

**SERVICING AGREEMENT**  
**BY AND BETWEEN**  
**INDYMAC VENTURE, LLC**  
**AND**  
**ONEWEST BANK, FSB**

**Dated as of March 19, 2009**

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## **SCHEDULES AND EXHIBITS**

### Exhibits

Exhibit A	Loan Schedule
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Schedule 3	Reimbursement of Servicer Advances
Schedule 4	Form of Electronic Report on the Loans and Collateral
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## SERVICING AGREEMENT

THIS SERVICING AGREEMENT (as the same shall be amended or supplemented, this “**Agreement**”) is made and entered into as of the 19th day of March, 2009 (the “**Effective Date**”) by and between INDYMAC VENTURE, LLC, a Delaware limited liability company (including its successors and assigns, the “**Company**”), and ONEWEST BANK, FSB, a federal savings bank (including those of its successors and assigns as are expressly permitted pursuant to this Agreement, the “**Servicer**”).

### RECITALS

WHEREAS, the Company owns the Loans (as defined below) described on the Loan Schedule (as defined below) attached hereto as Exhibit A; and

WHEREAS, the Company is obligated to service and manage the Loans and related Collateral (as defined below), including the Acquired Collateral, pursuant to that certain Participation and Servicing Agreement (the “**Participation Agreement**”), dated as of the 19th day of March, 2009, by and between the Company and the Federal Deposit Insurance Corporation as Receiver (“**Receiver**”) for IndyMac Federal Bank, FSB (including its successors and assigns, the “**Participant**”); and

WHEREAS, the Company and the Servicer desire that the Servicer service and administer the Loans and the Collateral on behalf of the Company in a manner that is, at all times, consistent with the requirements of this Agreement;

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

### ARTICLE I DEFINITIONS AND CONSTRUCTION

Section 1.01 **Definitions.** For purposes of this Agreement, the following terms shall have the meanings and definitions hereinafter respectively set forth:

“**Acceptable Rating**” means any of the top three rating categories that may be assigned to any security, obligation or entity by the Rating Agencies.

“**Acquired Collateral**” means real or personal property to which title is acquired by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, in any such case in accordance with the Loan Documents and this Agreement.

“**Affiliate**” means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person); provided, however, that for purposes of this Agreement, the Participant shall not be deemed to be an Affiliate of the Company or of any Affiliate of the

Company. For purposes of this definition, the term “**control**” (including the phrases “**controlled by**” and “**under common control with**”) when used with respect to any specified Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

“**Agreement**” has the meaning given in the preamble and shall include all exhibits and schedules hereto.

“**Authorized Funding Draw**” means any principal advance after the Effective Date with respect to a Loan listed on the Loan Schedule (which shall include any unfunded principal commitment that is permitted to be allocated to an interest reserve pursuant to the Loan Documents and is set forth in the column of the Loan Schedule entitled “Undisbursed Balance – Interest Reserve”), up to the Maximum Authorized Funding Draw; provided, however, that (i) if required by applicable Law or if otherwise deemed necessary by the Company and the related Loan Documents provide for the Company’s right to request the same, an endorsement to the title policy insuring the Loan, which endorsement shall be in form and content acceptable to the Company, is obtained that (a) brings down the effective date of the title policy to the date on which the applicable Authorized Funding Draw it covers is made, (b) increases the liability limit of the title policy by an amount at least equal to the principal amount of such Authorized Funding Draw, and (c) contains no new exceptions to title that have not been authorized or consented to by the Company in accordance with the Servicing Standard prior to the time the request for such principal advance is made; (ii) notwithstanding the Servicing Standard, the Servicer shall make or permit an Authorized Funding Draw if the then outstanding principal balance of the Loan exceeds the value of the Collateral (as reasonably determined by the Company or the Servicer) only if the Company determines, in its reasonable judgment, that the Borrower is reasonably likely to be able to repay the Loan or that the making of the Authorized Funding Draw is in the best interests (in terms of maximizing the value of the Loan) of the Company and the Participant; and (iii) such advance is made in accordance with the terms of the Loan and the Loan Documents; provided, however, if any term with respect to the Loan or the Loan Documents precludes such advance in the event of a Borrower default, such term may be waived if the Company determines, in its reasonable judgment, that such waiver is in the best interests of the Company and the Participant in terms of maximizing the value of the Loan.

“**Borrower**” means the borrower or other obligor with respect to a Loan.

“**Business Day**” means any day except a Saturday, Sunday or other day on which federal savings banks in California, New York or Washington, D.C. or United States federal government offices are required or authorized by Law to close.

