that the net amount of income, gain, loss, deduction and expense realized by each relevant party (after taking into account such special allocations) and the net Capital Account balances of the Members (after taking into account such special allocations and adjustments) shall, as nearly as possible, achieve the fundamental purpose of Section 6.2(a), such that the Capital Account balances correspond to the amounts distributable to the Members, as if such recharacterization had not occurred.

6.5 Priority of Payments. Each calendar month the amounts deposited in the Distribution Account under the Custodial and Paying Agency Agreement shall be distributed by the Paying Agent in the order of the Priority of Payments; provided, however, that for the avoidance of doubt, to the extent amounts are available for distribution to the Members with respect to their respective LLC Interests (such available amounts, the "**Distributable Cash**"), such Distributable Cash shall be distributed to the Members in accordance with Section 6.6 below.

6.6 Distributions.

(a) No Right to Withdraw. No Member shall have the right to withdraw capital or demand or receive distributions or other returns of any amount in its Capital Account, except as expressly provided in this Agreement.

(b) Ordinary Distributions.

(i) *Timing.* Distributable Cash, if any, shall be distributed to the Members on a monthly basis by the Paying Agent out of the Distribution Account in the manner set forth in the Custodial and Paying Agency Agreement; provided, however, that the Manager shall instruct the Paying Agent as to how such distributions are to be allocated as between the Initial Member and the Private Owner based on Section 6.6(b)(ii) below (which instructions shall be included in one or more reports to be provided to Paying Agent in accordance with Section 7.4(b)).

(ii) *Distributions of Distributable Cash.* Each distribution of Distributable Cash shall be made to the Members as follows:

(A) first, sixty percent (60%) to the Initial Member and forty percent (40%) to the Private Owner, until the time at which the First Incentive Threshold Event occurs; and

(B) thereafter, sixty-five percent (65%) to the Initial Member and thirty-five percent (35%) to the Private Owner, until the time at which the Second Incentive Threshold Event occurs; and

(C) thereafter, seventy percent (70%) to the Initial Member and thirty percent (30%) to the Private Owner.

For the avoidance of doubt, distributions to the Members occurring on the Distribution Date on which any of the First Incentive Threshold Event or the Second Incentive Threshold Event occurs shall, (x) with respect to all distributions up to the amount required for reaching such First Incentive Threshold Event or Second Incentive Threshold Event, as applicable, be allocated without regard to the occurrence of such First Incentive Threshold Event or Second Incentive Threshold Event, as applicable, and (y) with respect to all remaining distributions on such Distribution Date, be allocated taking into account the occurrence of such First Incentive Threshold Event or Second Incentive Threshold Event, as applicable.

(iii) *Incentive Threshold Events.* The "**First Incentive Threshold Event**" shall occur as of a Distribution Date if (A) the aggregate distributions made to the Private Owner pursuant to Section 6.6(b)(ii) as of such Distribution Date is equal to or greater than the product of two (2.0) and the Incentive Threshold Base Amount, and (B) the Incentive Threshold as of such Distribution Date (determined based on the Threshold Increase Amount for the First Incentive Threshold Event) is equal to zero. The "**Second Incentive Threshold Event**" shall occur as of a Distribution Date if (A) the aggregate distributions made to the Private Owner pursuant to Section 6.6(b)(ii) as of such Distribution Date is equal to or greater than the product of two and one-half (2.5) and the Incentive Threshold Base Amount, and (B) the Incentive Threshold as of such Distribution Date (determined based on the Threshold Increase Amount for the Second Incentive Threshold Event) is equal to zero.

(iv) *Incentive Threshold.* The "**Incentive Threshold**" shall be determined as follows:

(A) as of the Closing Date, the Incentive Threshold shall be equal to the Transferred LLC Interest Sale Price (the "**Incentive Threshold Base Amount**"); and

(B) as of any Distribution Date, the Incentive Threshold (as determined separately with respect to each of the First Incentive Threshold Event and the Second Incentive Threshold Event) shall be an amount equal to (1) the sum of (i) the applicable Incentive Threshold as of the preceding Distribution Date (or, in the case of the first Distribution Date, the Closing Date), and (ii) the applicable Threshold Increase Amount, minus (2) the monthly distribution made to the Private Owner pursuant to Section 6.6(b)(ii) on such Distribution Date (excluding any payments in respect of the Management Fee and repayments of Excess Working Capital Advances and Discretionary Funding Advances); provided, that, if, as of any Distribution Date, the amount referred to in clause (B)(2) of Section 6.6(b)(iii) is greater than the amount referred to in clause (B)(1) of Section 6.6(b)(iii), then the applicable Incentive Threshold shall be deemed to be zero for such Distribution Date and all subsequent Distribution Dates.

(c) Restrictions on Distributions. The foregoing provisions of this Article VI to the contrary notwithstanding, no distribution shall be made if such distribution would violate any contract or agreement to which the Company is then a party or any Law or directive of any Governmental Authority then applicable to the Company.

(d) Withholding. Notwithstanding any other provision of this Agreement, the Manager is authorized to take any action that it determines to be necessary or appropriate to cause the Company to comply with any foreign or United States federal, state or local withholding requirement with respect to any allocation, payment or distribution by the Company to any Member or other Person. All amounts so withheld shall be treated as distributions to the applicable Members under the applicable provisions of this Agreement. If any such withholding requirement with respect to any Member exceeds the amount distributable to such Member under the applicable provisions of this Agreement, or if any such withholding requirement was not satisfied with respect to any amount previously allocated or distributed to such Member, such Member and any successor or assignee with respect to such Member's LLC Interest hereby agrees to indemnify and hold harmless the Manager and the Company for such excess amount or such withholding requirement, as the case may be.

(e) Record Holders. Any distribution of Property, whether pursuant to this Article VI or otherwise, shall be made only to Persons that, according to the books and records of the Company, were the holders of record of LLC Interests on the date determined by the Manager as of which the Members are entitled to any such distribution.

(f) Final Distribution. The final distribution following dissolution of the Company (the "**Final Distribution**") shall be made in accordance with the provisions of Section 9.2.

ARTICLE VII
Accounting, Reporting and Taxation

7.1 Fiscal Year. The books and records of the Company shall be kept on an accrual basis and the fiscal year of the Company shall commence on January 1 and end on December 31 (the "**Fiscal Year**").

7.2 Maintenance of Books and Records.

(a) Maintenance of Books and Records. At all times during the continuance of the Company, the Manager shall cause to be kept and maintained (including by the Servicer and any Ownership Entity and including records transferred by the Initial Member and any predecessors-in-interest (including SFG) to the Company in connection with its conveyance of the Loans to the Company under the Contribution Agreement), at all times, at the Company's chief executive office referred to in Section 2.4, a complete and accurate set of files, books and records regarding the Loans and the Underlying Collateral, and the Company's and the relevant secured parties' interests in the Loans and the Underlying Collateral, including records relating to the Collection Account, the Escrow Accounts, any account(s) created under the Revolver, any liquidity reserve account (if permitted), the Defeasance Account, and the disbursement of all Loan Proceeds. This obligation to maintain a complete and accurate set of records shall encompass all

files in the Manager's or the Company's custody, possession or control pertaining to the Loans and the Underlying Collateral, including (except as required to be held by the Custodian pursuant to the Custodial and Paying Agency Agreement) all original and other documentation pertaining to the Loans and the Underlying Collateral, all documentation relating to items of income and expense pertaining to the Loans and the Underlying Collateral, and all of the Manager's (and the Servicer's and any Subservicer's) internal memoranda pertaining to the Loans and the Underlying Collateral. The books of account shall be maintained in a manner that provides sufficient assurance that: (a) transactions of the Company are executed in accordance with the general or specific authorization of the Manager consistent with the provisions of this Agreement; and (b) transactions of the Company are recorded in such form and manner as will: (i) permit preparation of federal, state and local income and franchise tax returns and information returns in accordance with this Agreement and as required by Law; (ii) permit preparation of the Company's financial statements in accordance with GAAP and as otherwise set forth herein and the provisions of the reports required to be provided hereunder; and (iii) maintain accountability for the Company's assets.

(b) Retention of Books and Records. The Manager shall cause all such books and records to be maintained and retained until the date that is the later of ten (10) years after the Closing Date and three (3) years after the date on which the Final Distribution is made. All such books and records shall be available during such period for inspection by the Initial Member, the FDIC or any of their respective representatives (including any Governmental Authority) and agents at the Company's chief executive office referred to in Section 2.4 at all reasonable times during business hours on any Business Day (or, in the case of any such inspection after the term hereof, at such other location as is provided by notice to the Initial Member and the FDIC), in each instance upon two (2) Business Days' prior notice to the Manager. Upon request by the Initial Member or the FDIC, the Manager shall promptly send copies (the number of copies of which shall be reasonable) of such books and records to such requesting Person or its designee. The Manager shall provide the Initial Member and the FDIC with reasonable advance notice of the Manager's intention to destroy or dispose of any documents or files relating to the Loans and, upon the request of the Initial Member or the FDIC, shall allow such requesting Person to recover the same (or copies thereof) from the Company and in the case both the Initial Member and the FDIC so request the same, the FDIC shall have the right to recover such documents or files, but the Initial Member shall have the right to make copies of such applicable documents or files so long as such copies are made while such documents files remain with the Manager or the Company (and prior to recovery of the same by the FDIC). The Manager shall also maintain complete and accurate records reflecting the status of Taxes, ground leases or other recurring charges which could become a Lien on any Underlying Collateral. Any expense incurred by the Initial Member or the FDIC and any reasonable out-of-pocket expense incurred by the Company in connection with the exercise by the Initial Member or the FDIC of its respective rights in this Section 7.2(b) to recover or make (or otherwise receive) copies of books, records, documents or files shall be borne by such Person so exercising such rights; provided, however, that any expense incident to the exercise of such rights pursuant to this Section 7.2(b) as a result of or during the continuance of an Event of Default shall in all cases be borne by the Private Owner (except to the extent such Event of Default is attributable exclusively to a Manager having been appointed by the Initial Member following removal of the Private Owner in such applicable capacity, or to any applicable Servicer (and any of its Subservicers) having been engaged by the Initial Member, the

Company or the applicable replacement Manager following such removal of the Private Owner as the Manager, in each case that is not an Affiliate of the Private Owner).

7.3 Financial Statements.

(a) Annual Financial Statements. As soon as practicable following, but no later than ninety (90) days immediately after, the end of each Fiscal Year (commencing with respect to the 2010 Fiscal Year), the Manager shall prepare and deliver to the Initial Member an audited consolidated balance sheet of the Company and the Ownership Entities as at the end of such Fiscal Year, and audited consolidated statements of operations and cash flow of the Company and the Ownership Entities for such Fiscal Year, each prepared in accordance with GAAP and accompanied by the Accountants' report thereon, which shall be certified in the customary manner by the Accountants.

(b) Quarterly Financial Information. As soon as practicable following, but no later than thirty (30) days immediately after, the end of each quarter of each Fiscal Year (other than the last quarter of such Fiscal Year, and commencing with the calendar quarter ending on or about June 30, 2010), the Manager shall prepare and deliver to the Initial Member unaudited consolidated balance sheet of the Company and the Ownership Entities as at the end of such calendar quarter, and unaudited consolidated statements of operations and cash flow of the Company and the Ownership Entities for such calendar quarter (for the first such report, covering the period from the Closing Date through the end of such calendar quarter), each prepared in accordance with GAAP.

7.4 Additional Reporting and Notice Requirements.

(a) Manager's Duty to Initial Member and Secured Parties; Delivery of Certain Notices. In addition to such other reports and access to books, records and reports as are required to be provided under this Agreement, the Manager shall cause to be delivered to the Initial Member, the Revolver Lender and the Purchase Money Notes Guarantor such information as is specified in Exhibit B (in addition to the Monthly Report) and such other information relating to the Loans, the Underlying Collateral, the Company, the Servicers and any Subservicers as the Initial Member, the Revolver Lender or the Purchase Money Notes Guarantor may reasonably request from time to time and, in any case, shall ensure that the Initial Member, the Revolver Lender and the Purchase Money Notes Guarantor are promptly advised, in writing, of any matter of which the Manager, any Servicer or any Subservicer becomes aware relating to the Loans, the Underlying Collateral, the Collection Account, the Escrow Accounts, any accounts created under the Revolver, the Defeasance Account, or any Borrower or Obligor that materially and adversely affects the interests of the Initial Member hereunder, the Revolver Lender or of any secured party under the Reimbursement, Security and Guaranty Agreement. Without limiting the generality of the foregoing, the Manager shall cause to be delivered to the Initial Member information indicating any possible Environmental Hazards with respect to any Underlying Collateral. To the extent that the Initial Member requests information which is dependent upon obtaining such information from a Borrower, Obligor or other third party, the Manager shall cause to be made commercially reasonable efforts to obtain such information but it shall not be a breach by the Manager of this Agreement if the Manager fails to cause such information to be provided to the

Initial Member because a Borrower, Obligor or other Person has failed to provide such information after such efforts have been made.

(b) Monthly Reports. On or prior to the Distribution Date for each month, commencing on the Distribution Date following the calendar month in which the Closing Date occurs, the Company shall deliver or cause the Manager to deliver to the Revolver Lender, the Paying Agent, the Initial Member and the Purchase Money Notes Guarantor the Monthly Report with respect to the relevant Due Period, which Monthly Report shall include the Distribution Date Report specifying the amounts and recipients of all funds to be distributed by the Paying Agent on such Distribution Date; provided however, that (unless the Company and the Initial Member agree otherwise) the Initial Member will prepare and deliver to the Revolver Lender, the Paying Agent and the Purchase Money Notes Guarantor the first Monthly Report (including a Distribution Date Report) on behalf of the Company on or before June 30, 2010 for all Due Periods ending on such date. Following receipt by the Paying Agent of the Monthly Report (including the Distribution Date Report) with respect to a given Due Period, the Paying Agent shall prepare and deliver the Custodian and Paying Agent Report with respect to such Due Period in accordance with the terms of the Custodial and Paying Agency Agreement. Each Monthly Report (including the Distribution Date Report) prepared and delivered by the Manager shall be certified by the chief financial officer (or an equivalent officer) of the Manager. Each Monthly Report prepared and delivered by the Manager shall also include a certification of the Manager that all withdrawals by the Manager from the Collection Account during such Due Period were made in accordance with the terms of this Agreement and the Custodial and Paying Agency Agreement.

(c) Annual Compliance Certificates. The Manager shall, and shall cause each Servicer and any Subservicer to, deliver to the Initial Member, the Revolver Lender and the Purchase Money Notes Guarantor, on or before March 15 of each year, commencing in the year 2011, an officer's certificate stating, as to the signer thereof, that (i) a review of such party's (in the case of the Manager, for the avoidance of doubt, in any capacity under this Agreement) activities during the preceding Fiscal Year (or other applicable period as set forth below in this Section 7.4(c))and of its performance under this Agreement (or, as applicable, the Servicing Agreement or any Subservicing Agreement) has been made under such officer's supervision, and (ii) to the best of such officer's knowledge and belief, based on such review, such party (in the case of the Manager, for the avoidance of doubt, in any capacity under this Agreement) has fulfilled all of its obligations under this Agreement (or, as applicable, the Servicing Agreement or Subservicing Agreement) in all material respects throughout such year (or other applicable period as set forth below in this Section 7.4(c)) or, if there has been a failure to fulfill any such obligation in any material respect, specifying each such failure and the nature and status thereof. The first such officer's certificate shall cover the period commencing on the Closing Date (and with respect to each Loan, shall include relevant information with respect thereto for the period commencing on the Servicing Transfer Date for such Loan) and continuing through the end of the 2010 Fiscal Year. In the event a Servicer or any Subservicer was terminated, resigned or otherwise performed in such capacity for only part of a year (or other applicable period, as the case may be, with respect to the period commencing, with respect to any Loan, on the applicable Servicing Transfer Date through the end of the 2010 Fiscal Year), such party shall provide an officer's certificate pursuant to this Section 7.4(c) with respect to such portion of the year (or other applicable period).

(d) Annual Compliance Report. On or before March 15 of each year, commencing in the year 2011, the Manager shall cause each Servicer and Subservicer to provide to each of the Paying Agent, the Initial Member, the Revolver Lender and the Purchase Money Notes Guarantor the annual reports (including the independent accountant report) for the prior Fiscal Year (or other applicable period as set forth below) required under Section 1122 of Regulation AB (regardless of whether any such requirements apply, by their terms, only to companies registered or required to file reports with the Securities and Exchange Commission) with respect to the relevant servicing criteria provisions of Section 1122(d)(1) of Regulation AB that are applicable to the servicing being conducted under this Agreement (and the Servicing Agreement) pursuant to Section 12.3(d) below. The first such reports shall cover the period commencing on the Closing Date (and with respect to each Loan, shall include the relevant information with respect thereto for the period from the applicable Servicing Transfer Date) and continuing through the end of the 2010 Fiscal Year.

(e) Audits. Until the later of the date that is ten (10) years after the Closing Date and the date that is three (3) years after the Final Distribution, the Manager shall, and shall cause each Servicer and any Subservicer to, (i) provide any representative of the Initial Member (including any Governmental Authority), during normal business hours and on reasonable notice, with access to all of the books of account, reports and records relating to the Loans or any Underlying Collateral, the Servicing Obligations, the Collection Account, the Escrow Accounts, any account created under the Servicing Agreement, the Defeasance Account, the Revolver Documents or accounts created thereunder, disbursements under the Custodial and Paying Agency Agreement, distributions hereunder or any other matters relating to this Agreement or the rights or obligations hereunder or under the Ancillary Documents; (ii) permit such representatives to make copies of and extracts from the same, (iii) allow the Initial Member to cause such books to be audited by accountants selected by the Initial Member, and (iv) allow the Initial Member's representatives to discuss the Company's, the Manager's and any Servicer's and any Subservicer's affairs, finances and accounts, as they relate to the Loans, the Underlying Collateral, the Servicing Obligations, the Collection Account, the Escrow Accounts, any accounts created under the Revolver, the Defeasance Account, or any other matters relating to this Agreement, the Ancillary Documents, or the rights or obligations hereunder and thereunder, with the Company, the Manager's, the Servicer's and any Subservicer's officers, directors, employees, attorneys and accountants (and by this provision the Company and the Manager hereby authorize the Company's, the Manager's the Servicer's and any Subservicer's accountants to discuss such affairs, finances and accounts with such representatives). Any expense incurred by the Initial Member and any reasonable out-of-pocket expense incurred by the Company in connection with the exercise by the Initial Member of its rights in this Section 7.4(e) shall be borne by the Initial Member; provided, however, that any expense incident to the exercise by the Initial Member of its rights pursuant to this Section 7.4(e) as a result of or during the continuance of an Event of Default shall in all cases be borne by the Private Owner (except to the extent such Event of Default is attributable exclusively to a Manager having been appointed by the Initial Member following removal of the Private Owner in such capacity, or to any applicable Servicer (and its Subservicers) having been engaged by the Initial Member, the Company or the applicable replacement Manager following such removal of the Private Owner as the Manager, in each case that is not an Affiliate of the Private Owner).

