

**CRE Venture 2011-2 Structured Transaction**

**PRIVATE OWNER INTEREST  
SALE AND ASSIGNMENT AGREEMENT**

**by and among  
COLFIN 2011-2 CRE FUNDING, LLC,  
FEDERAL DEPOSIT INSURANCE CORPORATION,  
in its capacity as Receiver,  
and  
CRE VENTURE 2011-2, LLC**

**Dated as of December 13, 2011**

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**PRIVATE OWNER INTEREST  
SALE AND ASSIGNMENT AGREEMENT**

THIS PRIVATE OWNER INTEREST SALE AND ASSIGNMENT AGREEMENT (this "**Agreement**") is made as of December 13, 2011, by and among ColFin 2011-2 CRE Funding, LLC, a limited liability company organized and existing under the laws of Delaware (the "**Private Owner**"), the Federal Deposit Insurance Corporation in its capacity as Receiver (the "**Initial Member**"), and CRE Venture 2011-2, LLC, a limited liability company organized and existing under the laws of Delaware (the "**Company**"). For purposes of this Agreement, all terms used in this Agreement (including in the preamble and recitals hereto) that are defined in, or by reference in, that certain Agreement of Definitions – CRE Venture 2011-2 Structured Transaction dated as of the date hereof among the parties hereto and certain others (as the same may be amended from time to time in accordance with the terms set forth herein for the amendment of this Agreement) (the "**Agreement of Definitions**"), and are not otherwise defined herein, shall have the meanings and definitions given, or referred to, in the Agreement of Definitions.

**RECITALS**

WHEREAS, the Initial Member formed the Company by causing the Certificate of Formation of the Company to be filed with the Secretary of State of the State of Delaware on December 5, 2011, holds the sole limited liability company interest in the Company, and has entered into the Original LLC Operating Agreement;

WHEREAS, pursuant to the Contribution Agreement, the Initial Member has contributed in part and sold in part to the Company all of the Initial Member's right, title and interest in and to the Assets;

WHEREAS, after conducting a sealed bid sale for a forty percent (40%) limited liability company interest in the Company (the "**Private Owner Interest**"), the FDIC selected Colony Capital Acquisitions, LLC, a Delaware limited liability company (the "**Winning Bidder**"), as the successful bidder pursuant to the bid form submitted by it (the "**Bid Form**") and, in accordance with the instructions governing the sealed bid sale, the Winning Bidder has deposited \$300,000.00 with its bid and an additional \$2,430,710.10 after its bid was selected (collectively, the "**Earnest Money Deposit**") with the FDIC;

WHEREAS, following its selection as the successful bidder, the Winning Bidder formed the Private Owner as a Qualified Transferee;

WHEREAS, the Initial Member desires to transfer the Private Owner Interest to the Private Owner (and the Initial Member will retain a sixty percent (60%) limited liability company interest in the Company) and enter into the LLC Operating Agreement in the form attached hereto as Exhibit A, and the Private Owner desires to acquire the Private Owner Interest and enter into the LLC Operating Agreement;

WHEREAS, the Initial Member and the Private Owner desire, as capital contributions to the Company *pro rata* in accordance with their proportionate limited liability company interests in the Company (after giving effect to the transfer of the Private Owner Interest), to fund the Working Capital Reserve Account with an aggregate amount of \$3,000,000.00 (such sum, the “**WCR Account Deposit**”); and

WHEREAS, the Initial Member’s pro rata share of such WCR Account Deposit is \$1,800,000.00 (the “**Initial Member WCR Account Deposit**”) and the Private Owner’s pro rata share of such WCR Account Deposit is \$1,200,000.00 (the “**Private Owner WCR Account Deposit**”);

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

1. **Sale and Assignment; Purchase Price; Funding of Working Capital Reserve; Account Closing.**

(a) **Sale and Assignment.** Subject to the terms and conditions of this Agreement, the Initial Member hereby sells to the Private Owner, and the Private Owner hereby purchases from the Initial Member, all of the Initial Member’s right, title and interest in and to the Private Owner Interest for a purchase price of \$27,307,101.00 (the “**Private Owner Interest Sale Price**”). On the date hereof, in satisfaction of its obligation to pay the Private Owner Interest Sale Price, the Private Owner shall:

(i) remit to the Initial Member, by wire transfer of immediately available funds, to such account as the Initial Member may direct in writing, an amount (the “**Purchase Price Payment**”) equal to the positive difference (if any) between (x) the Private Owner Interest Sale Price and (y) the sum of (A) the Earnest Money Deposit, and (B) the Initial Member WCR Account Deposit; and

(ii) (x) remit, on behalf of the Initial Member, by wire transfer of immediately available funds, an amount equal to the Initial Member WCR Account Deposit to the Paying Agent for credit to the Working Capital Reserve Account, and (y) remit, on its own behalf, by wire transfer of immediately available funds, an amount equal to the Private Owner WCR Account Deposit to the Paying Agent for credit to the Working Capital Reserve Account.