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

“**Collateral Document**” means any pledge agreement, security agreement, personal or corporate guaranty, deed of trust, deed, mortgage, contract for the sale of real property,

assignment, collateral agreement or other agreement or document of any kind, whether an original or a copy, whether similar to or different from those enumerated, (i) securing in any manner the performance or payment by any Borrower of its obligations or the obligations of any other Borrower under any of the Loans or the Notes evidencing the Loans or (ii) evidencing the Acquired Collateral.

“**Collection Account**” has the meaning given in Section 2.06(a).

“**Company**” has the meaning given in the preamble.

“**Conservator**” means the FDIC in its capacity as Conservator for IndyMac Federal Bank, FSB.

“**Default**” has the meaning given in Section 7.01.

“**Default Rate**” means the default interest rate prescribed in a Note.

“**Effective Date**” has the meaning given in the preamble.

“**Electronic Tracking Agreement**” means an agreement in the form of Exhibit B, as it may be supplemented or amended.

“**Eligible Account**” means one or more segregated trust or custodial account or accounts established and maintained with an Eligible Institution, each of which shall be held in trust for the benefit of the Company and the Participant as required by Article II.

“**Eligible Institution**” means a Person that is not a Related Person of the Company and that is a federally insured depository institution that is well capitalized; provided that a Related Person of the Company may be deemed to be an Eligible Institution if the Participant provides written consent (which may be withheld in the Participant’s sole and absolute discretion), which consent may be withdrawn by the Participant upon written notification to the Company, in which case such Related Person of the Company shall no longer constitute an Eligible Institution as of the receipt of such notice and any accounts maintained pursuant to this Agreement at such institution shall be moved to an Eligible Institution within three (3) Business Days after the receipt of such notice.

“**Environmental Hazard**” means the presence at, in or under any real property constituting part of the Collateral (whether held in fee simple estate 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 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 under applicable environmental Law.

“**Escrow Accounts**” has the meaning given in Section 2.08.

“**Escrow Advance**” means 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.

“**Excluded Expenses**” means any advances for fees, costs, expenses or indemnified amounts that: (i) are not incurred in accordance with the Servicing Standard, (ii) are paid to any Related Person of the Company, or any Related Person of the Servicer or any Subservicer (except payments to IndyMac Financial Services (or any successor thereto) or as is otherwise expressly permitted pursuant to this Agreement), (iii) are incurred by the Company or the Servicer to become a MERS member or to maintain the Company or the Servicer as a MERS member in good standing, (iv) are incurred to pay fees or other compensation to or expenses of financial advisers, (v) constitute interest on any Servicing Expenses, (vi) constitute overhead or administrative costs incurred by the Servicer or any other Person, (vii) constitute any servicing, management or similar fees paid to the Servicer, any Subservicer or any other Person or (viii) are incurred, and relate only to the period, after the Effective Date as a result of the Servicer’s or any Subservicer’s failure to service any Loan or Collateral properly in accordance with the applicable Loan Documents, this Agreement, any Subservicing Agreement, the Servicing Standard or otherwise or failure to make a payment in a timely manner, or failure otherwise act in a timely manner; except in each of the foregoing cases, to the extent such failure was caused by (x) the action or inaction of the Participant or MERS or (y) a technical failure or other malfunction of the MERS® System, and in either case, without any fault of the Company or the Servicer.

“**Failed Thrift**” means IndyMac Bank, FSB.

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

“**Fee Schedule**” means **Schedule 1**, as the same may be amended from time to time by the Company and the Servicer without the Participant’s consent.

“**FDIC**” means the Federal Deposit Insurance Corporation in any capacity.

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

“**Guarantor**” means 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.

“**Immediate Family Member**” means, with respect to any individual, his or her spouse, parents, parents-in-law, grandparents, descendants, children (whether natural or adopted), children-in-law, stepchildren, grandchildren and grandchildren-in-law.

“**Indemnified Parties**” has the meaning given in **Section 8.02**.

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



- (1) the specified Person makes a general assignment for the benefit of its 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 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) at least 90 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 at least 90 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 if the appointment is stayed, at least 90 days have passed following the expiration of the stay if the appointment has not been vacated.

**"Insolvency Proceeding"** means any proceeding under Title 11 of the United States Code (11 U.S.C. §§101, *et seq.*) or any proceeding under the Law of any jurisdiction involving any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief.

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

**"Lien"** means any mortgage, pledge, security interest, equity interest, participation interest, lien or other charge or encumbrance, including the lien or retained security title of a conditional vendor, upon or with respect to any property or assets.

**"LIP Account"** shall mean an Eligible Account established and maintained with an Eligible Institution for the sole purpose of holding and distributing the LIP Funds.

**“LIP Funds”** has the meaning given in Section 2.07(a).

**“LLC Interest”** has the meaning given in the Participation Agreement.

**“Loan”** means any loan or Loan Participation listed on the Loan Schedule and any loan into which any listed loan or Loan Participation is refinanced, and includes with respect to each such loan or Loan Participation: (i) any obligation evidenced by a Note; (ii) all rights, powers or Liens of the Company in or under the Collateral Documents; (iii) any contract for deed or installment land contract and the real property which is subject to any such contract for deed or installment land contract; and (iv) any lease and the related leased property.