(f) In addition to the foregoing, the Manager shall provide or cause to be provided to the Initial Member, all reports, information (financial or otherwise), certificates and other documents required to be provided by the Company pursuant to the Revolver and pursuant to the Reimbursement, Security and Guaranty Agreement, and by the Servicer under the Servicing Agreement.

(g) The rights afforded to the Members under this Section 7.4 are in addition to, and not in limitation of, the rights of the Members under Section 18-305(a) of the Act. Section 18-305(c) of the Act shall not apply in relation to the Initial Member.

7.5 Designation of Tax Matters Member. The Private Owner is hereby designated as the "**Tax Matters Member**" under Section 6231(a)(7) of the Code and under other similar Laws of other relevant jurisdictions, to manage, in consultation with the Initial Member, administrative tax proceedings conducted at the Company level by the Internal Revenue Service or other Tax authorities with respect to Company matters. Each Member expressly consents to such designation and agrees that, upon the request of the Tax Matters Member, it will execute, acknowledge, deliver, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. The Tax Matters Member is specifically directed and authorized to take whatever steps the Tax Matters Member in its sole and absolute discretion deems necessary or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service (or other Tax authorities) and taking such other action as may from time to time be required under the Code, Treasury Regulations or other Laws. The Tax Matters Member shall keep the other Members fully informed as to any Tax audits of the Company, including promptly providing the other Members with copies of any correspondence from any Taxing authority and permitting the other Member to participate in any conferences or meetings with any Taxing authority and in any subsequent administrative or judicial proceedings. The Tax Matters Member shall have the authority, following consultation with the Initial Member, to make any Tax elections on behalf of the Company permitted to be made, including the election pursuant to Section 754, under any section of the Code or the Treasury Regulations promulgated thereunder or under other Laws. In the event the Company may be deemed to be a "small partnership" as described in Section 6231(a)(1)(B), each Member consents to the Company's electing to be treated as a partnership to which the provisions of Code Section 6221 et. seq. apply (thereby electing to have Code Section 6231(a)(1)(B)(i) not apply). The Initial Member may, at any time following the occurrence and during the continuation of an Event of Default, remove the Private Owner as the Tax Matters Member, appoint itself (or any other willing Member at the time) as the Tax Matters Member, and serve (or cause such other Member to so serve) in such capacity; provided that such removal shall not relieve the Private Owner as Tax Matters Member of any obligations or liabilities under this Agreement or any Ancillary Document arising, relating to, occurring, or required to have been paid or performed by, the Private Owner as the Tax Matters Member in its capacity as such.

7.6 Tax Information. Within ninety (90) days after the end of each Fiscal Year, the Tax Matters Member shall send, or cause to be sent to, each Person who was a Member at any time during the Fiscal Year then ended a Schedule K-1 and such Company tax information as the Tax Matters Member reasonably believes shall be necessary for the preparation by such Person

of its United States federal, state and local tax returns in accordance with any Law. Such information shall include a statement showing such Person's share of distributions, income, gain, loss, deductions and expenses and other relevant items of the Company for such Fiscal Year. Promptly upon the request of any Member (or any former Member, for tax years during which such Person was a Member), the Tax Matters Member will furnish to such Member (or former Member):

(a) United States federal, state and local income tax returns or information returns, if any, filed by the Company; and

(b) at the sole cost and expense of the requesting Member, such other information as such Member may reasonably request for the purpose of applying for refunds of withholding taxes.

7.7 Business Plans. As promptly as possible, but in no event later than July 15, 2010 (and, as applicable, with current information as of June 30, 2010) the Manager shall deliver to the Initial Member written plans (each, a "**Business Plan**") detailing the strategy to be used by it in managing and disposing of the assets of the Company in respect of all of the Loans for achieving the Company's purposes with respect thereto, in conformance with the Servicing Standard, based, to the extent appropriate, on information gathered by the Company with respect to the Loans, which shall include (i) individual Business Plans for (A) each of the ten (10) largest Loans based on their Unpaid Principal Balance as of the Cut-Off Date (as set forth on the Loan Schedule), and (B) the Construction Loans (as such term is defined in the Revolving Credit Agreement) that have outstanding Funding Draws as of the Cut-Off Date necessary for the completion of construction of the related Underlying Collateral, provided, however, that for purposes if this Section 7.7, notwithstanding subsection (i) of the definition of Unpaid Principal Balance, the Unpaid Principal Balance of any Loan Participation shall be the Unpaid Principal Balance of the whole loan to which the participation interest relates, and (ii) a consolidated Business Plan covering all Loans (a "**Consolidated Business Plan**"). With respect to the first such Business Plans and Consolidated Business Plan, the Manager shall meet with the Initial Member as reasonably requested by the Initial Member from time to time during the thirty (30) Business Days following the Initial Member's receipt of the same, to review and discuss such Business Plans and Consolidated Business Plan, including changes thereto suggested by the Initial Member. Within thirty (30) Business Days following expiration of such review period, the Manager will deliver to the Initial Member a final version of such Business Plans and Consolidated Business Plan reflecting such changes as the Manager considers to be appropriate in light of its discussions with the Initial Member during such review period. The Manager shall thereafter review and revise each Business Plan and Consolidated Business Plan as the circumstances may require, and in any event provide periodic updates to such Business Plans (and for each such update, the same shall cover the ten (10) largest Loans based on their Unpaid Principal Balance as of the time of such update determined by Unpaid Principal Balance on a whole loan basis for Loan Participations) and Consolidated Business Plan to the Initial Member, in January (current as of December 31 of the immediately preceding year) and July (current as of June 30 of such year) of each year, commencing in January 2011, with each such periodic update to de delivered as part of the Monthly Reports due at such time pursuant to Section 7.4(b), Upon reasonable notice by the Initial Member, the Company shall make its personnel who are familiar

with such Business Plans and Consolidated Business Plans available during normal business hours for the purposes of discussing such Business Plans and Consolidated Business Plans with representatives of the Initial Member and responding to questions therefrom.

(a) Each Business Plan and Consolidated Business Plan will set forth a strategy for the disposition of the Loans addressed thereby which strategy may consist of one or more of the following: (i) the pay-off of Loans at a discount; (ii) modifications of the related note and/or mortgage, including reductions in the mortgage loan interest rate, reductions in the principal balance and rescheduling principal payments; (iii) foreclosure upon the related Underlying Collateral (or acquisition thereof by deed in lieu of foreclosure) and subsequent sale thereof; (iv) assumptions of Loans by new borrowers; (v) repairs to and, if applicable, completion of construction of the related Underlying Collateral, with a view towards selling such Underlying Collateral or the Loan secured thereby; (vi) sale of a Loan, either singly or in pools, before or after restructuring; and (vii) any other method of work-out, rehabilitation and disposition consistent with the Servicing Standard and other general duties of the Company specified in this Agreement.

(b) Each Business Plan and Consolidated Business Plan will set forth a strategy for the disposition of each related Acquired Property which strategy may consist of one or more of the following: (i) the sale or leasing of the Acquired Property in whole or in parts, or in pools; (ii) making repairs to and, if applicable, completion of construction the Acquired Property or making changes to the Acquired Property so that it may be used for uses other than its current use, with a view toward selling the Acquired Property; (iii) rehabilitation or improvement and, if applicable, completion of construction of the Acquired Property, with a view toward selling the Acquired Property; (iv) continued leasing or sales activity with respect to the Acquired Property available for leasing or sale (in whole or in part) at the time it is transferred to a Ownership Entity; and (v) maintenance, landscaping and general upkeep of the Acquired Property.

(c) Each Business Plan or Consolidated Business Plan shall contain the Company's estimate of the present value of the net amount that is recoverable with respect to each related Loan and projected Working Capital Expenses with respect thereto, and, in reasonable detail, the manner of calculation of such estimates. The Consolidated Business Plan shall include projected financials including statements of income, assets, and cash flows for the Company. Such cash flow projections shall, for the Consolidated Business Plan and each update thereto, include an Excel model of projected cash flows by month, as of Jun 30 and December 31 of each year (or, in the case of the initial Consolidated Business Plan, as of the date of preparation and delivery thereof) and covering a period not less than the upcoming six (6) months, including projected monthly cash inflows on the Loans and REO Property, projected Excess Working Capital Advances and/or Discretionary Funding Advances, projected outflows of Servicing Expenses, projected Funding Draws, projected funding draws under the Revolver, projected net monthly cash available for deposit into the Defeasance Account, and the amount and allocation of any projected distributions to the Initial Member and the Private Owner.

ARTICLE VIII
Restrictions on Disposition of LLC Interests

8.1 Limitations on Disposition of LLC Interests. Except as otherwise provided in this ARTICLE VIII, the Private Owner shall not directly Dispose of or permit to be Disposed of, all

or any part of its LLC Interest or any of its rights or interests under this Agreement, except only that the Private Owner may make a direct, outright transfer of its entire (but not less than its entire) LLC Interest if, and only if, (a) (i) the transferee is a single Person that is a Qualified Transferee, (ii) such transferee delivers to the Initial Member a Purchaser Eligibility Certification and the representations and warranties made by such transferee therein shall be true and correct both before and after giving effect to such transfer of the LLC Interest, and (iii) the Private Owner first obtains the prior written consent of the Initial Member and, until the Purchase Money Notes Defeasance Date, the Purchase Money Notes Guarantor to such transfer, or (b) such Disposition is done by or at the direction of the Initial Member pursuant to Sections 3.13 or 3.14. Transfers of indirect interest in the Private Owner shall be permitted so long as such transfers, either individually or in the aggregate, do not result in (X) a Change of Control or (Y) the Private Owner no longer constituting a Qualified Transferee. Notwithstanding anything in this Agreement to the contrary, the Private Owner may not under any circumstances, directly Dispose (or cause the disposition) of less than all of the Private Owner LLC Interest. Transfers by the Private Member satisfying the foregoing criteria are hereinafter referred to as "**Permitted Dispositions**."

8.2 Change of Control. The Private Owner will not permit any Change of Control to occur with respect to the Private Owner unless (i) it first obtains the prior written consent of the Initial Member, and (ii) following such Change of Control, the Private Owner would be a Qualified Transferee. Without limitation of the preceding sentence, the Private Owner will provide the Initial Member with immediate notice at the address specified in Section 13.6 of the occurrence of any Change of Control with respect to the Private Owner.

8.3 Additional Provisions Relating to Permitted Dispositions. Except as otherwise expressly provided in this Section 8.3, the following provisions shall apply to each Permitted Disposition under this Article VIII:

(a) In the event the Private Owner proposes to make a Permitted Disposition, the Private Owner shall be required to pay any and all filing and recording fees, fees of counsel and accountants and other out-of-pocket costs and expenses reasonably incurred by the Initial Member and/or the Company in connection with such Permitted Disposition.

(b) The transferee in a Permitted Disposition shall deliver to the Company, with a copy to the Initial Member, an agreement, in form and substance reasonably satisfactory to the Initial Member, by which such transferee shall (i) agree to become a party to and be bound by this Agreement as the "Private Owner," agree (if the transferor Member, prior to such transfer, also was the Manager) to be appointed as the "Manager", and without limitation of the generality of the foregoing, agree to be bound by the other terms of Section 8.4 hereof, (ii) assume and agree to perform when due all of the obligations of the Private Owner and the Manager (if the transferor Member, prior to such transfer, also was the Manager) under this Agreement, and (iii) represent and warrant that it complies with the requirements set forth in Article X

(c) In connection with each Permitted Disposition, the Private Owner and the transferee shall deliver to the Company and the Initial Member such other documents and instruments as the Initial Member reasonably may request and which are required to effect the Permitted Disposition and substitute the transferee as a Member.

8.4 Effect of Permitted Dispositions.

(a) Upon consummation of any Permitted Disposition:

(i) the transferee shall be admitted as a member of the Company and be deemed to be a party to this Agreement as the "Private Owner" and, if the transferor Member, prior to such transfer, also was the Manager, such transferee shall be appointed as the Manager (in the place of the transferor Member);

(ii) the transferred LLC Interest shall continue to be subject to all the provisions of this Agreement, and the transferee Member shall have the same status as the Private Owner had at the time of consummation of such Permitted Disposition and, without limiting the generality of the foregoing, any outstanding breach, misrepresentation, violation or default (with respect to this Agreement or any Ancillary Document) by any direct or indirect predecessor to the transferee as the Member, or by any Affiliate of any such predecessor Member, shall be deemed to constitute an outstanding breach, misrepresentation, violation or default as the case may be, by the transferee Member;

(iii) subject to Section 8.4(b) and the last sentence of Section 13.8, the transferor Member shall cease to be a member of the Company (and accordingly, except as expressly otherwise provided in Section 8.4(b) or the last sentence of Section 13.8, shall cease to be responsible for the payment or performance of any of the obligations or liabilities under this Agreement of the Private Owner, in any capacity hereunder).

(b) No Permitted Disposition (and no resulting withdrawal or resignation of the transferor Member from the Company) shall:

(i) relieve the transferor Member of any of the obligations or liabilities of the transferor Member, in any capacity, under this Agreement or any Ancillary Document required to have been paid or performed prior to the consummation of such Permitted Disposition (or of any liability it may have arising out of any breach, misrepresentation, violation or default by the transferor Member prior to such consummation);

(ii) result in the termination of, relieve the transferor Member (or any of its Affiliates) of, or otherwise affect, any of the obligations or liabilities of the transferor Member, in any capacity, or its Affiliates under, any Related Party Agreement (such Related Party Agreements to continue in effect in accordance with their respective terms), except to the extent expressly provided in such Related Party Agreement; or

(iii) dissolve the Company.

8.5 Effect of Prohibited Dispositions. Any attempted or purported Disposition of the Private Owner LLC Interest (or any portion thereof) not strictly in accordance with the terms of

this Agreement shall be void ab initio and of no force or effect whatsoever. The Private Owner shall not be entitled, and hereby specifically waives any right, to receive Company distributions during (i) the period between any attempted or purported Disposition of the Private Owner LLC Interest (or any portion thereof) not strictly in accordance with the terms of this Agreement and the express rescission of such attempted or purported Disposition by the Private Owner and (ii) during any period when a Member is in violation of Section 8.2, *provided* that all such omitted Company distributions shall (subject to Section 8.6) be made to the Private Owner (without interest) forthwith after the end of the relevant suspension period.

8.6 Distributions After Disposition. Distributions with respect to an LLC Interest made on or after the effective date of the Permitted Disposition of such LLC Interest shall be made to the transferee Member with respect to such LLC Interest, regardless of when such distributions accrued on the books of the Company.

8.7 Transfers By Initial Member. Notwithstanding anything to the contrary contained in this Agreement, except as provided by applicable Law, there shall be no restriction on the Initial Member's ability to Dispose of the Initial Member LLC Interest, directly or indirectly, to any Person and the Private Owner shall have no right to purchase or right-of-first-refusal in connection with any such sale; provided, however, that, the Initial Member may not assign the consent and voting rights associated with the Initial Member LLC Interest to more than one (1) Person (for the avoidance of doubt, except as expressly provided above, the foregoing restriction shall not otherwise limit the Initial Member's right to Dispose of any interest associated with the Initial Member LLC Interest); and provided, further, that in the event the Initial Member determines to sell the Initial Member LLC Interest through an auction process, the Private Owner shall be entitled to participate in such auction on the same terms that apply generally to other participants in the auction. At the election of the Person then constituting the "Initial Member" under this Agreement, the transferee in any direct Disposition of any portion of the Initial Member LLC Interest shall, upon delivery to the Company, with a copy to the Private Owner, of an agreement by which such transferee shall agree to become a party to and be bound by this Agreement as the "Initial Member," be admitted as a member of the Company and be deemed to be a party to this Agreement as the "Initial Member", and thereupon, subject to last sentence of Section 13.8, the transferor Member shall cease to be a member of the Company (and accordingly, except as expressly otherwise provided in last sentence of Section 13.8, shall cease to be responsible for the payment or performance of any of the obligations or liabilities under this Agreement of the Initial Member).

8.8 Resignation; Dissolution.

(a) The Private Owner may not withdraw or resign from the Company, except (i) in connection with a Permitted Disposition made in accordance with the applicable provisions of this Article VIII or (ii) with the prior written consent of the Initial Member.

(b) The Private Owner covenants that it shall not allow a Dissolution Event to occur with respect to itself.

(c) Section 18-304 of the Act shall not apply to the Company. Nothing in this Section 8.8(c) shall limit the terms of Section 9.1 hereof.

(d) Except as is otherwise expressly provided in this Agreement, no Member shall be entitled to receive any payment pursuant to Section 18-604 of the Act.

8.9 Applicable Law Withdrawal. If, as a result of applicable Law, the ownership of an LLC Interest by a Member becomes illegal or is likely to become illegal or the applicable Law more likely than not requires divestiture of such Member's LLC Interest, or the applicable Law would require the Company to register as an investment company under the Investment Company Act, then the Manager and such Member shall use their respective commercially reasonable efforts to avoid a violation of any such applicable Law by such Member or the need for the Company to register as an investment company. These steps may include, depending on the provisions of such applicable Law, (i) arranging for the sale of the Member's LLC Interest to a third party upon terms reasonably satisfactory to the Member in a transaction that complies with ARTICLE VIII and ARTICLE X; (ii) making any appropriate applications to the relevant Governmental Authority, (iii) prohibiting such Member from making further Capital Contributions, and converting its LLC Interest into a special interest with no voting or similar rights but with only an economic right (identical to its prior rights as a Member), or (iv) permitting the Member to withdraw from the Company for a "payment" to such Member equal to the value of its LLC Interest at the time of withdrawal, such value to be determined by a third party appraiser mutually agreeable to the Manager and all Members. The aforesaid "payment" shall be made in cash unless the Manager determines that the payment in cash would be economically detrimental to the Company, in which case such payment may be made in kind, subject to the applicable Law. The timing of any such withdrawal must be mutually agreeable to the Member and the Manager taking proper account of the effective date of the applicable Law or registration requirement that is the basis for the withdrawal or other remedy provided herein and the need of the Manager for a reasonable period of time to find a solution to the illegality or requirement for divestiture. Such illegality or registration requirement must be established by (x) an opinion of counsel (which counsel shall be reasonably satisfactory to the Manager and the Initial Member) substantially to the effect that the ownership of the LLC Interest more likely than not will result in such illegality or requirement for registration or divestiture or (y) upon a ruling or order from a Governmental Authority.