(b) **Closing Procedure.** The sale and assignment of the Private Owner Interest to the Private Owner and the closing of the other transactions contemplated hereby (collectively, the “**Closing**”) shall be effective upon:

(i) the receipt by the Initial Member of (x) the Purchase Price Payment, (y) evidence of the establishment of the Working Capital Reserve Account in accordance with the provisions of Section 3.6 of the Custodial and Paying Agency Agreement,

and (z) confirmation of receipt by the Paying Agent of each of the Initial Member WCR Account Deposit and the Private Owner WCR Account Deposit;

(ii) the delivery of the executed LLC Operating Agreement by the parties thereto (as required by Section 2);

(iii) the delivery of the Additional Security (as required by Section 3);

(iv) the delivery by each Person specified in Section 4(a) of a PO Owner Undertaking;

(v) the delivery by the Private Owner of the letter described in Section 4(b);

(vi) the delivery of the completed Private Owner Interest Asset Value Schedule, in the form attached hereto as Exhibit B, allocating the Private Owner Interest Sale Price among the Assets (the "**Private Owner Interest Asset Value Schedule**"), which shall be appended to the Contribution Agreement as the Private Owner Interest Asset Value Schedule thereunder;

(vii) the delivery of the executed Transferee Acknowledgment and Certification, in the form attached hereto as Exhibit C; and

(viii) the delivery of the executed Joinder and Consent Agreement, in the form attached hereto as Exhibit D.

2. **LLC Operating Agreement.** Contemporaneously with the execution and delivery of this Agreement, the Private Owner shall execute and deliver to the Company and the Initial Member the LLC Operating Agreement.

3. **Additional Security.** Contemporaneously with the execution of this Agreement and the LLC Operating Agreement, the Private Owner shall (i) pursuant to the applicable provisions in the LLC Operating Agreement and the Custodial and Paying Agency Agreement, establish the Private Owner Pledged Account and (ii) deliver or cause to be delivered to the Paying Agent the Additional Security (which, if in the form of Qualifying Cash Collateral, shall be remitted for deposit into the Private Owner Pledged Account).

4. **PO Owner Undertaking; LPOA Letter.**

(a) Contemporaneously with the execution of this Agreement, the Private Owner shall cause to be delivered to the Initial Member and the PMN Agent an instrument in the form attached hereto as Exhibit E (a "**PO Owner Undertaking**"), executed by each PO Owner. Each Person required pursuant to the preceding sentence to deliver a PO Owner Undertaking shall execute and deliver a separate PO Owner Undertaking.

(b) Contemporaneously with the execution of this Agreement, the Private Owner shall execute and deliver to the Receiver a letter in the form attached hereto as Exhibit F, appropriately completed.

5. **Representations and Warranties of Private Owner.** The Private Owner hereby represents and warrants separately to each of the Initial Member and the Company as follows:

(a) The Private Owner is a “Qualified Transferee,” and, as such, represents and warrants that each item included in such definition is true and correct in all respects as of the date hereof as if set forth herein.

(b) All information and documents provided to the Initial Member or its agents by or on behalf of the Private Owner or any Affiliate thereof (or by or on behalf of any Specified Parent of the Private Owner or any Affiliate thereof) in connection with this Agreement and the transactions contemplated hereby, including, but not limited to, the “Purchaser Eligibility Certification,” the “Bid Certification,” the “Structured Transaction Qualification Request,” the “Bidder Qualification Application,” the “Bid Form” and the “Structured Transaction Confidentiality Agreement,” are true and correct in all respects as of the date hereof and do not fail to state any fact necessary to make the information contained therein not misleading.

(c) As of the date hereof, the only PO Owner is ColFin 2011-2 CRE Holdco, LLC, a Delaware limited liability company.

6. **Exclusivity of Representations.** THE PRIVATE OWNER INTEREST IS SOLD “AS IS” AND “WITH ALL FAULTS,” WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTY OR RECOURSE WHATSOEVER, INCLUDING AS TO ITS VALUE (OR THE VALUE, COLLECTABILITY OR CONDITION OF THE ASSETS HELD BY THE COMPANY OR ANY OF THE COLLATERAL FOR ANY SUCH ASSETS), FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE OR ANY OTHER MATTER, WHETHER EXPRESS OR IMPLIED OR BY OPERATION OF LAW OR OTHERWISE, AND THE INITIAL MEMBER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PRIVATE OWNER INTEREST, THE ASSETS, OR THE COLLATERAL SECURING THE ASSETS.