**“Loan Documents”** means all documents, agreements, certificates, instruments and other writings (including all Collateral Documents) now or hereafter executed by or delivered or caused to be delivered by any Borrower, any Guarantor or any other obligor evidencing, creating, guaranteeing or securing, or otherwise executed or delivered in respect of, all or any part of a Loan or any Acquired Collateral or evidencing any transaction contemplated thereby, and all Modifications thereto.

**“Loan Participation”** means any loan subject to a shared credit, participation or similar intercreditor agreement (excluding, for the avoidance of doubt, the Participation Agreement) under which the Failed Thrift, the Conservator or the Receiver was the lead or agent financial depository institution or otherwise managed or held the credit or sold participations, or under which the Failed Thrift, the Conservator or the Receiver was a participating financial depository institution or purchased participations in a credit managed by another Person.

**“Loan Participation Agreement”** means an agreement (excluding, for the avoidance of doubt, the Participation Agreement) under which the Failed Thrift, the Conservator or the Receiver was the lead or agent financial depository institution or otherwise managed or held a shared credit or sold participations, or under which the Failed Thrift, the Conservator or the Receiver was a participating financial depository institution or purchased participations in a credit managed by another Person.

**“Loan Proceeds”** means (i) any and all proceeds (net of such proceeds as are payable to others under any Loan Participation Agreement) with respect to any or all of the Loans and any or all of the Collateral that are received at any time after the Effective Date, including principal, interest, interest at the Default Rate, prepayment fees, premiums and charges, extension and exit fees, late fees, assumption fees, other fees and charges, insurance proceeds and condemnation payments (or any portion thereof) that are not used and disbursed to repair, replace or restore the related Collateral in accordance with the terms of the Loan Documents; (ii) any and all proceeds from sales or other dispositions of any or all of the Loans or the Collateral; (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 Borrowers or Guarantors of any kind or nature with respect to the Loans; and (v) any interest or other earnings accrued and paid on any of the foregoing clauses (i) through (iv) while held in the Collection Account or any Other Account.

**“Loan Schedule”** means the schedule of Loans attached as Exhibit A (and delivered in electronic format to the Company), which shall be updated as of the Closing Date.

**“Maximum Authorized Funding Draw”** means, with respect to any Loan, the maximum aggregate amount of principal advances set forth in the column of the Loan Schedule entitled “Maximum Authorized Funding Draw” (which shall include any unfunded principal commitment that is permitted to be allocated to an interest reserve pursuant to the Loan Documents and is set forth in the column of the Loan Schedule entitled “Undisbursed Balance – Interest Reserve”), as the same may be adjusted with the consent of the Participant (such consent not to be unreasonably withheld) to correct errors due to a miscalculation of the maximum aggregate amount of the unfunded principal commitment for such Loan under the relevant Loan Documents.

**“MERS”** means Mortgage Electronic Registration Systems, Incorporated.

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

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

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

**“Other Accounts”** has the meaning given in Section 2.09.

**“Participant”** has the meaning given in the recitals.

**“Participation Agreement”** has the meaning given in the recitals.

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

(1) direct obligations of, or guaranteed as to timely payment of principal and interest by, the United States of America, or any agency or instrumentality of the United States of America the obligations of which are backed by the full faith and credit of the United States of America;

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

commercial paper or long-term unsecured debt obligations of such holding company) have an Acceptable Rating;

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

(4) mutual funds in which investments are limited to the obligations referred to in clauses (1), (2) or (3) of this definition; and

(5) with the prior written consent of the Company, any other demand, money market or time deposit or other obligation, security or investment.

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

**“Qualified Servicer”** means any Person that (i) is properly licensed and qualified to conduct business in each jurisdiction in which such licenses and qualifications to conduct business are necessary for the servicing of the Loans and management of the Collateral and the Acquired Collateral, (ii) is a member of MERS (if any of the Loans being serviced are registered on the MERS® System), (iii) 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 residential or commercial properties, including the number and types of loans serviced, and the ability to track, process and post payments, to furnish tax reports to borrowers, to monitor construction, and to approve and disburse construction draws, and (iv) (x) has an Acceptable Rating as a mortgage loan servicer or special servicer, (y) is an FDIC-insured depository institution or an Affiliate of an FDIC-insured depository institution, or (z) in the case of any mortgage loan servicer or special servicer that does not have an Acceptable Rating, is acceptable to and approved by the Participant (such approval not to be unreasonably withheld, delayed or conditioned).