ARTICLE IX
Dissolution and Winding-Up of the Company

9.1 Dissolution. A dissolution of the Company shall take place upon the first to occur of the following:

(a) the agreement by all Members to dissolve the Company (it being understood and agreed that neither Member, acting alone, shall have the right unilaterally to dissolve the Company);

(b) the sale of all or substantially all of the Company Property (other than cash and cash equivalent instruments), including as an entirety or substantially as an entirety; or

(c) notice to such effect to the Private Owner from the Initial Member at any time after the occurrence of a Dissolution Event or an Insolvency Event with respect to the Private Owner or any Person that Controls the Private Owner; or

(d) exercise of the Clean-Up Call and liquidation of all remaining Loans and Acquired Property of the Company in accordance with Section 12.17.

9.2 Winding-Up Procedures. If a dissolution of the Company pursuant to Section 9.1 occurs, subject to the Company's compliance with its obligation under the other agreements to which it is a party, the other terms and conditions of this Agreement or the Ancillary Documents, the Manager shall proceed as promptly as practicable to wind up the affairs of the Company in an orderly and businesslike manner. A final accounting shall be made by the Manager. As part of the winding up of the affairs of the Company, the following steps will be taken:

(a) The assets of the Company shall be sold except to the extent that some or all of the assets of the Company are retained by the Company for distribution to the Members as hereinafter provided.

(b) The Company shall comply with Section 18-804(b) of the Act.

(c) Distributions of the assets of the Company after a dissolution of the Company shall be conducted as follows:

(i) first, to creditors, but excluding the Members who are creditors (other than the Revolver Lender and the Initial Member (to the extent it continues to hold the Purchase Money Notes)), to the extent otherwise permitted by Law (and, to the extent permitted, in accordance with the Priority of Payments), in satisfaction of liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof);

(ii) second, to the Members or former Members who are creditors, to the extent otherwise permitted by Law, in satisfaction of liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to the Members and former Members under Section 18-601 of the Act;

(iii) third, to the Members and former Members in satisfaction of liabilities (if any) for distributions under Section 18-601 of the Act; and

(iv) finally, to the Members in the manner set forth in Section 6.6(b).

(d) Upon dissolution, the Manager, may, with the consent of all the Members, (i) liquidate all or a portion of the Company assets and apply the proceeds of such liquidation in the manner set forth in Section 9.2(c) and/or (ii) hire independent appraisers to appraise the value of Company assets not sold or otherwise disposed of or determine the Fair Market Value of such assets, and allocate any unrealized gain or loss determined by such appraisal to the Members' respective Capital Accounts as though the properties in question had been sold on the date of distribution and, after giving effect to any such adjustment, distribute said assets in the manner set forth in Section 9.2(c), provided that the Manager shall in good faith attempt to liquidate sufficient Company assets to satisfy in cash the debts and liabilities described in Section 9.2. If a Member

shall, upon the advice of counsel, determine that there is a reasonable likelihood that any distribution in kind of an asset would cause such Member to be in violation of any Law, such Member and the Manager shall each use its best efforts to make alternative arrangements for the sale or transfer into an escrow account of any such distribution on mutually agreeable terms.

9.3 Termination of the Company.

Upon the dissolution of the Company and the completion of the winding up process set forth in Section 9.2, the Manager (or such other Person or Persons as the Act may require or permit) shall cause the cancellation of the Certificate and any filings made as provided in clause (c) of Section 4.3 and shall take (or cause to be taken) such other actions as may be necessary to terminate the Company.

ARTICLE X
Qualified Transferees

10.1 Qualified Transferees. Each Member, other than the Initial Member (including, for the avoidance of doubt, its Successors and transferees), shall at all times be in compliance with the following (and any proposed transferee of any LLC Interest in compliance with the following shall be deemed a "**Qualified Transferee**"):

(a) Organization; Good Standing; Licenses. Such Member (i) is a Single Purpose Entity duly organized, validly existing and in good standing under the Laws of the state of its organization, (ii) has qualified or will qualify to do business as a foreign corporation, partnership or other entity and will remain so qualified, and is and will remain in good standing, in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary and in which failure to so qualify would have a material adverse effect upon such Member or its ability to perform its obligations hereunder, (iii) has full power to own its property, to carry on its business as presently conducted, and to enter into and perform its obligations under this Agreement, (iv) has all licenses or other governmental approvals necessary to perform its obligations hereunder; and (v) in the case of the Private Owner, as of the Closing Date, is, directly or indirectly, at least 50.1% owned, and is Controlled, by its Specified Parent.

(b) Authorization; No Violation. The execution and delivery by such Member of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor compliance with the provisions hereof, will conflict with or result in a breach of, or constitute a default under, (i) any of the provisions of any Law binding on such Member or its properties, (ii) the constituent documents of such Member, or (iii) any of the provisions of any indenture, mortgage, contract or other instrument to which such Member is a party or by which it is bound or result in the creation or imposition of any Lien upon any of its property pursuant to the terms of any such indenture, mortgage, contract or other instrument.

(c) Governmental Approvals. All actions, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights and licenses required to be taken, given or obtained, as the case may be, by or from any Governmental Authority or

agency that are necessary in connection with the execution and delivery by such Member of this Agreement and the consummation of the transactions contemplated hereby and the performance of its obligations hereunder, have been duly taken, given or obtained, as the case may be, are in full force and effect, are not subject to any pending proceedings or appeals (administrative, judicial or otherwise) and either the time within which any appeal therefrom may be taken or review thereof may be obtained has expired or no review thereof may be obtained or appeal therefrom taken.

(d) No Litigation. On the date such Member becomes a party to this Agreement, there is no action, suit, proceeding or investigation pending or threatened against such Member before any Governmental Authority.

(e) No Violation of Orders, Decrees, etc. Such Member is not in default with respect to any order or decree of any Governmental Authority or in violation of any Law.

(f) Third Party Consents. No consents, approvals, waivers or notifications of stockholders, creditors, lessors or other nongovernmental persons are required to be obtained by such Member in connection with the execution and delivery of this Agreement and the consummation of all the transactions herein contemplated and the performance of its obligations hereunder.

(g) Owners Accredited Investors. All of the equity owners of such Member are "accredited investors," as that term is defined in Rule 501 under the Securities Act.

(h) Knowledge and Experience. Such Member, either by itself or through its advisers and principals, has such knowledge and experience in the origination, servicing, sale and/or purchase of performing and non-performing or distressed loans, including construction loans and loans secured by commercial properties, as well as financial and business matters, as to enable such Member to utilize the information made available to it with respect to the LLC Interest acquired by it and the Loans to evaluate the merits and risks of a purchase of the Private Owner LLC Interest and, indirectly, the Loans, and to make an informed decision with respect thereto.

(i) Economic Risks. Such Member acknowledges, understands and represents that it is able to bear the economic risks associated with the acquisition and ownership of the Private Owner LLC Interest and, indirectly, the Loans, including the risk of a total loss of its investment in the Company and, indirectly, the Loans and/or the risk that it may be required to hold the Private Owner LLC Interest and, indirectly, the Loans for an indefinite period of time.

(j) No Representations. Such Member hereby acknowledges that, except as is otherwise expressly provided in this Agreement, the Transferred LLC Interest Sale Agreement, or the Contribution Agreement, none of the Initial Member or the FDIC or any Affiliate of either, or any of their respective officers, directors, employees, agents or contractors, makes or has made any representation or warranty regarding the Company, the LLC Interests or the Loans or the value of any Underlying Collateral.

(k) Due Diligence. Such Member acknowledges and agrees that, whether or not information is available with respect to the LLC Interests or the Loans and whether or not it

chooses to review any information that is or was made available to it regarding the LLC Interests or the Loans, such Member, by itself or through its advisers or principals, has the ability and shall be responsible for making its own independent investigation and evaluation of the LLC Interests and the Loans and the economic, credit or other risks involved in an acquisition of the Private Owner LLC Interest and, indirectly, the Loans. Except as is otherwise expressly provided in this Agreement, none of the Initial Member or the FDIC or any Affiliate of either, or any of their respective officers, directors, employees, agents or contractors, makes or has made any representation or warranty as to the completeness or accuracy of any information provided.

(l) No Securities. Such Member acknowledges and agrees that (i) neither the offer nor the sale of the Private Owner LLC Interest (and, indirectly, the Loans) is intended to constitute an offer or sale of a "security" within the meaning of the Securities Act or any applicable federal or state securities Laws, (ii) no inference that any of the LLC Interests or the Loans is a "security" under such federal or state securities Laws shall be drawn from any of the certifications, representations or warranties made by any Person in this Agreement, (iii) it is not contemplated that any filing will be made with the Securities and Exchange Commission or pursuant to the "Blue Sky" or securities Laws of any jurisdiction, and (iv) if any of the LLC Interests or the Loans is a security, such may not be resold or otherwise transferred by such Member except in accordance with any and all applicable securities and Blue Sky Laws.

(m) Resales. Such Member is acquiring the Private Owner LLC Interest (and, indirectly, the Loans) for its own account and not with a view toward resale in a distribution within the meaning of the Securities Act.

(n) Resales in Compliance with Law. Such Member will not (i) offer, pledge, sell or otherwise dispose of the Private Owner LLC Interest (or any interest therein) or any Loan (or any interest therein or evidence thereof) to, or (ii) solicit any offer to buy or accept a transfer, pledge or other disposition of the Private Owner LLC Interest (or any interest therein) or any Loan (or any interest therein or evidence thereof) from, or (iii) otherwise approach or negotiate with respect to the Private Owner LLC Interest (or any interest therein) or any Loan (or any interest therein or evidence thereof) with, any person or entity in any manner, or take any other action, that would (A) not comply with Article VIII, or (B) render the transfer to such Member of the Private Owner LLC Interest or any interest in any Loan a violation of any Law relating to the issuance, regulation, registration or disposition of securities, nor will it authorize any person or entity to so act, in any manner with respect to the Private Owner LLC Interest (or any interest therein) or any Loan (or interest therein or evidence thereof).

(o) Acquisition in Compliance with Law. Such Member's acquisition of the Private Owner LLC Interest and the resulting investment in the Loans will comply with all applicable Laws, including any and all Laws and/or restrictions imposed on resale of the Private Owner LLC Interest and the Loans by federal and state securities or Blue Sky Laws.

(p) Independent Evaluation. Such Member has made an independent evaluation of the Company and its assets (including the Loans and related Loan files and/or any electronic data made available to it pertaining to the Loans held by the Company). Such Member also has conducted such other investigations as it deems appropriate, including searches of Uniform Commercial Code, title, court, bankruptcy and other public records. Such Member

agrees and represents that it is entering into this Agreement solely on the basis of its own investigations and its judgment as to the value of the Private Owner LLC Interest and the nature, validity, enforceability, collectability and value of the Loans and all other facts material to their ownership, including the legal matters and risks relating to collection and enforcement, and the performance of any obligations under any of the Loans in any jurisdiction. Such Member further acknowledges that no officer, director, employee, agent, representative or contractor of the Initial Member or any of its Affiliates has been authorized to make any statements or representations other than those specifically contained in this Agreement or the Contribution Agreement.

(q) Embargoed Person. Such Member certifies, represents and warrants that (i) no consideration that such Member or any of its Affiliates contributes hereunder or under the Ancillary Documents in connection with any transaction regarding any assets will have been derived from or related to any activity that is deemed criminal under United States Law; (ii) neither it nor any of its Affiliates or Direct Owners is an Embargoed Person; (iii) neither it nor any of its Affiliates or Direct Owners engages in any dealings or transactions, or is otherwise "associated with" (as defined in 31 C.F.R. 594.101, et seq.), any Embargoed Person; and (iv) if and to the extent such Member or any of its Affiliates are required by Law to maintain an anti-money laundering compliance program under applicable anti-money laundering Laws and regulations, including without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56)) such compliance programs are currently being maintained. The foregoing certifications, representations and warranties shall be based upon a due inquiry and investigation; provided, however, that for purposes of determining whether any of the same with respect to indirect ownership are true, the undersigned shall not be required to make an investigation into the ownership of publicly-traded securities (including securities of open-end investment companies registered under the Investment Company Act) or the ownership of assets by a collective investment fund that holds assets for employee benefit plans or retirement arrangements.

(r) ERISA Plan Asset. The assets of such Member (including any successor to or transferee of such Member) are not deemed to be "plan assets" within the meaning of Section 3(42) of the Employee Retirement Income Security Act of 1974 (as amended) ("**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 (the "**Plan Asset Regulation**").

(s) Purchase Eligibility. Each of such Member and any person that, together with its Affiliates, directly or indirectly holds twenty-five percent (25%) or more of the equity interests of such Member is and remains capable of truthfully making the representations and warranties in the Purchaser Eligibility Certification.

ARTICLE XI
Manager Liability

11.1 Liability of Manager.

(a) Except as otherwise specifically provided in this Agreement (including in the other subsections of this Section 11.1), the duties (including fiduciary duties) and obligations

owed to the Company and the Initial Member by the Manager shall be as provided in Section 3.1(b) hereof.

(b) The Manager may rely, and shall be protected in acting or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(c) The Manager may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion of such Persons as to matters that the Manager reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

(d) The Manager shall not be liable to the Company or the Members for its good faith reliance on the provisions of this Agreement.

(e) The limitations and exculpation afforded by each provision of this Section 11.1 are cumulative and not exclusive. Nothing in this Section 11.1 is intended, or shall be deemed, to permit conduct that would otherwise constitute misappropriation of a trade secret of the Company under applicable Law or conduct that, even disregarding the terms hereof, otherwise would be actionable by the Company or any Member.

ARTICLE XII
Servicing of Loans

12.1 Servicing.

(a) Appointment and Acceptance as Servicer. Effective as of the Closing Date, but subject to Section 3.3 of the Contribution Agreement (with which the Manager agrees to comply), the Manager is hereby appointed (and hereby accepts the appointment) with full authority and responsibility, in its own name, to act as the servicer for the Loans and any Underlying Collateral. Until such time as the Company is dissolved and liquidated pursuant to Article IX, and except as otherwise provided in Section 12.4 and subject to the interim servicing being provided by or on behalf of the Initial Member pursuant to Section 3.3 of the Contribution Agreement, the Manager, shall from and after the Cut-Off Date, be responsible for (and hereby assumes responsibility for) servicing, administering, managing and disposing of the Loans and the Underlying Collateral in accordance with the standards (collectively, the "**Servicing Standard**") set forth in Section 12.2 (such obligations referred to collectively herein as the "**Servicing Obligations**") and the other provisions of this Article XII, including the provisions of Section 12.3 (which require that servicing be performed through one or more Qualified Servicers). Without in any way limiting the foregoing, but subject to Section 3.3 of the Contribution Agreement, the Manager shall cause the Loans (including, for all purposes under this Article XII, the related Underlying Collateral) to be serviced as follows: (a) such Loan shall, except as provided in the immediately following subsection (b), be serviced by the Servicer(s) appointed in accordance with Section 12.3 below, and (b) following the replacement of the Servicer as a result

of an Event of Default, the Loans shall be serviced by a Servicer appointed by the Initial Member in accordance with Section 12.4 below. All servicing of Loans following the Closing Date shall be performed in accordance with the terms of the Contribution Agreement and this Article XII.

(b) Servicing and Subservicing Agreement Requirements. Except as is otherwise agreed in writing by the Initial Member, each Servicing Agreement (and any Subservicing Agreement with any Subservicer) shall, among other things,

(i) provide for the servicing of the Loans and management of the Underlying Collateral by the Servicer (or any Subservicer) in accordance with the Servicing Standard and the other terms of this Agreement;

(ii) be terminable upon no more than thirty (30) days prior notice if an Event of Default or any default under the Servicing Agreement (or Subservicing Agreement) has occurred;

(iii) provide that the Manager (in its individual capacity) and the Initial Member (and, in the case of any Subservicing Agreement, the Servicer) shall be entitled to exercise termination rights under the relevant Servicing Agreement or Subservicing Agreement (it being understood that the Initial Member shall only exercise such termination rights as contemplated or permitted in this Agreement);

(iv) provide that the Servicer (or any Subservicer) and the Manager (in its individual capacity) acknowledge that the Servicing Agreement (or the Subservicing Agreement) constitutes a personal services agreement between the Manager (in its individual capacity) and the Servicer (or between the Servicer and the Subservicer, as applicable);

(v) provide that (A) each of the Company, the Purchase Money Notes Guarantor, the Revolver Lender and the FDIC are third party beneficiaries thereunder to the extent of any rights expressly granted to such Person under the Servicing Agreement or Subservicing Agreement and is entitled to enforce the Servicing Agreement or Subservicing Agreement, as applicable, with respect to such rights, (B) the Initial Member and, in the case of any Subservicing Agreement, the Manager (in its individual capacity) is a third party beneficiary thereunder; and further provide that in no event shall any amendment or waiver to any such Servicing Agreement or Subservicing Agreement limit or affect any rights of any such third party beneficiary thereunder without the express written consent of such third party beneficiary;

(vi) provide that (A) upon the removal of the Private Owner as the Manager or the occurrence of an Event of Default, the Initial Member (and any successor Manager) may exercise all of the rights of the Manager thereunder and cause the termination or assignment of the same from the Private Owner as the Manager to any other Person, without penalty or payment of any fee, and (B) upon the occurrence of any default under the Servicing Agreement, the Initial Member (and any successor Manager) may exercise all of the rights of (1) the

Manager under such Servicing Agreement and cause the termination or assignment of the same from the Private Owner as the Manager to any other Person, without penalty or payment of any fee, and (2) the Servicer under the Subservicing Agreement and cause the termination or assignment of the Subservicing Agreement from the Private Owner as the Manager to any other Person, without penalty or payment of any fee (it being understood that the Initial Member shall only exercise the foregoing rights as contemplated or permitted in this Agreement);

(vii) provide that the Initial Member, the Manager, the Revolver Lender, the Purchase Money Notes Guarantor and the Company (and each of their respective representatives) shall each have access to and the right to review, copy and audit the books and records of each Servicer and any Subservicers and that all Servicers and all Subservicers shall make available their respective officers, directors, employees, accountants and attorneys to answer the Initial Member's, the Manager's, the Revolver Lender's , the Purchase Money Notes Guarantor's and the Company's (and each of their respective representatives') questions or to discuss any matter relating to the Servicer's or Subservicer's affairs, finances and accounts, as they relate to the Loans, the Underlying Collateral, the Collection Account or any other accounts established or maintained pursuant to this Agreement, the Revolver Documents, the Custodial and Paying Agency Agreement, the Servicing Agreement or any Subservicing Agreement, or any matters relating to the Servicing Agreement or any Subservicing Agreement or the rights or obligations thereunder;