7. **Assignment.** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs (in the case of any individual), successors and permitted assigns; provided, however, that the Private Owner may not assign this Agreement or any of its rights, interests or obligations hereunder. Any purported assignment or delegation in violation of this Agreement shall be null and void ab initio.

8. **Beneficiaries.** This Agreement shall inure to the benefit of, and may be enforced by, the Initial Member, the Private Owner and the Company and their respective successors and assigns. Except for the FDIC (in its corporate capacity), which shall be considered a third party beneficiary to this Agreement, there shall be no other third party beneficiaries hereunder.

9. **Waivers and Amendments.** No amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and executed by the Initial Member, the Private Owner, the Company and the FDIC (in its corporate capacity).

10. **Governing Law.** EACH PARTY TO THIS AGREEMENT AGREES AND ELECTS THAT, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION, AND EACH PARTY TO THIS AGREEMENT UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAWS OF ANY OTHER JURISDICTION GOVERN THIS AGREEMENT. Nothing in this Agreement shall require any unlawful action or inaction by any party hereto.

11. **Jurisdiction; Venue and Service.**

(a) Each of the Private Owner 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 or any such Affiliate commenced by the Initial Member arising out of, relating to, or in connection with this Agreement or any Transaction Document, and waives any right to:

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

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

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

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

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

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

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

(iii) agrees to bring any suit, action or proceeding by it or any such Affiliate against the Initial Member arising out of, relating to, or in connection with this Agreement or any Transaction Document (other than the LLC Operating Agreement) 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 11(a)(iii), to bring that suit, action or proceeding in only the Supreme Court of the State of New York, County of New York, and waives any right to remove or transfer such suit, action or proceeding to any other court or dispute-resolution forum without the consent of the Initial Member.

(b) Each of the Private Owner and the Company, 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 11(a) may be enforced in any court of competent jurisdiction.

(c) Subject to the provisions of Section 11(d), each of the Private Owner 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 11(a) or Section 11(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 (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 11(c) shall affect the right of any party to serve process in any other manner permitted by Law.

(d) Nothing in this Section 11 shall constitute consent to jurisdiction in any court by the FDIC (in any capacity), other than as expressly provided in Section 11(a)(iii) and Section 11(a)(iv), or in any way limit the FDIC's (in any capacity) right to remove, transfer, seek to dismiss, or otherwise respond to any suit, action, or proceeding against it in any forum.



12. **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 AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

13. **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, 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 below. 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; (B) if delivered by mail, when delivered (or refused), and (C) 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 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 of the recipient. 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.

If to the Initial Member, to:

Assistant Director - Structured Transactions  
Federal Deposit Insurance Corporation  
550 17th Street, NW (Room F-7015)  
Washington, D.C. 20429-0002  
Attention: Ralph Malami  
E-mail Address: rmalami@fdic.gov

with a copy to:

Supervisory Counsel  
FDIC Legal Division  
Litigation and Resolutions Branch, Receivership Section  
Special Issues Unit  
3501 Fairfax Drive (Room D-7102)  
Arlington, Virginia 22226  
Attention: Kathleen Russo  
E-mail Address: krusso@fdic.gov

If to the Private Owner or to the Company, to:

CRE Venture 2011-2, LLC  
2450 Broadway, 6th Floor  
Santa Monica, California 90404  
Attention: Paul Fuhrman  
E-mail Address: [REDACTED]

with copies to:

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

14. **Counterparts; Facsimile Signatures.** 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. 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.

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


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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.


**PRIVATE OWNER:**

**COLFIN 2011-2 CRE FUNDING, LLC**

By:   
Name: Mark M. Hedstrom  
Title: Vice President

**INITIAL MEMBER:**

**FEDERAL DEPOSIT INSURANCE CORPORATION** in its capacity as Receiver (as defined in the Agreement of Definitions referred to herein)

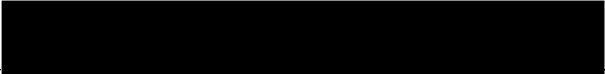
By:   
Name: Jocelyn M. Spector  
Title: Attorney in Fact

**COMPANY:**

**CRE VENTURE 2011-2, LLC**

By: Federal Deposit Insurance Corporation in its capacity as Receiver (as defined in the Agreement of Definitions referred to herein), as Sole Member and Manager

By:

  
Name: Jocelyñ M. Speçtor

Title: Attorney in Fact

[Signature Page to Private Owner Interest Sale and Assignment Agreement - Page 2 of 2]