(viii) provide that all Loan Proceeds are to be deposited into the Collection Account on a daily basis (without reduction or setoff) within two (2) Business Days of receipt and that under no circumstances are funds, other than Loan Proceeds and interest and earnings thereon and the proceeds of Excess Working Capital Advances and Discretionary Funding Advances, to be commingled in the Collection Account;

(ix) provide that the Servicer or any Subservicer shall not sell, transfer or assign its rights under the Servicing Agreement or Subservicing Agreement, as applicable, other than Servicer's rights to delegate to Subservicers certain responsibilities thereunder as and to the extent permitted by this Agreement, and that any such prohibited sale, transfer or assignment shall be void *ab initio*;

(x) provide that (A) the Servicer or any Subservicer consents to the immediate termination of the Servicer or Subservicer, as applicable, upon the occurrence of a termination event under the Servicing or Subservicing Agreement, as applicable, and upon the occurrence of any Insolvency Event with respect to the Servicer or Subservicer or any of their respective Related Parties, as applicable, and (B) the occurrence of any Restricted Servicer Change of Control with respect to the Servicer or of any Insolvency Event with respect to the Servicer or any Subservicer or any Related Party thereof constitutes a default

under the Servicing Agreement or Subservicing Agreement, as applicable; provided, however, that, in the case of the Servicing Agreement, the occurrence of an Insolvency Event with respect to a Subservicer or Related Party thereof (which is not an Related Party of the Servicer) may, at the election of the Manager, be subject to a cure period of not more than thirty (30) days for replacement of the affected Subservicer (in a manner that will permit the Manager to comply with its obligations hereunder);

(xi) provide that there shall be no right of setoff on the part of the Servicer or any Subservicer against the Loan Proceeds (or the Company);

(xii) provide for such other matters as are necessary or appropriate to ensure that the Servicer or any Subservicer is obligated to comply with the Servicing Obligations of the Manager hereunder;

(xiii) provide a full release and discharge of the Initial Member, the Company, the Existing Servicers, the FDIC, in relation to any particular Loan, SFG, the Failed Bank and any predecessor-in-interest thereof, any Ownership Entities existing as of the applicable Servicing Transfer Date, and all of their respective officers, directors, employees, agents, attorneys, contractors and representatives, and all of their respective successors, assigns and Affiliates (but excluding, in all cases, the Manager (in its individual capacity)) (any such Person, a "**Prior Servicer**" and collectively, the "**Prior Servicers**"), from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Servicer had, has or might have in the future, whether known or unknown, which are related in any manner whatsoever to the servicing of the Loans by the Prior Servicers prior to the applicable Servicing Transfer Date (other than due to gross negligence, violation of law or willful misconduct of such Prior Servicer);

(xiv) provide that all Loans registered on the MERS® System shall remain registered unless default, foreclosure or similar legal or MERS requirements dictate otherwise;

(xv) provide that the Servicer or any Subservicer shall immediately notify the Manager and the Initial Member upon becoming aware of any Subservicer or any Affiliate of the Servicer or of any Subservicer at any time, (A) being or becoming a partner or joint venturer with any Borrower or Obligor, (B) being or becoming an agent of any Borrower or Obligor, or allowing any Borrower or Obligor to be an agent of such Servicer or any Subservicer or of any Affiliate of the Servicer or any Subservicer, or (C) having any interest whatsoever in any Borrower or Obligor;

(xvi) provide that the Servicer shall immediately notify the Manager and the Initial Member of the occurrence of any Change of Control with respect to the Servicer; and

(xvii) not conflict with the Servicing Standard or any other terms or provisions of this Agreement, the Custodial and Paying Agency Agreement or any of the other Ancillary Documents insofar as such other terms or provisions hereof or thereof are required to be imposed by the Manager (in its individual capacity) on the Servicer (or any Subservicers) in the Servicing Agreement (or Subservicing Agreements). Nothing contained in any Servicing Agreement or any Subservicing Agreement shall alter any obligation of the Manager under this Agreement and, in the event of any inconsistency between the Servicing Agreement (or any Subservicing Agreement) and the terms of this Agreement, among the Parties to this Agreement the terms of this Agreement shall control.

12.2 Servicing Standard. The Manager shall perform the Servicing Obligations: (i) in the best interests and for the benefit of the Initial Member and the Company, (ii) in accordance with the terms of the Loans (and related Loan Documents), (iii) in accordance with the terms of this Agreement and the other Ancillary Documents, (iv) in accordance with all applicable Law, and (v) to the extent consistent with the foregoing terms, in the same manner in which a prudent servicer would service and administer similar loans and in which a prudent servicer would manage and administer similar properties for its own portfolio or for other Persons, whichever standard is higher, but using no less care and diligence than would be customarily employed by a prudent servicer following customary and usual standards of practice of prudent mortgage lenders, loan servicers and asset managers servicing, managing and administering similar loans and properties on an arms' length basis; provided, however, that, with respect to each Loan and related Underlying Collateral, in the absence of a customary and usual standard of practice, the Company shall comply with standards and guidelines with respect to similar loans and properties in similar situations. The Manager shall cause its Servicing Obligations with respect to the Loans and the Underlying Collateral to be performed without regard to (w) any relationship that the Company, the Manager, or any Servicer or Subservicer, or any of their respective Affiliates may have to any Borrower, Obligor or other obligor, or any of their respective Affiliates, including any other banking or lending relationship, (x) the Company's, the Manager's, or any Servicer's or Subservicer's, obligation to make disbursements and advances with respect to the Loans and Underlying Collateral, (y) any relationship that the Servicer or any Subservicer may have to each other or to the Company, the Manager or any of their respective Affiliates, or any relationship that any of their respective Affiliates may have to the Company, the Manager or any of their respective Affiliates (other than the contractual relationship evidenced by this Agreement or the Servicing Agreement or any Subservicing Agreement), and (z) the Manager's, or any Servicer's or Subservicer's, right to receive compensation (including the Management Fee and any Interim Management Fee) for its services under this Agreement, the Servicing Agreement or any Subservicing Agreement. Without limiting the generality of the foregoing, the Manager's Servicing Obligations hereunder shall include the following:

(a) discharging in a timely manner each and every obligation which the Loan Documents provide is to be performed by the lender thereunder, on its own behalf and on behalf of the Company and the Initial Member and in the case of REO Property, which the Loan Documents that were applicable to the Underlying Collateral before it became REO Property provided were to be performed by the borrower thereunder in respect of such Underlying Collateral (not including payment of debt service under the applicable Loan Documents), together

with such additional obligations as are required of the Company under this Agreement, the Revolver or the Servicing Agreement in respect of such REO Property;

(b) incurring costs (including Servicing Expenses and Pre-Approved Charges) in accordance with the provisions of the Loan Documents, and in the case of REO Property, in accordance with the Loan Documents that were applicable to the REO Property before it became REO Property (not including payment of debt service under the applicable Loan Documents) and otherwise in accordance with the terms and conditions of the Revolver and the Reimbursement, Security and Guaranty Agreement;

(c) causing insurance to be maintained on the Underlying Collateral (including any Acquired Property) with respect to each Loan with respect to which an Ownership Entity or the Borrower has failed to maintain required insurance with extended coverage as is customary in the area in which the Underlying Collateral is located and in such amounts and with such deductibles as the Manager may, in the exercise of its reasonable discretion, determine are prudent and as required under this Agreement, the Revolver Documents and the Reimbursement, Security and Guaranty Agreement;

(d) ensuring compliance with the terms and conditions of each insurer under any hazard policy and preparing and presenting claims under any policy in a timely fashion in accordance with the terms of the policy;

(e) supervising and coordinating the construction, ownership, management, leasing and preservation of the Acquired Property as well as all other matters involved in the administration, preservation and ultimate disposition of the Acquired Property as would be taken by a prudent asset manager managing properties similar to the Acquired Property and as required of the Company under this Agreement, the Revolver Documents and the Reimbursement, Security and Guaranty Agreement;

(f) administering the making of advances to Borrowers under Loans pursuant to and in accordance with the provisions herein and in the Custodial and Paying Agency Agreement governing the making of Funding Draws;

(g) to the extent consistent with the foregoing, seeking to maximize the timely and complete recovery of principal and interest on the Loans and otherwise to maximize the value of the Loans and the Underlying Collateral;

(h) except as otherwise set forth in this Agreement, making decisions under, and enforcing and performing in accordance with, the Loan Documents all loan administration, inspections, review of financial data and other matters involved in the servicing, administration and management of the Loans and the Underlying Collateral;

(i) ensuring that all filings required to maintain perfection in any Underlying Collateral remain up to date and in force, including Uniform Commercial Code financing statements;

(j) ensuring that each Borrower (or in the case of REO Property, the applicable Ownership Entity) is diligently performing all applicable construction work using all commercially reasonable efforts in accordance with the requirements of the applicable Loan Documents (in the case of REO Property), the Revolver Documents and of this Agreement; and

(k) providing the Servicers and any Subservicers with copies of such Ancillary Documents (or portions thereof) as are necessary for the Servicers or any Subservicers to be familiar with in order to perform their respective obligations provided for in this Agreement, the Servicing Agreements or the Subservicing Agreements, as applicable.

12.3 Servicing of Loans.

(a) Appointment of Servicers. The Manager (in its individual capacity) has entered into one or more Servicing Agreements dated the date hereof to provide for the servicing and administration and management of the Loans and Underlying Collateral by one or more Qualified Servicers named therein (each, together with other Qualified Servicers, a "**Servicer**"). Each Servicer, at all times during which it acts as Servicer, shall continue to satisfy the definition of Qualified Servicer. Subject, with respect to the Interim Servicing Period, to the provisions of Section 3.3 of the Contribution Agreement, each Loan shall at all times be serviced (and any Underlying Collateral managed) by or through at least one (1) Servicer (including any subservicers engaged by the Servicer ("**Subservicers**") as permitted hereunder) and the performance of all day-to-day Servicing Obligations of the Manager shall be conducted by or through one (1) or more Servicers (including any Subservicers permitted hereunder). Subject to the other terms and conditions of this Agreement, any Servicer may be an Affiliate of the Private Owner or of the Manager. Each Servicer may engage or retain one (1) or more Subservicers, including Affiliates of the Private Owner or of the Manager, to perform certain of its duties under the Servicing Agreement, as it may deem necessary and appropriate, by entering into a subservicing agreement with each such Subservicer ("**Subservicing Agreement**"), provided that any Subservicer meets (and at all times continues to meet) the requirements set forth in the definition of Qualified Servicer and the terms of the applicable Subservicing Agreement comply with the terms of this Agreement and the applicable Servicing Agreement. The costs and fees of the Servicers (and any Subservicers) shall be borne exclusively by the Manager in its individual capacity without any right of reimbursement from the Company or the Initial Member (it being understood that the Manager will receive the Interim Management Fee and Management Fee in accordance with Section 12.5 hereof). Under no circumstances shall the Manager transfer, or permit to be transferred, to any Servicer or any other Person any ownership interest in the servicing rights with respect to the Loans or any right to transfer or sell the servicing rights with respect to the Loans (other than in connection with the sale of any Loan), and no Servicer shall be permitted to assign, pledge or otherwise transfer to any Subservicer or other Person or purport to assign, pledge or otherwise transfer any interest in the servicing rights with respect to the Loans (other than in connection with the sale of any Loan), and any purported assignment, pledge or other transfer in violation of this provision shall be void *ab initio* and of no effect.

(b) Manager Liable for Servicer and Subservicers. Notwithstanding anything to the contrary contained herein, the use of any Servicer (or any Subservicer) shall not release the Manager from any of its Servicing Obligations or other obligations under this Agreement, and the

Manager shall remain responsible and liable for all acts and omissions of each Servicer (and each Subservicer of each Servicer) as fully as if such acts and omissions were those of the Manager. All actions of each Servicer (or any Subservicer) performed pursuant to the Servicing Agreement (or any Subservicing Agreement) shall be performed as an agent of the Manager (or, in the case of Subservicers, the Servicer).

(c) Copies of Servicing and Subservicing Agreements. Copies of all fully executed Servicing Agreements and Subservicing Agreements, including all supplements and amendments thereto, shall be provided to the Initial Member, the Revolver Lender and the Purchase Money Notes Guarantor.

(d) Regulation AB Requirements. The Manager shall use commercially reasonable efforts to confirm, where applicable, that each Servicer (and any Subservicer) has in place policies and procedures to (i) comply with the relevant servicing criteria provisions of Section 1122(d)(1) of Regulation AB that are applicable and relate to the servicing being conducted under this Agreement, and (ii) provide to the Manager, at the Servicer's (and any Subservicer's) expense the annual reports (including the independent accountant report) required pursuant to Section 7.4(d) above; provided, however, that the following Regulation AB criteria shall not be deemed relevant to the servicing being conducted under this Agreement (or the Servicing Agreement): Section 1122(d)(1)(iii) regarding backup servicer requirements; Sections 1122(d)(3)(i-iv) regarding paying agent requirements; and Section 1122(d)(4)(xv) regarding external credit enhancement.

(e) Servicer and Subservicer Fees. No Servicer or Subservicer shall be paid any fees or indemnified out of any Loan Proceeds (or funds in the Collection Account or any proceeds disbursed or accounts established, under the Revolver Documents, or any other Company account), it being understood that all fees and related costs of liabilities of the Servicers and Subservicers shall be the sole responsibility of the Manager (without any right of reimbursement from the Company or the Initial Member).

(f) Fidelity Bond; E&O Insurance. The Servicer and each Subservicer shall maintain each of the following types of insurance coverage having such limits as described below:

(i) Errors & Omissions Liability with limits of not less than $10,000,000 per claim and $10,000,000 in the aggregate. The Manager shall be notified immediately upon the reduction of or potential reduction of fifty percent (50%) of the limits. The Manager may require that the Servicer and each Subservicer purchase additional limits to provide back to the required limits as stated above. "Potential reduction of fifty percent (50%)" shall mean any knowledge by the Servicer or Subservicer, as applicable, that a claim or the sum of all claims, current or initiated after the effective date of policy which would reduce the limits by fifty percent (50%).

(ii) Directors & Officers Liability with limits of not less than $10,000,000 each claim and $10,000,000 in the aggregate.

(iii) Crime Insurance or a Fidelity Bond in an amount of not less than $10,000,000 covering employee theft, forgery & alteration, wire/funds transfer, computer fraud, client coverage. Such coverage shall insure all employees or any other Persons authorized by the Servicer or any Subservicer to handle any funds, money, documents and papers relating to any Loan, and shall protect the Servicer or Subservicer, as applicable, against losses arising out of theft, embezzlement, fraud, misplacement, and other similar causes. The Manager and the Company shall each be named as a loss payee with respect to claims arising out of assets handled under this Agreement or any applicable Servicing Agreement or Subservicing Agreement.

(iv) General Liability with limits of not less than $1,000,000 each occurrence, $2,000,000 in the aggregate, including coverage for products/completed operations, advertising and personal injury. The Manager and the Company shall each be named as additional insured. The policy shall include a Waiver of Subrogation in favor of the Manager and the Company.

(v) Auto Liability with a combined single limit of not less than $1,000,000 to provide coverage for any owned, hired, or non-owned vehicles.

(vi) Workers Compensation in such amount as required by the states in which the Servicer or Subservicer, as applicable, operates, including coverage for Employer's Liability in an amount not less than, $1,000,000. The policy shall include a Waiver of Subrogation in favor of the Manager and the Company.

(vii) Umbrella Liability in an amount of not less than $10,000,000 each occurrence and in the aggregate.

All such policies shall be written with carriers having a minimum insurer rating of A- VIII from A.M. Best and A from Standard & Poor's. All such policies shall have a minimum notice of cancellation of thirty (30) days, except for non-payment of premium whereby a ten (10) day notice of cancellation is acceptable. Certificates shall show each of the Manager and the Company as certificate holder, or as otherwise designated by the language in clauses (i)-(vii) above.

The Manager shall provide (or shall cause each Servicer and Subservicer to provide) the Purchase Money Notes Guarantor, Initial Member and the Revolver Lender with certificates evidencing all such policies on the Closing Date (and, with respect to each Loan, on or before the applicable Servicing Transfer Date with respect thereto) and each anniversary of the Closing Date thereafter, and otherwise upon request of the Purchase Money Notes Guarantor, Initial Member or the Revolver Lender. Copies of fidelity bonds and insurance policies required to be maintained pursuant to this Section 12.3(f) shall be made available to the Purchase Money Notes Guarantor, the Initial Member and the Revolver Lender or their respective representatives on the Closing Date (and, with respect to each Loan, on or before the applicable Servicing Transfer Date with respect thereto), and shall otherwise be made available to any of the Purchase Money Notes Guarantor, the Initial Member, the Revolver Lender and their respective representatives upon request.

(g) MERS Requirements. In the event that any of the Loans are (or are required by the terms hereof to be) registered on the MERS® System, (i) the Manager shall, and shall cause the Company and each applicable Servicer to, become a member of MERS on or before the initial Servicing Transfer Date, and maintain itself as a MERS member in good standing (including paying all dues and other fees required to maintain its membership and complying with MERS policies and procedures), and (ii) the Servicer shall maintain (or register, as applicable) such Loan on the MERS® System and execute and deliver on behalf of the Company any and all instruments of assignment and other comparable instruments with respect to such assignment or re-recording of a mortgage securing a Loan in the name of MERS®, solely as nominee for the Company and its successors and assigns. The Manager shall be designated as the "servicer" and the "investor" with respect to the Loans that are registered on the MERS® System, and the Servicer shall be designated as the "subservicer" with respect to such Loans. No other Person shall be identified on the MERS® System as having any interest in any of the Loans unless otherwise consented to by the Initial Member. All Loans registered on the MERS® System shall remain registered on the MERS® System unless default, foreclosure or similar legal or MERS requirements dictate otherwise. The Servicer shall provide the Manager and the Initial Member with such reports from the MERS® System as the Manager or the Initial Member, from time to time, may request, including to allow the Manager and the Initial Member to verify the Persons identified on the MERS® System as having any interest in any of the Loans and to confirm that the Loans required to be registered on the MERS® System are so registered. The Servicer shall also execute and deliver to the Company and the Initial Member the Electronic Tracking Agreement in the form of Exhibit B to the Servicing Agreement. Without limiting the foregoing, upon the request of the Manager or the Initial Member, the Servicer shall cause MERS® to run a query with respect to any and all specified fields on the MERS® System with respect to any or all of the Loans registered on the MERS® System and provide the results to the Manager and the Initial Member and, if requested by the Manager or the Initial Member, shall cause MERS® to change the information in such fields, to the extent MERS® will do so in accordance with its policies and procedures, to reflect its instructions.

12.4 Removal of Servicer.

(a) Removal of Servicer. Upon the occurrence of an Event of Default, in addition to any other rights it may have pursuant to this Agreement, any Ancillary Document or applicable Law (including the Uniform Commercial Code), whether at law or in equity and whether pursuant to statute or regulation or otherwise, the Initial Member shall have the right to take, at the Initial Member's option and the Manager's expense, one or more of the following actions: (i) upon notice in writing to the Manager (effective at such time as is specified in such notice), to act on behalf of the Manager (in its individual capacity) to terminate the existing Servicer (and any Subservicers) and to cause the Manager (in its individual capacity) to enter into a new Servicing Agreement with a servicer (a "successor Servicer") selected by the Initial Member (in its sole and absolute discretion), and (ii) upon notice in writing to the Manager (effective at such time as is specified in such notice), to remove the Private Owner as the Manager and appoint a successor Manager (which successor Manager may be the Initial Member) in the sole discretion of the Initial Member, whereupon (without limitation of Section 13.5), such successor Manager shall immediately succeed to all, or such portion as the Initial Member and successor Manager agree, of the rights and obligations of the Private Owner as the Manager of the

Company, and, in such case, the Initial Member shall further have the right (A) to terminate the Servicer (in its sole and absolute discretion), and cause or permit the successor Manager selected by the Initial Member (and/or the Company directly, as determined by the Initial Member in its sole discretion) to enter into a Servicing Agreement with a successor Servicer, such Servicing Agreement to be between the applicable successor Manager (and/or the Company) and the successor Servicer chosen by the Initial Member, or (B) to retain the existing Servicer and cause or permit the successor Manager (and/or the Company directly, as determined by the Initial Member in its sole discretion) to enter into a new Servicing Agreement between such successor Manager (and/or the Company) and the Servicer (or to effect an assignment of the existing Servicing Agreement from the existing Manager (in its individual capacity) to such successor Manager (and/or the Company). None of the Initial Member, any successor Manager or the Company shall have any obligation to assume any obligations or liabilities of the removed Manager (in its individual capacity) under or in connection with any Servicing Agreement. Notwithstanding the foregoing, the Initial Member shall not exercise its right to terminate a Servicer that is not an Affiliate of the Manager or of the Private Owner in the absence of (1) an Event of Default attributable in whole or in part to the failure by the Servicer or any of its Subservicers to perform any material obligation under its applicable Servicing Agreement or Subservicing Agreement, (2) an Event of Default as described in clause (b) or clause (g) of the definition thereof with respect to the Servicer or any Related Party thereof or any of its Subservicers or any Related Party thereof, (3) an Event of Default resulting from the failure of the Servicer or any of its Subservicers at any time to meet the criteria of a Qualified Servicer, (4) an Event of Default as described in clause (e) of the definition thereof, to the extent relating to such Servicer or any of its Subservicers, or (5) any other Event of Default that consists of a breach of a servicing obligation under this Agreement. Subject to the foregoing, the Manager hereby consents to the immediate termination of the Servicer upon the occurrence of any Event of Default. For the avoidance of doubt, the rights of the Initial Member in this Section 12.4 are in addition to, and can be exercised independently of the rights of the Initial Member in Sections 3.2, 3.13, and 3.14; and in any event all rights and remedies of the Initial Member under this Agreement with respect to or following an Event of Default shall be cumulative, and any or all thereof may be exercised instead of or in addition to each other or any other remedies available to the Initial Member, whether under this Agreement, any Ancillary Document or otherwise.

(b) Appointment of Successor Servicer. If the Initial Member exercises its right to act on behalf of the Manager (in its individual capacity) to appoint a successor Servicer, the costs and expenses associated with such successor Servicer (including any servicing fees) shall be borne by the Manager (and not the Company or the Initial Member), and no termination or other fee shall be due to the Manager or the Servicer or any Subservicer in connection with or as a result of any such action; provided, however, that, if the Initial Member has also exercised its right to remove the Manager (such that such removed Manager no longer has rights to the Management Fee), then, with respect to servicing fees of such successor Servicer (but not costs and expenses in connection with the replacement of the Servicer with such successor Servicer) such removed Manager shall be responsible only for the portion of such fees that, as of any particular Distribution Date, are in excess of the Management Fee payable to the successor Manager on such Distribution Date.

(c) Removal of Manager; Management Fee. If the Initial Member exercises its right pursuant to this Section 12.4 to remove the Private Owner as the Manager and appoint a successor Manager, (i) the successor Manager selected by the Initial Member shall immediately succeed to all, or such portion as the Initial Member and successor Manager agree, of the rights and obligations of the Private Owner as the Manager of the Company, and all references in this Agreement to the Private Owner, in its capacity as Manager of the Company, shall be deemed to be references to the successor Manager so appointed by the Initial Member, (ii) without limitation of Section 13.5, the Initial Member shall have the right to determine, in its sole discretion, the extent, terms and conditions of the appointment of any such successor Manager, including as to compensation (whether from the Initial Member or the Company), indemnification by the Company, term of appointment and removal rights, in each case without the necessity for any consent from the Private Owner or any other Person, and (iii) the successor Manager appointed by the Initial Member shall be entitled to be paid the Interim Management Fee and Management Fee (or, in each case, such portion thereof as the Initial Member and the successor Manager agree) in accordance with the terms of this Agreement and the Custodial and Paying Agency Agreement. The removal of the Private Owner as the Manager shall not relieve the Private Owner of (x) any of the liabilities and/or obligations of the Private Owner as Manager to the extent required under the terms of this Agreement to have been paid and/or performed prior to such removal or (y) any liability the Private Owner may have arising out of any act or omission by the Private Owner as Manager. No successor to the Private Owner as Manager shall have any liability or obligation for any of the matters described in clause (x) or (y) of the preceding sentence, except as may be otherwise specified pursuant to any modification to this Agreement pursuant to Section 13.5. In connection with any such removal of the Manager, the Initial Member and any successor Manager selected by the Initial Member are each hereby authorized and empowered, as attorney-in-fact or otherwise, to execute and deliver, on behalf of and at the expense of the removed Manager (in its individual capacity), any and all documents and other instruments and to do or take any and all acts necessary or appropriate to effect the termination and replacement of such Manager and the Servicer and, in the event the Initial Member decides to retain a new Servicer, to enter into a new Servicing Agreement between the successor Manager (and/or the Company) and the Servicer or to effect an assignment of the existing Servicing Agreement from the removed Manager (in its individual capacity) to the successor Manager (and/or the Company).

(d) Cooperation To Facilitate Transfer. In the event any of the Manager, a Servicer or a Subservicer is terminated pursuant to the provisions of this Article XII, the Manager (in its individual capacity) shall, and shall cause any Servicer (and any Subservicer) to, provide the Initial Member and any successor Manager or Servicer in a timely manner with all documents, records and data (including electronic documents, records and data) requested by the Initial Member or any successor Manager or Servicer to enable such Person to assume the responsibilities as Manager under this Agreement and any applicable Servicing Agreement, and to cooperate with the Initial Member in effecting the termination of any Servicer (or Subservicer) or the Manager's rights as "Manager" under this Agreement, including, in each case subject to applicable requirements in the Custodial and Paying Agency Agreement, the Revolver Documents and the Reimbursement, Security and Guaranty Agreement, (x) the transfer within one (1) Business Day to such account as the Initial Member may specify of all cash amounts which, at the time, shall be or should have been credited to the Collection Account or are thereafter received with respect to any Loans or Acquired Property, and (y) the transfer of all lockbox accounts with

respect to which payments or other amounts with respect to the Loans are directed or the redirection of all such payments and other amounts to such account as the Initial Member may specify, and (z) the assignment to the Initial Member (or the applicable successor Manager or Servicer as indicated by the Initial Member) of the right to access all such lockbox accounts, the Collection Account, any Defeasance Account, any accounts established under the Revolver Documents and any other account into which Loan Proceeds or Borrower escrow payments are deposited or held. The Manager (in its individual capacity) shall be liable for all costs and expenses incurred by the Initial Member or the Company (x) associated with the complete transfer of the servicing data, (y) associated with the completion, correction or manipulation of servicing data as may be required to correct errors or insufficiencies in the servicing data to enable the Initial Member and any successor Manager and successor Servicer (and Subservicers) to service the Loans and Acquired Property properly and effectively, and (z) to retain and maintain the services of a successor Manager and/or successor Servicer (and any Subservicers), it being understood that, as to the compensation to be paid to the successor Manager (and servicing fees due and payable to any Servicer or Subservicer engaged by or through such successor Manager), the removed Manager shall be responsible only for the portion of such compensation and fees that, as of any particular Distribution Date, are in excess of the Management Fee payable to the successor Manager on such Distribution Date. Within a reasonable time after receipt of a written request of the Manager (in its individual capacity) for the same, the Initial Member shall provide reasonable documentation evidencing such costs and expenses, but the Initial Member's right to reimbursement of such costs and expenses (and to exercise offset rights under Section 4.6(h) on account thereof) shall not be subject to or contingent upon the provision of such documentation.

(e) Power of Attorney. The Company hereby irrevocably constitutes and appoints the Initial Member and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact for the purposes of this Agreement and allowing the Initial Member to perfect, preserve the validity, perfection and priority of, and enforce any Lien granted by this Agreement and, after the occurrence and during the continuance of any Event of Default, to exercise its rights, remedies and powers and privileges under this Agreement. This appointment as attorney-in-fact is irrevocable and coupled with an interest until this Agreement is terminated and the security interests created hereby are released. Without limiting the generality of the foregoing, but subject at all times to the rights of a secured party under the Revolver Documents and the Reimbursement, Security and Guaranty Agreement, the Initial Member shall be entitled under this Section 12.4(e) to do any of the following if an Event of Default has occurred and is continuing: (i) ask, demand, collect, sue for, recover, receive and give receipt and discharge for amounts due and to become due under and in respect of any or all of the Loans; (ii) file any claims or take any action or proceeding in any court of law or equity that the Initial Member may reasonably deem necessary or advisable for the collection or other enforcement of all or any part of the Loans, defend any suit, action or proceeding brought against the Company with respect to any Loan, and settle, compromise or adjust any such suit, action or proceeding; (iii) execute, in connection with any sale or disposition of the Loans, any endorsements, assignments, bills of sale or other instruments of conveyance or transfer with respect to all or any part of the Loans; (iv) enforce the rights of the Company under any provision of any Servicing Agreement to the extent permitted thereunder and under the terms of this Agreement; (v) pay or discharge Taxes and Liens levied or placed on the Loans; (vi) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Loans as fully and completely as

though the Initial Member were the absolute owner thereof for all purposes; and (vii) do, at the Initial Member's option and the Company's expense, at any time and from time to time, all acts and things that the Initial Member reasonably deems necessary to protect, preserve, or realize upon the Loans and the Initial Member's security interests in any Secured Assets and to effect the intent of this Agreement, all as fully and effectively as the Company might do. Anything in this Section 12.4(e) to the contrary notwithstanding, the Initial Member agrees that it shall not exercise any right under the power of attorney provided for in this Section 12.4(e) unless an Event of Default shall have occurred and be continuing.

12.5 Interim Management Fee and Interim Servicing Fee; Management Fee. For each Due Period commencing on or after the Cut-Off Date, (a) if the Servicing Transfer Date has not occurred as of the first day of such Due Period, the Company shall pay the Interim Management Fee to the Manager and the Interim Servicing Fee to the Initial Member, and (b) if the Servicing Transfer Date has occurred as of (or occurs on) the first day of such Due Period, the Company shall pay the Management Fee to the Manager. Each such payment of any Interim Servicing Fee, Interim Management Fee and Management Fee shall be made in the manner described in the Custodial and Paying Agency Agreement (and, as applicable, on the Distribution Date with respect to the applicable Due Period). In the event the Manager is removed and replaced by the Initial Member in accordance with Section 12.4 above, the Management Fee and Interim Management Fee shall thereafter be payable to the Initial Member or successor Manager, as determined by the Initial Member pursuant to such Section 12.4.

12.6 Servicing Expenses. Subject to Section 3.3 of the Contribution Agreement (with respect to the Interim Servicing Period), from and after the Servicing Transfer Date, the Manager shall cause the Company to pay, from available Company funds (in the Collection Account, or any other applicable Company account the funds of which may be used for such purpose or otherwise through Excess Working Capital Advances funded by the Manager) all amounts due as Servicing Expenses (or, as applicable, Pre-Approved Charges) in a timely manner, and in each case in accordance with applicable requirements set forth in the Custodial and Paying Agency Agreement (and, as applicable, the Contribution Agreement); provided, however, that anything to the contrary herein or in any Ancillary Document notwithstanding, the Manager shall not have an obligation to fund Excess Working Capital Advances for purposes of the payment by the Company of (i) any Pre-Approved Charges, or (ii) any specific Servicing Expense relating to a Loan to the extent that the Manager has reasonably determined in accordance with the Servicing Standard that such Servicing Expense, if so paid, when combined with all unreimbursed previous Servicing Expenses, Funding Draws and Pre-Approved Charges with respect to such Loan (and any remaining amounts owing to the Initial Member with respect to its servicing of such Loans during the Interim Servicing Period pursuant to Sections 2.3, 2.4 and 3.1 of the Contribution Agreement), would not ultimately be recoverable from the Loan Proceeds for such Loan. All Servicing Expenses (and Excess Working Capital Advances for the funding of the same) shall be reimbursed in accordance with the Custodial and Paying Agency Agreement.

12.7 Use of Loan Proceeds.

(a) Permitted Payments. Subject to Section 12.7(ii), each month the Loan Proceeds shall be utilized and distributed in the manner set forth in the Custodial and Paying

Agency Agreement following receipt by the Paying Agent from the Manager of the Distribution Date Report required to be provided under Section 7.4(b).

(b) Costs That Are Not Reimbursable. Notwithstanding anything else to the contrary contained herein or in any Ancillary Document, without the prior written consent of the Initial Member (which may be withheld, conditioned or delayed in the Initial Member's sole and absolute discretion), in no event may the Manager deduct from the Loan Proceeds, or otherwise use Loan Proceeds to reimburse itself or any Servicer or Subservicer or pay for, any of the following (all of which shall be borne by the Manager in its individual capacity) (collectively, the "**Excluded Expenses**"):

(i) any expenses or costs that are in excess of the relevant amounts that are permitted to be incurred by the Company or the Manager (or any Servicer or Subservicer thereof) under the Revolver;

(ii) any expenses or costs that are not incurred in accordance with the Servicing Standard;

(iii) any expenses or costs that are paid to any Affiliate of the Manager or the Company, or any Affiliate of any Servicer or any Subservicer; provided, however, that Excluded Expenses under this clause (iii) do not include amounts payable to the Servicer pursuant to the Servicing Agreement or to any Subservicer pursuant to any Subservicing Agreement that would be deemed Excluded Expenses under this clause (iii) solely as a result of such Servicer or Subservicer being an Affiliate of the Manager or the Company, so long as such amounts would otherwise constitute Servicing Expenses but for application of this clause (iii);

(iv) any fees or other compensation to or expenses of financial advisers, except to the extent the same are incurred as brokerage fees or sales commissions incurred (x) to market or sell the Loans or any Acquired Property in a Bulk Sale, the terms of which Bulk Sale (including the financial adviser's or broker's fees) are approved in advance by the Initial Member); and (y) in connection with the marketing or sale of any Acquired Property (including any REO Property) or any portion thereof on an individual basis;

(v) 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 or the Manager (in its capacity as such or in its individual capacity) as a result of the Company's or the Manager's or the Servicer's or any Subservicer's failure to service any Loan or Underlying Collateral properly in accordance with the applicable Loan Documents, this Agreement, the Servicing Agreement, any Subservicing Agreement or otherwise, or failure to make a payment in a timely manner, or failure otherwise to act in a timely manner;

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

(vii) any overhead or administrative costs (whether or not attributable to the servicing or management of any Loan) incurred by the Company, the Manager or any other Person (including any travel expenses and any expenses incurred by the Manager, the Company or any Servicer or Subservicer to comply with Section 4.3, Section 7.2, Section 7.3, Section 7.4 and Section 7.7), in each case other than Reimbursable Company Administrative Expenses;

(viii) any servicing, management or similar fees paid to the Servicer, any Subservicer or any other Person (other than property management fees approved in writing by the Initial Member);

(ix) any expenses (other than Reimbursable Company Administrative Expenses with respect to the Company and the Ownership Entities) incurred by the Manager or any other Person to become a MERS member or to maintain the Company, the Manager or such other Person as a MERS member in good standing; or

(x) any amounts subject to the indemnity obligations of the Private Owner under Section 4.6 of this Agreement or of the Servicer under Section 8.2 of the Servicing Agreement.

12.8 Collection Account. On the Closing Date, the Manager shall cause the Company to establish and maintain the Collection Account with the Paying Agent in accordance with the Custodial and Paying Agency Agreement. The Collection Account (and all funds therein) shall be subject to the security interest granted under the Reimbursement, Security and Guaranty Agreement and to the Account Control Agreement under the Custodial and Paying Agency Agreement.

12.9 Distribution Account. On the Closing Date, the Manager shall cause the Company to establish the Distribution Account with the Paying Agent in accordance with the Custodial and Paying Agency Agreement. The Distribution Account (and all funds therein) shall be subject to the security interest granted under the Reimbursement, Security and Guaranty Agreement and to the Account Control Agreement under the Custodial and Paying Agency Agreement.

12.10 Defeasance Account. On the Closing Date, the Manager shall cause the Company to establish the Defeasance Account with the Paying Agent in accordance with the Custodial and Paying Agency Agreement. The Defeasance Account (and all funds therein) shall be subject to the security interest granted under the Reimbursement, Security and Guaranty Agreement.

12.11 Intentionally Omitted.

12.12 Certain Servicing and Loan Administration Decisions. The Manager shall have full power and authority, acting alone or through any Servicer or any Subservicer, to cause to be

done any and all things in connection with the servicing and administration of the Loans that the Manager may deem necessary or desirable, and cause to be made all servicing decisions in its reasonable discretion, subject to its obligation to comply with the Servicing Standard and other applicable provisions herein and in the Ancillary Documents. Upon the occurrence of an event of default under any of the Loan Documents, but subject to the other terms and conditions of this Agreement (including the Servicing Standard), the Manager shall cause to be determined the response to such default and course of action with respect to such default, including (i) the selection of attorneys to be used in connection with any action, whether judicial or otherwise, to protect the interests of the Company in the Loan and the Underlying Collateral, (ii) the declaration and recording of a notice of such default and the acceleration of the maturity of the Loan, (iii) the institution of proceedings to foreclose under the Loan Documents securing the Loan pursuant to the power of sale contained therein or through a judicial action, (iv) the institution of proceedings against any Obligor, (v) the acceptance of a deed in lieu of foreclosure, (vi) the purchase of the real property Underlying Collateral at a foreclosure sale or trustee's sale or the purchase of the personal property Underlying Collateral at a Uniform Commercial Code sale, and (vii) the institution or continuation of proceedings to obtain a deficiency judgment against such Borrower or any Obligor. Notwithstanding any provision to the contrary herein, the Manager shall not, and shall not cause any Servicer or any Subservicer to, take any action that is inconsistent with or prohibited by the terms of the Reimbursement, Security and Guaranty Agreement, the Custodial and Paying Agency Agreement or the Revolver, in each case without the prior written consent of the Initial Member.

12.13 Management and Disposition of Underlying Collateral. Subject to the other terms and conditions of this Agreement (including the Servicing Standard), the Reimbursement, Security and Guaranty Agreement and the Revolver Documents, the Manager shall have full power and authority, acting alone or through any Servicer and any Subservicer, to cause to be done any and all things in connection with the Manager's management of any Underlying Collateral or Acquired Property, that the Manager may deem necessary or desirable, and cause to be made all asset management decisions in its reasonable discretion.

12.14 Acquisition of Underlying Collateral.

(a) If title to any Underlying Collateral that constitutes real property is to be acquired by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, or otherwise, title to such REO Property shall be taken and held in the name of an Ownership Entity; provided, however, that for any REO Property with respect to which there exists any Environmental Hazard, the Ownership Entity that holds such REO Property may hold title only to the relevant REO Property with respect to which the Environmental Hazard exists.

(b) Nothing in this Article XII or anything else in this Agreement shall be deemed to affirmatively require the Manager to cause the Company to acquire all or any portion of any REO Property with respect to which there exists any Environmental Hazard. Prior to acquisition of title to any REO Property (whether by foreclosure, deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, or otherwise), the Manager shall cause to be commissioned with respect to such REO Property either (i) a Transaction Screen

Process consistent with ASTM Standard E 1528-06, by an environmental professional or (ii) such other site inspections and assessments by a Person who regularly conducts environmental audits using customary industry standards as would customarily be undertaken or obtained by a prudent lender in order to ascertain whether there are any actual or threatened Environmental Hazards (a "**Site Assessment**"), and the cost of such Site Assessment shall be deemed to be a Servicing Expense as long as the costs for such Site Assessment were not paid to any Affiliate of the Manager, or any Affiliate of the Servicer or any Subservicer.

(c) The Company shall be the sole member of any Ownership Entity. The purposes of each Ownership Entity shall be to hold the REO Property pending sale, to complete construction of such Underlying Collateral and to operate the Underlying Collateral as efficiently as possible in order to minimize financial loss to the Company, and the Purchase Money Notes Guarantor and to sell the REO Property as promptly as practicable in a way designed to minimize financial loss to the Company, and the Purchase Money Notes Guarantor.

12.15 Administration of REO Properties. The following terms and conditions shall be binding on the Company and the Ownership Entities (and on the Manager's performance of its obligations hereunder) with respect to any REO Properties, in addition to any other terms and conditions concerning the same subject matter set forth in this Agreement and any of the other Ancillary Documents:

(a) Insurance. With respect to each REO Property, the Manager shall cause the applicable Ownership Entity to maintain, with financially sound and reputable insurers, insurance (including, as applicable, public liability insurance, property insurance, flood insurance, boiler and machinery insurance, business interruption or rent insurance and other insurance), in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions, in each case as are customarily maintained by property owners for other real property and buildings similar to such REO Property in the area in which such REO Property is located, all as determined by the Manager in accordance with the Servicing Standard and the provisions of this Agreement and the Ancillary Documents. All insurance policies shall name the Collateral Agent, the Manager, the Revolver Lender and the Company as an additional insured, loss payee or mortgagee thereunder, as applicable, as its interest may appear. Each policy shall provide that such policy may not be cancelled or materially changed except upon thirty (30) days' prior written notice to the Company ,the Collateral Agent, and the Revolver Lender, and shall further provide that no act or thing done by the applicable Ownership Entity shall invalidate any policy as against the Collateral Agent.

(b) Leasing Covenants. With respect to each REO Property, the Manager shall cause the applicable Ownership Entity to (i) perform the obligations that such Ownership Entity is required to perform under the leases to which it is a party in all material respects and (ii) enforce, in accordance with commercially reasonable practices for properties similar to the applicable REO Property, the material obligations to be performed by the tenants under such leases.

(c) Zoning. The Manager shall not permit any Ownership Entity to initiate or consent to any zoning reclassification of any portion of the REO Property owned by such Ownership Entity, or use or permit the use of any portion of an REO Property in any manner that

could result in such use (taking into account any applicable variance obtained in accordance with the Servicing Standard) becoming a non-conforming use under any zoning ordinance or any other applicable land use Law, rule or regulation, without the prior consent of the Initial Member, the Collateral Agent and the Revolver Lender.

(d) No Joint Assessment. The Manager shall not permit any Ownership Entity to suffer, permit or initiate the joint assessment of REO Property (i) with any other real property constituting a Tax lot separate from such REO Property, and (ii) with any portion of a REO Property which may be deemed to constitute personal property, or any other procedure whereby the Lien of any Taxes which may be levied against such personal property shall be assessed or levied or charged to such REO Property.

(e) Maintenance, Repairs and Alterations. From and after the completion of any buildings or other improvements at an REO Property, the Manager shall cause the applicable Ownership Entity to maintain such REO Property in a good and safe condition and repair (subject to such alterations as the Manager may from time to time determine to be appropriate in accordance with the Servicing Standard and applicable requirements herein and in the Ancillary Documents) and in accordance with applicable Law.

(f) Property Management. All property managers with respect to any REO Property shall, in their respective property management agreements or by separate agreement, subordinate their rights under such agreements (including their right to receive management fees) to the rights and interest of the Collateral Agent under the applicable REO Mortgage (as defined in the Reimbursement, Security and Guaranty Agreement).

(g) Ground Leases. With respect to any REO Property that is leased under a ground or other lease (in each case, a "**ground lease**"), the Manager shall cause the applicable Ownership Entity to (i) pay all rents and other sums required to be paid by the tenant under and pursuant to the provisions of the applicable ground lease as and when such rent or other charge is payable, and (ii) diligently and timely perform and observe all of the terms, covenants and conditions binding on the tenant under the ground lease. The Manager shall not permit the applicable Ownership Entity to subordinate or consent to the subordination of any ground lease to any mortgage, lease or other interest on or in the ground lessor's interest in the applicable REO Property without the prior consent of the Collateral Agent unless such subordination is required under the provisions of such ground lease.

(h) Additional Construction Covenants. In the event the Manager elects to fund the construction of the REO Property (pursuant to Funding Draws for such purpose), then the Manager shall cause each Ownership Entity to pursue with diligence the construction of the REO Property owned by such Ownership Entity (i) in accordance with the construction, construction management (if any) and all other material contracts relating to such construction, and all requirements of Law, all restrictions, covenants and easements affecting such REO Property, and all applicable governmental approvals, (ii) in substantial compliance with the plans and specifications therefor as in existence on the Closing Date and as thereafter modified by the Manager in its business judgment exercised in accordance with the Servicing Standard and applicable provisions in this Agreement and the Ancillary Documents, (iii) in a good and workmanlike manner and free of defects, (iv) in a manner such that such REO Property remains

free from any Liens, claims or assessments (actual or contingent) for any material, labor or other item furnished in connection therewith and (v) in conformance with the requirements for Funding Draws.

(i) REO Property Generally. Notwithstanding any other provision of this Section 12.15 to the contrary, (i) in operating, managing, leasing or disposing of any REO Property, the Manager shall act in the best interests of the Company, and the Members and creditors of the Company (including the FDIC in its various capacities) and in accordance with the Servicing Standard, and (ii) without relieving the Manager of any obligation elsewhere in this Agreement or any Ancillary Document, the Manager shall not be required to act in accordance with a specific provision of this Section 12.15 if such action is (A) not in the best interests of Company and the Members and creditors of the Company (including the FDIC in its various capacities), as determined by the Manager in the exercise of its reasonable discretion, (B) not in accordance with the Servicing Standard, or (C) the Manager lacks the funds to do so and is not expressly required to fund such expenses pursuant to the terms hereof.

(j) Reports. The Manager shall furnish to the Initial Member , the Collateral Agent and the Revolver Lender such reports regarding the construction, leasing and sales efforts of or relating to the REO Property as the Initial Member, the Collateral Agent or the Revolver Lender shall reasonably request.

12.16 Releases of Underlying Collateral. The Manager is authorized to cause the release or assignment of any Lien granted to or held by the Company on any Underlying Collateral upon payment of any Loan in full and satisfaction in full of all of the secured obligations with respect to a Loan, upon receipt of a discounted payoff as payment in full of a Loan, or upon a sale of the Loan to any Person, in each case as and to the extent permitted hereunder, under the Reimbursement, Security and Guaranty Agreement or under the Revolver Documents.

12.17 Clean-Up Call Rights.

(a) If, and only if, all amounts owing under the Revolver and the Purchase Money Notes have paid in full, and all reimbursement and other obligations to the FDIC under the Reimbursement, Security and Guaranty Agreement have been satisfied in full, the Initial Member shall have the right, exercisable in its sole and absolute discretion, to require the liquidation and sale, for cash consideration, of any remaining Loans and Acquired Property held by the Company or any Ownership Entity (the "**Clean-Up Call**") at any time after the earlier to occur of (i) the seventh (7th) anniversary of the Closing Date and (ii) the date on which the then Unpaid Principal Balance is ten percent (10%) or less of the Unpaid Principal Balance as of the Cut-Off Date as set forth on the Loan Schedule.

(b) In order to exercise its rights under this Section 12.17, the Initial Member shall give notice in writing to the Manager, setting forth the date by which the remaining Loans and Acquired Property are to be liquidated by the Company, which date shall be no less than one hundred fifty (150) calendar days after the date of such notice.

(c) The Manager shall proceed expeditiously to cause to be commenced the liquidation of the remaining Loans and Acquired Property by means of sealed bid sales to Persons other than the Servicer or any Subservicer, Affiliates of the Company, or Affiliates of the Servicer or any Subservicer; provided, however, that the Manager shall not, under any circumstances, whether directly or indirectly, sell any Participated Loan to a Borrower or a Related Party without the prior written consent of the other participants in the Loan and of the Initial Member. The selection of any financial adviser or other Person, broker or sales agent retained for the liquidation of the remaining Loans and Acquired Property pursuant to this Section 12.17 shall be subject to the prior approval of the Initial Member, such approval not to be unreasonably withheld, delayed or conditioned as long as the fees to be charged by such financial adviser or other Person, broker or sales agent are reasonable and such Person is not an Affiliate of the Manager or any Servicer or Subservicer. In the event the remaining Loans and Acquired Property are not liquidated by the date specified in the notice provided by the Initial Member pursuant to Section 12.17(b), the Initial Member shall be entitled to liquidate the remaining Loans and Acquired Property in its discretion and the Manager shall, and shall cause the Company to, cooperate and assist with such liquidation to the extent reasonably requested by the Initial Member. In the event the Manager or any Affiliate thereof desires to bid to acquire the remaining Loans and Acquired Property, then the Initial Member shall be entitled to liquidate the remaining Loans and Acquired Property in its discretion. In the event the Initial Member undertakes to liquidate the remaining Loans and Acquired Property pursuant to this Section 12.17(c), all costs and expenses incurred by it shall be deducted from the Loan Proceeds and retained by the Initial Member and the remaining Loan Proceeds shall be distributed in accordance with Section 9.2.

12.18 Certain Transfer Obligations. Without limitation of other obligations of the Manager with respect to the Contribution Agreement, the Manager agrees to cause the Company to comply with its obligations under the Contribution Agreement with respect to preparing, furnishing, executing and recording transfer documents with respect to the Loans (including special warranty deeds to convey the real property subject to any contract for deed and any Acquired Property to the Company). Any title curative work with respect to such real property, if required, shall be at the Manager's sole cost and expense.

ARTICLE XIII
Miscellaneous

13.1 Waiver of Rights of Partition and Dissolution. Each Member (other than the Initial Member) hereby irrevocably waives all rights it may have at any time to maintain any action for division or sale of the Company Property as now or hereafter permitted under any applicable Law. Each Member (other than the Initial Member) hereby waives and renounces its rights to seek a court decree of dissolution or to seek the appointment of a court receiver for the Company as now or hereafter permitted under any applicable Law.

13.2 Entire Agreement; Other Agreements.

(a) This Agreement, together with the Annexes and Exhibits hereto and the Ancillary Documents (and any other agreements expressly contemplated hereby or thereby), constitute the entire agreement and understanding, and supersede all other prior agreements and understandings, both written and oral, between the Members or their respective Affiliates or any

of them and the Company with respect to the subject matter hereof; provided, however that any Confidentiality Agreement between the FDIC and the Private Owner or any Affiliates of the Private Owner (including by way of joinder) with respect to the transaction that is the subject of this Agreement and the Ancillary Documents shall remain in full force and effect to the extent provided therein, except that the Company's rights under Article VI of the Contribution Agreement shall not be deemed a repurchase option for purposes of Section 2 of any such Confidentiality Agreement. The Members acknowledge that certain agreements or other instruments are being (or were) executed by the Company, the Members and/or Affiliates of the Members simultaneously or otherwise in connection with the execution of this Agreement and that notwithstanding anything to the contrary contained in the foregoing sentence of this Section 13.2, such agreements shall be effective and binding on the parties thereto in accordance with the terms thereof.

(b) By executing this Agreement, the Manager agrees to be bound by the terms of the Ancillary Documents pursuant to which the Manager is expressly required to take or omit from taking certain actions, in each case with the same effect as if the Manager were a party to such Ancillary Document.

13.3 Third Party Beneficiaries. Each of the FDIC, the Revolver Lender and the Purchase Money Notes Guarantor, is hereby constituted an express third party beneficiary of this Agreement with respect to those provisions of this Agreement which expressly grant rights to such Person, and, as such, each is entitled to enforce such provisions of this Agreement as if such Person were a party hereto; provided that, upon occurrence of the Purchase Money Notes Defeasance Date (and subject to any rights of the Purchase Money Notes Guarantor that, by their terms or nature, survive such date), the Purchase Money Notes Guarantor shall cease to have any of the specified rights set forth herein with respect to consents/approvals, the exercise of remedies following an Event of Default and receipt of reports and other information with respect to the continued operation of the Business, in each case (i) to the extent relating exclusively to the period following such Purchase Money Notes Defeasance Date, and (ii) except as to any rights or remedies relating to (or the exercise or non-exercise of which rights or remedies would affect) the Defeasance Account or the repayment of the Purchase Money Notes in accordance with the terms hereof and of the Ancillary Documents, as determined by the Purchase Money Notes Guarantor in its sole discretion. Each Person ceasing to constitute the "Initial Member" under this Agreement (as a result of a Disposition of its LLC Interest) shall remain a third-party beneficiary of this Agreement with respect to Section 4.6 and, as such is entitled to enforce Section 4.6 as if such Person remained a party hereto. For the avoidance of doubt, in furtherance and without limitation of the preceding sentence, each Person comprising the "Initial Member" pursuant to the last sentence of Section 4.6(a) may enforce the provisions of Section 4.6 with respect to itself and/or any other Indemnified Party(ies) in relation to itself (in its own name and/or in the name of and/or otherwise on behalf of such other Indemnified Party(ies)). Subject to Section 11.1 and to the preceding provisions of this Section 13.13, (i) this Agreement is for the benefit solely of, and shall inure solely to the benefit of, the Members and the Company, and (ii) this Agreement is not enforceable by any Person (including any creditor of the Company or of any Member) other than the Members and the Company.

13.4 Expenses. Except as may otherwise be expressly provided herein or in any Ancillary Document, each Member 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 Ancillary Documents, the consummation of the transactions contemplated by Section 2.3 hereof and the performance of its obligations hereunder.

13.5 Waivers and Amendments.

(a) This Agreement may be amended or modified, and the terms hereof may be waived, only by a written instrument signed by all Members; provided, however that, following an Event of Default, from time to time this Agreement may be amended or modified and/or the terms hereof may be waived, in each case, by a written instrument signed only by the Initial Member as long as such amendment, modification or waiver would not (i) adversely affect the Private Owner's or the Company's limited liability status; (ii) adversely affect the Private Owner's share of the Company's distributions, income, gains or losses; (iii) impose on the Private Owner any additional obligations or (iv) amend Section 3.13 or this Section 13.5; provided further, that in no event shall any amendment, modification or waiver limit or otherwise adversely affect the rights expressly granted in this Agreement to (x) any Person comprising the "Initial Member" pursuant to the last sentence of Section 4.6(a) (and/or any other Indemnified Party(ies) in relation to such Person) without the express written consent of such Person so comprising the "Initial Member" or (y) a third party beneficiary of this Agreement (to the extent such third party beneficiary is, and remains, a third party beneficiary pursuant to Section 13.3 above) without the express written consent of such third party beneficiary. Except where a specific period for action or inaction is provided herein, no failure on the part of a Member to exercise, and no delay on the part of a Member in exercising, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of such Member of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) Notwithstanding anything to contrary contained elsewhere in this Agreement (including without limitation the foregoing Section 13.5(a)) or in any Ancillary Document, but subject to the restrictions in Section 8.4 of the Contribution Agreement and Section 2.8 of the Custodial and Paying Agency Agreement, as applicable), in order to facilitate any restructuring or sale of the Purchase Money Notes (or any reissuance, restructuring or sale of any such Purchase Money Notes to be issued pursuant to Section 2.8 of the Custodial and Paying Agency Agreement), the FDIC, without the consent of the Private Owner or the Company, may at any time that the FDIC is the holder of one hundred percent (100%) of any Purchase Money Note or beneficial interest therein cause the Company to replace or reissue such Purchase Money Note (or any promissory note reissued in respect thereof) and make related changes, modifications or amendments to this Agreement and the Ancillary Documents, in each case subject to the applicable limitations set forth in Section 8.4 of the Contribution Agreement and Section 2.8 of the Custodial and Paying Agency Agreement, as the case may be; provided, however, no such change, amendment or modification shall adversely affect in any material respect (i) the amount or timing of any payments or distributions to the Private Owner or any permitted successor or assign pursuant to the Priority of Payments (or its share of the Company's distributions, income, gains or losses in accordance herewith), or (ii) any other rights or obligations of, or the need for

any advances, contributions or payments from, the Private Owner or its Affiliates or any permitted successor or assign pursuant to this Agreement or any Ancillary Document or otherwise. Prior to effecting any such changes, amendments or modifications, the FDIC shall notify each of the Private Owner and the Company of any such contemplated changes, amendments or modifications, and each of the Private Owner and the Company agrees that it will cooperate in good faith with the FDIC in effecting all such changes, amendments or modifications.

(c) Notwithstanding anything to contrary contained elsewhere in this Agreement (including without limitation the foregoing Section 13.5(a)) or in any Ancillary Document), this Agreement may be amended or modified by a written instrument signed only by the Initial Member to the extent determined by the Initial Member in good faith to be necessary or desirable in order to facilitate any Disposition by the Initial Member of only a portion of the Initial Member LLC Interest, or a Disposition by the Initial Member of the entire Initial Member LLC Interest to more than one (1) Person, including to provide for more than two (2) Persons being members of the Company, provided that no such amendment or modification shall (i) adversely affect the Private Owner's or the Company's limited liability status; (ii) adversely affect the Private Owner's share of the Company's distributions, income, gains or losses; (iii) impose on the Private Owner any additional obligations or (iv) amend Section 3.13 (other than to the extent that such amendment or modification amends or modifies which member or members of the Company shall constitute the "Initial Member" hereunder) or this Section 13.5.

13.6 Notices. All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be given by certified or registered mail, postage prepaid, by delivery by hand or by nationally recognized courier service, or by electronic mail (followed up by a hard copy delivered through an alternate manner permitted under this Section 13.6), in each case mailed or delivered to the applicable address or electronic mail address specified in, or in the manner provided in, this Section 13.6. All such notices, requests, demands and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt (or refusal thereof) by the relevant party hereto and (ii) (A) if delivered by hand or by nationally recognized courier service, when signed for (or refused) by or on behalf of the relevant party hereto, and (B) if delivered by electronic mail (which form of delivery is subject to the provisions of this paragraph), when delivered and capable of being accessed from the recipient's office computer, provided, however, that any notice, request, demand or other communication that is received other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day. In no event shall a voice mail message be effective as a notice, communication or confirmation hereunder. From time to time, any party may designate a new address for purposes of notice to it hereunder by notice to such effect to the other parties hereto in the manner set forth in this Section 13.6.

If to the Company, to:

2010-1 SFG Venture LLC
c/o Square Mile Capital Management LLC
450 Park Avenue
New York, New York 10022

Attention: Joseph D'Angelo
Email Address: jdangelo@squaremilecapital.com

with a copy to:

Greenberg Traurig
MetLife Building
200 Park Avenue
New York, New York 10166
Attention: Gary S. Kleinman
Email Address: kleinmang@gtlaw.com

If to the Initial Member or the FDIC, to:

Manager, Capital Markets & Resolutions
c/o Federal Deposit Insurance Corporation
550 17th Street, NW (Room F-7014)
Washington, D.C. 20429-0002
Attention: Ralph Malami
Email Address: RMalami@fdic.gov

with a copy to:

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

and:

Thomas Raburn
Federal Deposit Insurance Corporation
TRaburn@fdic.gov

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

Square Mile Lodging Recovery LLC
c/o Square Mile Capital Management LLC
450 Park Avenue
New York, New York 10022

Attention: Joseph D'Angelo
Email Address: jdangelo@squaremilecapital.com

with a copy to:

Greenberg Traurig
MetLife Building
200 Park Avenue
New York, New York 10166
Attention: Gary S. Kleinman
Email Address: kleinmang@gtlaw.com

13.7 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 shall together 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 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.

13.8 Successors and Assigns. Except as otherwise specifically provided in this Agreement (including in Article VIII), this Agreement shall be binding upon and inure to the benefit of the Members and the Company and their respective Successors and assigns. Without limitation of Section 8.4, this Agreement, as in effect on the date that any particular Person shall cease to be a Member, shall continue to bind such Person in relation to the period during which it was a Member.

13.9 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 which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such

jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including without limitation, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 13.9(b) is intended to, or shall, limit (1) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 13.11.

13.10 Power of Attorney.

(a) The Private Owner does hereby constitute and appoint the Manager as its true and lawful representative and attorney-in-fact, in its name, place and stead to make, execute, sign, acknowledge, deliver or file any certificate, document or other instrument that the Private Owner is required to execute and deliver pursuant to clause (a), (b), (c) or (d) of Section 4.3 hereof. The foregoing notwithstanding, the Manager shall not have any right, power or authority to amend or modify this Agreement. The power of attorney granted hereby is coupled with an interest and shall (i) survive and not be affected by the subsequent death, incapacity, disability, dissolution, termination or bankruptcy of the Private Owner granting the same or the transfer of all or any portion of the Private Owner LLC Interest and (ii) extend to the Private Owner's Successors, assigns and legal representatives.

(b) The Company hereby grants to the Manager a limited power of attorney to execute all documents on its behalf in accordance with the Servicing Standard set forth above and as may be necessary to effectuate the Manager's obligations under Article XII until such time as the Company revokes said limited power of attorney. Revocation of the limited power of attorney shall take effect upon (i) the receipt by the Manager of written notice thereof from the Initial Member, or (ii) removal of the Manager in accordance with the terms of this Agreement; provided, however, in the event of such removal, the power of attorney granted hereunder shall thereafter automatically be vested in the successor or replacement Manager appointed in accordance with this Agreement.

13.11 Governing Law. THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. In the event of a direct conflict between the provisions of this Agreement and any mandatory, non-waivable provision of the Act, such provision of the Act

shall control to the extent necessary to eliminate such direct conflict. Nothing in this Agreement shall require any unlawful action or inaction by any Person.

13.12 Jurisdiction; Venue and Service.

(a) Each of the Private Owner (for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) and the Company, in each case on behalf of itself and its Affiliates, hereby irrevocably and unconditionally:

(i) consents to the jurisdiction of the United States District Court for the Southern District of New York and to the jurisdiction of the United States District Court for the District of Columbia for any suit, action or proceeding against it (in the case of the Private Owner and for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) or any of its Affiliates commenced by the Initial Member arising out of, relating to, or in connection with this Agreement or any Ancillary Document, and waives any right to:

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

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

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

(ii) consents to the jurisdiction of the Chancery Court of the State of Delaware for any suit, action or proceeding against it (in the case of the Private Owner and for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) or any of its Affiliates commenced by the Initial Member arising out of, relating to, or in connection with this Agreement or any Ancillary Document, and waives any right to:

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

(B) assert that venue is improper in the Chancery Court of the State of Delaware; or

(C) assert that the Chancery Court of the State of Delaware is an inconvenient forum.

(iii) agrees to bring any suit, action or proceeding by it (in the case of the Private Owner and for the avoidance of doubt, in any capacity, including as a Member and/or as the Manager) or any of its Affiliates against the Initial Member arising out of, relating to, or in connection with this Agreement or any Ancillary Document in only the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member, and agrees to consent thereafter to transfer of the suit, action or proceeding to either the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia at the option of the Initial Member; and

(iv) agrees, if the United States District Court for the Southern District of New York and the United States District Court for the District of Columbia both lack jurisdiction to hear a suit, action or proceeding falling within Section 13.12(a)(iii), to bring that suit, action or proceeding in only the Chancery Court of the State of Delaware, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member.

(b) Each of the Private Owner (in any capacity, including as a Member and/or as the Manager) and the Company, 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 13.12(a) may be enforced in any court of competent jurisdiction;

(c) Subject to the provisions of Section 13.12(d), each of the Private Owner (in any capacity, including as a Member and/or as the Manager) and the Company, in each case on behalf of itself and its Affiliates, and the Initial Member, hereby irrevocably and unconditionally agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 13.12(a) or Section 13.12(b) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 13.6 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 13.12(c) shall affect the right of any party to serve process in any other manner permitted by Law;

(d) Nothing in this Section 13.12 shall constitute consent to jurisdiction in any court by the FDIC (in any capacity, including as the Initial Member), other than as expressly provided in Section 13.12(a)(iii) and Section 13.12(a)(iv), or in any way limit the FDIC's (in any capacity, including as the Initial Member) right to remove, transfer, seek to dismiss, or otherwise respond to any suit, action, or proceeding against it (in any capacity, including as the Initial Member) in any forum.

13.13 Waiver of Jury Trial. EACH OF THE PRIVATE OWNER AND THE COMPANY, FOR ITSELF AND ITS AFFILIATES, AND THE INITIAL MEMBER, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A

TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ANCILLARY DOCUMENTS AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

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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.

FEDERAL DEPOSIT INSURANCE CORPORATION, IN ITS CAPACITY AS RECEIVER WITH RESPECT TO THE RECEIVERSHIP FOR SILVERTON BANK, N.A.

By:_____
Name: Philip G. Mangano
Title: Special Programs, Manager

2010-1 SFG VENTURE LLC

By: Federal Deposit Insurance Corporation, in its separate capacity with respect to the receivership for Silverton Bank, N.A.

By:_____
Name: Philip G. Mangano
Title: Special Programs, Manager

SQUARE MILE LODGING RECOVERY LLC

By: _____
Name:
Title:

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.

FEDERAL DEPOSIT INSURANCE CORPORATION, IN ITS CAPACITY AS RECEIVER WITH RESPECT TO THE RECEIVERSHIP FOR SILVERTON BANK, N.A.

By:_____
Name: Philip G. Mangano
Title: Special Programs, Manager

2010-1 SFG VENTURE LLC

By: Federal Deposit Insurance Corporation, in its separate capacity with respect to the receivership for Silverton Bank, N.A.

By:_____
Name: Philip G. Mangano
Title: Special Programs, Manager

SQUARE MILE HOLDINGS RECOVERY LLC

By: _____
Name:
Title: Craig H. Solomon
Authorized Signatory

Annex I

Member Schedule

Member	Percentage Interests
Initial Member	60%
Private Owner	40%

EXHIBIT A

FORM OF

CERTIFICATE OF FORMATION
OF
2010-1 SFG VENTURE LLC

Pursuant to and in accordance with the provisions of Section 18-201 of the Delaware Limited Liability Company Act, the undersigned hereby certifies that:

FIRST, the name of the limited liability company is 2010-1 SFG VENTURE LLC (the "**Company**").

SECOND, the address of the registered office of the Company in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of the Company on this ___ day of April, 2010.

By: _____
Name: [_____]
Title: Authorized Person

EXHIBIT B

INFORMATION; FORM OF MONTHLY REPORT

[See Attached]

	EXHIBIT B - FORM OF MONTHLY REPORT			
DISTRIBUTION DATE REPORT				
[insert date]				
		TOTAL		
	COLLECTIONS			
(+)	Principal collections	-		
(+)	Interest collections	-		
(+)	Loan sale proceeds, including short sales	-		
(+)	Mortgage insurance claim proceeds	-		
(+)	REO liquidation proceeds	-		
(+)	Servicing Expenses Recovered	-		
(+)	Other Loan Proceeds (including late fees and penalties)	-		
(+)	Any indemnity payments made under Section 13.1(c) of Custodial and Paying Agency Agreement ("Custodial Agreement")	-		
(+)	Interest and earnings from Collection Account	-		
	GROSS COLLECTIONS	-		
	Other deposits to Collection Account			
(+)	Excess Working Capital Advances made by Manager	-		
(+)	Discretionary Funding Advances made by Manager	-		
		-		
	GROSS FUNDS AVAILABLE	-		
	Less authorized disbursements from Collection Account			
(-)	Repayment of Discretionary Funding Advances made by Manager	-	(1)	
(-)	Servicing Expenses paid	-		
(-)	Pre-Approved Charges	-		
(-)	Funding Draws	-		
		-		
	TOTAL FUNDS AVAILABLE - TO DISTRIBUTION ACCOUNT	-		
5.1(b)	***Distributions pursuant to Priority of Payments in the Custodial Agreement***			
(i)	Custodian and Paying Agent Fees and Expenses (and any indemnity payments under Section 13.1 of Custodial Agreement)	-		
(ii)	Verification Contractor Amounts payable to the Verification Contractor and indemnification payments pursuant to the Revolver Documents	-		
(iii)(A)(1)	Interim Servicing Fee to Initial Member	-	(2)	
(iii)(A)(2)	Interim Management Fee to Manager	-	(2)	
(iii)(B)	Management Fee to Manager	-	(3)	
(iv)	Repayment of Excess Working Capital Advances to Manager	-		
(v)	Principal and interest due to Revolver Lender	-		
(vi)	Reimbursements due under Reimbursement, Security and Guaranty Agreement for prior payments under Purchase Money Note Guaranty	-		
(vii)	Deposit to Defeasance Account (until Purchase Money Notes Defeasance Date	-		
	TOTAL DISTRIBUTIONS DUE	-		
(viii)	NET DISTRIBUTABLE CASH TO MEMBERS	$ -		
	DISTRIBUTION TO MEMBERS			
	Distribution to Initial Member (at proportionate LLC interest)	$ -		
	Distribution to Private Owner (at proportionate LLC interest)	-		
	TOTAL DISTRIBUTIONS TO MEMBERS	$ -		

Calculation of amounts payable for items in Section 5.1 (b)(iii) -				
	Custodial and Paying Agency Agreement			
	INTERIM SERVICING FEE CALCULATION			
	UPB, beginning of Due Period (with respect to any Group of Loans for which Servicing Transfer Date has not occurred as of first date in Due Period)			
	Times interim servicing fee rate	0.25%		
	Times number of days in Due Period/360	-		
	Interim Servicing Fee due to Initial Member	$ -		
	INTERIM MANAGEMENT FEE CALCULATION			
	UPB, beginning of Due Period (with respect to any Group of Loans for which Servicing Transfer Date has not occurred as of first day in Due Period)	$ -		
	Times Management Fee rate	0.25%		
	Times number of days in Due Period/360	-		
	Interim Management Fee due to Manager	$ -		
	MANAGEMENT FEE CALCULATION			
	UPB, beginning of Due Period (with respect to any Group of Loans for which Servicing Transfer Date has occurred as of first day in Due Period)	$ -		
	Times Management Fee rate	0.50%		
	Times number of days in Due Period/360	-		
	Management Fee due to Manager	$ -		
(1)	Repayment only to the extent of Loan Proceeds from the Loan with respect to which the Advance was made.			
(2)	Applicable only to the Interim Servicing Period with respect to a Group of Loans.			
(3)	Applicable to Due Periods following the Interim Servicing Period with respect to a Group of Loans.			

Loan & REO Monthly Rollforward Report

[insert date]

For the Period from [insert date]

	LOANS	# ASSETS	GROSS UPB	PARTICIPATION SOLD UPB	NET CURRENT UPB
	Unpaid principal balance, [insert date]	-	$ -	$ -	$ -
(-)	Payments received (regular and curtailments)		-	-	-
(-)	Paid-in-full loans	-	-	-	-
(-)	Short sale proceeds	-	-	-	-
(-)	Mortgage insurance proceeds		-	-	-
(-)	UPB, transfers to REO	-	-	-	-
(+)	Balance capitalized on loan modifications		-	-	-
(+)	Commitments funded		-	-	-
(-)	Principal charge-offs		-	-	-
	Unpaid principal balance, [insert date]	-	$ -	$ -	$ -

	UNFUNDED COMMITMENTS (LIP)	# ASSETS	AMOUNT
	Unfunded commitments balance, [insert date]	-	$ -
(-)	Commitments funded		
(-)	Commitments released on loan payoffs		
			-
	Unfunded commitments balance, [insert date]	-	$ -

	REO	# ASSETS	AMOUNT
	UPB of REO properties, 10/1/09	-	$ -
(+)	UPB on REO transfers in	-	-
(+)	Capitalized post-acquisition costs		-
(-)	Net liquidation proceeds	-	-
(+/-)	Realized Gain (Losses)		-
	UPB of REO properties, 10/31/09	-	$ -

Servicing Expenses

Monthly Roll Forward

[insert date]

		Escrow Advances	Other Servicing Expenses	(1) Total Servicing Expenses
	Balance, [insert date]	$ -	$ -	$ -
(+)	Payments/Advances	-	-	-
(-)	Advance Recoveries	-	-	-
		-	-	-
	Balance, [insert date]	$ -	$ -	$ -
		(2)	(2)	

(1) Servicing Expenses, as defined in the LLC Operating Agreement, are authorized to be paid by withdrawal of funds from the Collection Account. For reporting purposes, Servicing Expenses may be broken out into additional and/or different fields at the discretion of the Manager, sufficient to determine the appropriateness of the payments under the definition of Servicing Expenses.

(2) Loan servicing system should include fields to capture and report balances in each category, and the category totals should agree to asset-level detail tapes provided by the Manager as of each month-end.

Revolver Account

Monthly Roll Forward

[insert date]

Balance, beginning of Due Period	$ -	(1)
Transfers in:		
(+) Proceeds from Revolving Credit Loan Borrowings		
(+) Investment Income		
Transfers to Collection Account:		
(-) For payment of Advances	-	
(-) For payment of Working Capital Expenses	-	
Balance, end of Due Period	$ -	

Revolver Loan Rollforward

Monthly Roll Forward

[insert date]

		Total -	Borrowing Allocated by Asset	
		All Borrowings	**Advance Loans**	**Working Capital Loans**
	Balance, beginning of Due Period	$ -	$ -	$ -
(+)	Principal amount of Loan Borrowing	-	-	-
(+)	Interest Due (30-day LIBOR + 3.00%, actual/360)	-	-	-
(-)	Repayments of principal and interest from cash waterfall (1)	-	-	-
	Balance, end of Due Period	$ -	$ -	$ -
	Additional Information by Borrowing			
	Advance Loan or Working Capital Loan Borrowing?			
	Date of Borrowing			
	Asset loan number associated with Borrowing			
	Costs and expenses to be paid out of proceeds			

(1) The Borrower may voluntarily prepay the Loans in whole or in part without penalty. Repayment is mandatory to the extent of Loan Repayments or Proceeds from the Loan with respect to which the Borrowing was made. All repayments must be applied in accordance with the priority of payments in the Custodial Agreement.

Excess Working Capital Advances

Monthly Roll Forward

[insert date]

	Balance, beginning of Due Period	$ -
	Advanced by Manager to Collection Account for payments of Working Capital Expenses other than Funding Draws :	
(+)	Servicing Expenses	-
(+)	Pre-Approved Charges	-
(+)	Management Fees	-
(+)	Interim Servicing Fees	
(+)	Custodian and Paying Agent Fees	
	Advanced by Manager to Defeasance Account for payments:	
(+)	As required to cure a Purchase Money Notes Trigger Event	
(-)	Reimbursements from Cash Flow	-
	Balance, end of Due Period	$ -

Discretionary Funding Advances

Monthly Roll Forward

[insert date]

		Total - All Advances	Detail Advances by Loan Number: Loan A	Detail Advances by Loan Number: Loan B
	Balance, beginning of Due Period	$ -	$ -	$ -
(+)	Funding Draws Advanced by Manager to Collection Account	-	-	-
(+)	Interest Due (30-day LIBOR + 3.00%, actual/360)	-	-	-
(-)	Reimbursements from Cash Flow (1)	-	-	-
	Balance, end of Due Period	$ -	$ -	$ -

(1) Repayment only to the extent of Loan Proceeds from the Loan with respect to which the Advance was made.

Funding Draws

Monthly Report

[insert date]

Loan Number / Purpose of Funding Draw	Amount of Funding Draw	Current UPB	Unfunded Commitment	Date of Draw	Amount funded by Discretionary Funding Advance
	$ -				
	-				
	-				
	-				
Total Funding Draws, [insert date]	$ -				

Purchase Money Notes and Defeasance Account

Monthly Roll Forward

[insert date]

		Total - All Purchase Money Notes	Term A-1 Purchase Money Note	Term A-2 Purchase Money Note	Term A-3 Purchase Money Note
	Purchase Money Notes Monthly Roll				
(+)	Original Aggregate Principal Amount	$ -	$ -	$ -	$ -
(+)	Guaranty Fee	-	-	-	-
(-)	Payment from Defeasance Account	-	-	-	-
	Purchase Money Notes balance, end of Due Period	$ -	$ -	$ -	$ -
	Defeasance Account Monthly Roll				
(+)	Balance, beginning of Due Period	$ -			
(+)	Additions from Cash Flow	-			
(+)	Investment Income	-			
(-)	Release to Purchase Money Note	-			
	Defeasance Account balance, end of Due Period	$ -			
	Note Guarantor Payments				
(+)	Balance, beginning of Due Period	$ -			
(+)	Draws, current month	-			
(-)	Repayments, current month	-			
	Balance, end of Due Period	$ -			

Purchase Money Note Trigger Event

A Purchase Money Note Trigger Event will be deemed to have occurred if, as of any of the dates defined below, (a) the total amount then on deposit in the Defeasance Account, plus the sum of the aggregate amount from the Defeasance Account previously paid by the Company to all Holders to repay any Purchase Money Note and the aggregate reimbursements to the Purchase Money Notes Guarantor, divided by (b) the original aggregate principal amount of the Purchase Money Notes as of the Closing Date, is less than:

- 3 Years from the Closing Date:	25%
- 4 Years from the Closing Date:	40%
- 5 Years from the Closing Date:	50%
- 6 Years from the Closing Date:	75%
- 7 Years from the Closing Date:	100%

Incentive Threshold Tracking Report			
[insert date]			
	Aggregate Cash Distributions to Private Owner, as of preceding Distribution Date	$ -	
(+)	Current month distribution to Private Owner in respect of its LLC Interest	-	(1)
	Aggregate Cash Distributions to Private Owner, as of the current Distribution Date	**$ -**	
	Incentive Threshold Base Amount		
	Transferred LLC Interest Sale Price	**$ -**	
FIRST INCENTIVE THRESHOLD EVENT			
	Occurs as of a Distribution Date if:		
	(a) the aggregate distributions made to the Private Owner in respect of its LLC interest		
	are equal to or greater than 2 times the Incentive Threshold Base Amount ***and***		
	(b) the Incentive Threshold (for First Incentive Threshold Event) is equal to zero.		
	Aggregate cash distributions to Private Owner	$ -	
	Incentive Threshold Base Amount * 2	-	
	Distributions Remaining to First Incentive Threshold Event	**$ -**	
	Incentive Threshold (for First Incentive Threshold Event), as of the preceding Distribution Date	$ -	
(+)	Threshold Increase Amount (1.8769% per month)	-	
(-)	Current month distribution to Private Owner in respect of its LLC Interest	-	
	Incentive Threshold (for First Incentive Threshold Event), as of the current Distribution Date	$ -	(2)
	First Incentive Threshold Event met?	Y/N	
SECOND INCENTIVE THRESHOLD EVENT			
	Occurs as of a Distribution Date if:		
	(a) the aggregate distributions made to the Private Owner in respect of its LLC interest		
	are equal to or greater than 2.5 times the Incentive Threshold Base Amount ***and***		
	(b) the Incentive Threshold (for Second Incentive Threshold Event) is equal to zero.		
	Aggregate cash distributions to Private Owner	$ -	
	Incentive Threshold Base Amount * 2.5	-	
	Distributions Remaining to Second Incentive Threshold Event	**$ -**	
	Incentive Threshold (for Second Incentive Threshold Event), as of the preceding Distribution Date	$ -	
(+)	Threshold Increase Amount (2.5324% per month)	-	
(-)	Current month distribution to Private Owner in respect of its LLC Interest	-	
	Incentive Threshold (for Second Incentive Threshold Event), as of the current Distribution Date	$ -	(2)
	Second Incentive Threshold Event met?	Y/N	
(1)	Excludes Management Fees and repayments of Discretionary Funding Advances		
	and Excess Working Capital Advances.		
(2)	The Return Threshold can never be less than zero.		

Additional Security Report

[insert date]

Amount of Additional Security (in each case as of the end of the Due Period)

Undrawn Amount under Qualifying Letters of Credit:	$_____
[and/or]	
Balance in Private Owner Pledged Account:	$_____
Additional Security amount equal to or in excess of $5,000,000?	Y / N

In the event of any Additional Security consisting of a Qualifying Letter of Credit, for each such Qualifying Letter of Credit:

A. Capital category of Issuing Bank as of the end of the Due Period pursuant to the standards in 12 U.S.C. § 1831o (b)(1), or applicable replacement legislation:	_____
B. Is such Issuing Bank a Qualified Issuer?	Y / N

Other Reports

Withdrawals from Collection Account

Manager hereby certifies that all withdrawals by the Manager from the Collection Account during the relevant Due Period were made in accordance with the terms of the Amended and Restated Limited Liability Company Operating Agreement and the Custodial Agreement: Y / N

Delinquency Report

and $ by delinquency classification: Current, < 30, 30-60 days, 61-90 days, > 90 days, in foreclosure, in bankruptcy, REO

Breakout of > 60 day delinquencies by collateral type, # and $
Breakout of > 60 day delinquencies by state, # and $

REO Report

Listing of REO properties held to include original loan number, date of ownership, description, collateral type, address, UPB (of the loan prior to foreclosure), net book value, listing date, estimated sale date, appraisal amount, original list price, current list price, cumulative Servicing Expenses allocable, broker name, and comments

Modification Report

Listing of loans modified, to include borrower name, loan balance and terms before modification, loan balance and terms after modification. Show amounts of principal forgiven, if any, and principal forbearance amounts, if any.

Liquidation Report

Listing of loans and REO properties liquidated, to include borrower name, UPB, net liquidation proceeds, cumulative Servicing Expenses, realized loss amount

Short Sale Report

Listing of loans for which short sales were accepted, to include borrower name, UPB, payoff accepted, realized loss amount

Judgment Report

Listing of Judgments obtained, to include borrower name, Judgment amount, current month and cumulative payments received, remaining balance

Significant Litigation Report

Company and/or Servicer with respect to assets subject to this Agreement, the actions taken to defend such claim, and an estimate of the projected exposure for: a) any claim in which the Company or Servicer expects to incur more than $10,000 in Servicing Expenses to defend such claim, b) any claim in which multiple plaintiffs have joined in filing an action against the Company and/or Servicer or the same law firm has filed individual claims on behalf of more than one plaintiff, and c) any claim(s) regardless of the dollar amount naming: (i) any Failed Bank, or (ii) FDIC (in any capacity) as defendant(s). Activity should be updated quarterly.

Environmental Exposure Report

Provide a report identifying any assets in which the Site Assessment identified an Environmental Hazard together with information on the nature of the hazard, additional tests performed, and the cost of correcting the hazard identified in the Site Assessment.

MONTHLY LOAN-LEVEL DETAIL REPORTS

Monthly Loan Trial Balance and Activity Report

PROVIDE A MONTHLY LOAN-LEVEL REPORT IN EXCEL WITH THE FOLLOWING FIELDS:

Current Loan Number
Prior Servicer Loan Number
P&I Constant
Note Rate
Next Due or Paid-Thru Date
Payoff Date (if applicable)
Principal Balance, end of prior month
Principal collections - regular
Principal collections - payoffs
Principal proceeds – loan sales
Principal Write-Off Amount
Other Non-Cash Principal Adjustment
Transfer to REO
Principal Balance, end of current month
Escrow balance
Other Advances Balance
Interest collections - regular
Interest collections - payoffs
Interest collections – loan sales
Non-Cash Interest Adjustment
Late Charges
Pre-Payment Penalty Paid
Other Fee Income

Servicing System Data Download – To Initial Member

Provide a monthly loan-level data download in Excel format with every field populated in the Servicer's loan servicing system. This requirement may be modified in the future by the Initial Member to include only certain specified fields.

SEMIANNUAL REPORT – TO INITIAL MEMBER (in January and July of each year, commencing July 2010)

Business Plan

Updated Consolidated Business Plan and individual Business Plans for 10 largest Loans, as required pursuant to Section 7.7 of the Amended and Restated Limited Liability Company Agreement.

Projected Cash Flows

Excel model of projected cash flows by month, as of June 30 and December 31 of each year, as required pursuant to Section 7.7(c) of the Amended and Restated Limited Liability Company Agreement.

AS AVAILABLE – TO INITIAL MEMBER

Custodial Report or an updated Loan Schedule and Exception List (in each case as defined in the Custodial Agreement) from the Custodian/Paying Agent, as provided to the Company.

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**") is made and entered into as of _____, 20__ by and between [____], a [____] ("**Transferor**"), and [____],_____, a _____ ("**Transferee**").

RECITALS

WHEREAS, the Transferor, is the owner of a limited liability company membership interest (the "**LLC Interest**") in 2010-1 SFG VENTURE LLC, a Delaware limited liability company (the "**Company**");

WHEREAS, the LLC Interest represents a forty percent (40%) "Percentage Interest" in the Company (as defined in that certain Amended and Restated Limited Liability Company Operating Agreement, effective as of May __, 2010, by and among the Federal Deposit Insurance Corporation, in its capacity as receiver for the Failed Bank defined therein (the "**Initial Member**"), Transferor and the Company (the "**LLC Operating Agreement**"));

WHEREAS, the ownership and other rights associated with the LLC Interest are set forth in the LLC Operating Agreement;

WHEREAS, pursuant to Section 3.13 of the LLC Operating Agreement, Transferor granted the Initial Member a first priority security interest in the LLC Interest in order to secure certain obligations of Transferor as more fully described in the LLC Operating Agreement;

WHEREAS, an Event of Default (as defined in the LLC Operating Agreement) has occurred and is continuing, and the Initial Member has elected, pursuant to the LLC Operating Agreement, to foreclose on its security interest in the LLC Interest and effect the assignment contemplated hereby;

NOW THEREFORE, in consideration of the mutual agreements contained herein and in the LLC Operating Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. **Assignment and Assumption**. Transferor hereby assigns and transfers the LLC Interest to Transferee, and Transferee hereby accepts and assumes the LLC Interest and agrees to be bound by the LLC Operating Agreement, as amended from time to time, to the extent it relates to such LLC Interest.

2. **Counterparts**. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one

or more counterparts have been signed by each of the parties and delivered (including by telecopy) to the other party.

3. **No Third Party Beneficiaries**. This Agreement shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement is not intended to confer upon any other person any rights or remedies hereunder.

4. **Governing Law**. The laws of the State of Delaware will govern the validity, performance and enforcement of this Agreement, without giving effect to the principles of conflict of laws of the State of Delaware or any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the date first above written.

TRANSFEROR:
[____]

By: [____]
Name: [____]
Title: [____]

TRANSFEREE:

_____

By: _____
Name:
Title:

EXHIBIT D

FORM OF LETTER OF CREDIT

(Bank Letterhead Stationary)

Federal Deposit Insurance Corporation, in its capacity as Initial Member (as defined below)
Manager, Capital Markets & Resolutions
c/o Federal Deposit Insurance Corporation
550 17th Street, NW (Room F-7014)
Washington, D.C. 20429-0002
Attention: Ralph Malami
Email Address: RMalami@FDIC.gov
Tel: _____
Fax: _____]

RE: Irrevocable Transferable Letter of Credit No. _____ for
U.S.$_____, Dated _____.

Gentlemen:

We hereby issue our irrevocable transferable Letter of Credit No. _____ (this "**Letter of Credit**") in favor of Federal Deposit Insurance Corporation (in any capacity, the "**FDIC**"), as receiver for the Failed Bank identified in the LLC Operating Agreement defined below, as the Initial Member under such LLC Operating Agreement (including its successors, and its assigns as provided herein, the "**Initial Member**"), for the account of [_____] (the "**Private Owner**").

This Letter of Credit is issued pursuant to the Amended and Restated Limited Liability Company Operating Agreement dated as of May __, 2010 (as amended or otherwise modified from time to time, the "**LLC Operating Agreement**"), by and among 2010-1 SFG VENTURE LLC (the "**Company**"), the Private Owner and the Initial Member.

We undertake to honor from time to time your draft or drafts presented to us in accordance herewith not exceeding in the aggregate _____ U.S. Dollars (U.S.$_____). All drafts hereunder (i) must be marked "Drawn under irrevocable transferable Letter of Credit No. _____, dated _____", (ii) must be accompanied by a typewritten statement signed by a purportedly authorized representative of the Initial Member stating that an "Event of Default" or "LC Reissuance/Extension Failure" has occurred under (and as defined in) the LLC Operating Agreement, and (iii) shall, unless payment is to be made at sight, include the wire transfer instructions for remittance by us of the amount of such draft.

Presentation of drafts drawn hereunder, together with the required statement and applicable wire transfer instructions, may be made at any time on or before the expiry date hereof (i) by physical presentation of such draft at, or overnight delivery of such draft to, our offices located at _____ [include address in New York City or Washington, D.C.], [or (ii) by telecopier (at telecopier number (___) _____, Attention:_____,] without further need of documentation. Presentation having been so made at or before 12:00 noon (New York, New York time) on any day other than a Saturday, Sunday or other day on which all commercial banks in [New York, New York / Washington, D.C.] are authorized or required by law to be closed ("**Banking Day**") shall result in payment to Initial Member in accordance herewith on the same date. Drafts presented after 12:00 noon (New York, New York time) or on any day other than a Banking Day, shall result in payment to Initial Member in accordance herewith on the next Banking Day.

This Letter of Credit shall expire at 5:00 p.m. (New York, New York time) on the date that occurs one year after the date hereof; provided, however, that this Letter of Credit will be automatically extended without amendment for additional periods of one year each (in each case commencing from the expiry date hereof as then in effect), unless we elect not to renew this Letter of Credit and deliver to the Initial Member written notice of such election at least sixty (60) days prior to any such expiry date. Any such notice shall be in writing and shall be delivered in hand with receipt acknowledged, or by certified mail (return receipt requested), to the Initial Member at its address set forth above (or to such other address for any such notices which Initial Member may hereafter specify in a written notice delivered to the undersigned).

Partial and multiple drafts are permitted, and the amount of this Letter of Credit will be reduced by each such draft honored.

All our charges (including wire transfer fees in connection with any payments by us hereunder) are for the account of the Private Owner, and in no event shall any such charges reduce the amount of any draft or payment hereunder.

We agree that we shall have no duty or right to inquire as to the basis upon which Initial Member has determined to present to us any draft under this Letter of Credit.

This Letter of Credit is transferable to any transferee who has succeeded you as the Initial Member under the LLC Operating Agreement, and may be successively transferred. Any transfer request must be effected by presenting to us the attached form of Attachment I signed by the transferor and the transferee together with the original Letter of Credit. Upon our endorsement of such transfer, the transferee instead of the transferor shall, without necessity of further action, be entitled to all the benefits of and rights under this Letter of Credit in the transferor's place; provided that, in such case, any drafts of the Initial Member to be provided hereunder shall be signed by one who states therein that he is a duly authorized officer of the transferee.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices, International Chamber of Commerce Publication No. 590, including any amendments, modifications or revisions thereof (the "**ISP 98**"). As to matters not covered by the ISP 98, and to the extent not inconsistent with the ISP 98, this Letter of Credit

shall be governed by and construed in accordance with the laws of the State of New York, including without limitation the Uniform Commercial Code as in effect in the State of New York, without regard to principals of conflict of laws.

All of the terms and conditions of this Letter of Credit are contained herein and shall not be altered except by reduction in the amount of this Letter of Credit due to corresponding payments in like amount in compliance with the aforementioned terms. Except as otherwise expressly set forth herein, there are no conditions to this Letter of Credit.

Very truly yours,

By:_____
Name:_____
Title:
_____

ATTACHMENT I TO LETTER OF CREDIT

REQUEST FOR TRANSFER

[Insert Bank Name and Address]

RE: Irrevocable Transferable Letter of Credit No. [_____] for U.S.$[_____], Dated [_____].

Gentlemen:

Reference is made to that certain irrevocable transferable Letter of Credit No. [_____], dated _____ (the "**Letter of Credit**"), issued by you in favor of [_____] (the "**Transferor**"), for the account of [_____] (the "**Private Owner**").

The Transferor has transferred and assigned (and hereby confirms to you said transfer and assignment) all of its rights in and under the Letter of Credit to [name of Transferee] (the "**Transferee**") and confirms that the Transferor no longer has any rights under or interest in the Letter of Credit.

The Letter of Credit is returned herewith and we request that you issue an irrevocable transferable letter of credit in the name of the Transferee and providing for notices to be sent to the Transferee at the address set forth below and in all other respects identical to the Letter of Credit.

Transferee hereby certifies that it is a duly authorized transferee under the terms of the Letter of Credit and is accordingly entitled, upon presentation of the drafts (and applicable items) called for therein, to receive payment thereunder.

Notices under the Letter of Credit should be sent to the Transferee as follows: [Name], [Address], [Attention:_____], Email: [_____], Fax: [_____], Tel: [_____].

[NAME OF TRANSFEROR]

By_____
[Name and Title of Authorized Representative of Transferor]

[NAME OF TRANSFEREE]

By_____
[Name and Title of Authorized Representative of Transferee]