**“Rating Agencies”** means each of Moody’s Investors Service, Inc., Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc., Fitch IBCA, Inc. and such other rating agencies as are nationally recognized.

**“Receiver”** has the meaning given in the recitals.

**“Related Person”** means, with respect to any specified Person, (i) any Affiliate of such specified Person, (ii) any Person owning or controlling five percent (5%) 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) (other than an Immediate Family Member referred to in clause (iii)) acts in any capacity referred to in clause (ii), or (v) any Person who is an officer, director, general partner, managing

member, trustee or holder of five percent (5%) or more of the outstanding voting securities, voting equity interests or beneficial interests of any Person described in clauses (i) through (iv); provided, however, that for purposes of this Agreement, the Participant shall not be deemed to be a Related Person of the Company or of any Related Person of the Company.

**“Servicer”** has the meaning given in the preamble.

**“Servicer Advances”** means (a) advances made by or on behalf of the Servicer to fund Servicing Expenses, and (b) to the extent not covered by clause (a), any and all legal fees and expenses (including judgments, settlements and reasonable attorneys’ fees) incurred by the Servicer in its defense of claims asserted against the Company that (x) relate to one or more Loans, and (y) arise out of the acts or omissions of the Failed Thrift, the Conservator or the Receiver in connection with the origination or servicing of such Loans prior to the Effective Date.

**“Servicer Remittance Date”** means the 10<sup>th</sup> day of each month, or such other day as is agreed to by the Servicer and the Company, provided, however, that, in any case, if such day is not a Business Day, the Servicer Remittance Date shall be the immediately preceding Business Day.

**“Servicing Expenses”** means all customary and reasonable out-of-pocket fees, costs, expenses and indemnified amounts incurred in connection with servicing the Loans and the Acquired Collateral, 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 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 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, and (iii) any and all direct expenses related to the preservation, operation, demolition, management and sale of the Acquired Collateral, including real estate broker fees and expenses; provided, however, that Servicing Expenses shall not include, without the prior written consent of the Company (in the Company’s sole and absolute discretion), Authorized Funding Draws or any Excluded Expenses.

**“Servicing Fee”** has the meaning given in Section 2.03.

**“Servicing Obligations”** has the meaning given in Section 2.04.

**“Servicing Standard”** has the meaning given in Section 2.04.

**“Site Assessment”** has the meaning given in Section 3.03.

**“Subservicer”** has the meaning given in Section 4.01.

**“Subservicing Agreement”** has the meaning given in Section 4.02.

**“Termination Notice”** means any written notice of termination required pursuant to Article VII.

**“Uniform Commercial Code”** means, with respect to each discrete element or category of the personal property Collateral, the Uniform Commercial Code in effect in the applicable jurisdiction, as the same may be amended from time to time.

**“Unpaid Principal Balance”** means, at any time, (i) for each Loan, an amount equal to the then aggregate outstanding principal balance of the Loan and (ii) for each Loan with respect to which some or all of the related Collateral has been converted to Acquired Collateral, until such time as the Acquired Collateral (or portion thereof) is liquidated, an amount equal to the unpaid principal balance of the related Loan (adjusted pro rata for partial collateral sales, debt forgiveness or retained indebtedness) at the time such Loan was converted to Acquired Collateral, plus 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.

## **ARTICLE II SERVICING OBLIGATIONS OF THE SERVICER**

Section 2.01 **Appointment and Acceptance as Servicer.** Effective as of the date hereof, the Company appoints the Servicer to service, administer, manage and dispose of the Loans and the Collateral on behalf of and as an agent of the Company.

Section 2.02 **Limited Power of Attorney.** The Company hereby grants to the Servicer a limited power of attorney to execute all documents on its behalf in accordance with the Servicing Standard set forth below and as may be necessary to effectuate the Servicer’s obligations under this Agreement 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 Servicer of written notice thereof from or on behalf of the Company, or (ii) termination of this Agreement pursuant to Article VII.

Section 2.03 **Servicing Fee.** As consideration for servicing the Loans and the Collateral, on each Servicer Remittance Date, the Servicer shall be paid such monthly servicing fees as are set forth on the Fee Schedule (the **“Servicing Fee”**).

Section 2.04 **Servicing Obligations and Servicing Standard.** The Servicer shall take such actions and perform such duties in connection with the servicing, administration, management and disposition of the Loans and the Collateral as are set forth on Schedule 2, as the same may be amended from time to time by the Company and the Servicer without the Participant’s consent (the **“Servicing Obligations”**). The Servicer shall perform its Servicing Obligations (i) in the best interests and for the benefit of the Participant 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 (including this Article II), (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 (the requirements in clauses (i) through (v) collectively, the "**Servicing Standard**"). In addition, the Servicer shall perform its Servicing Obligations without regard to (a) any relationship that the Servicer, the Company or any Subservicer or any of their respective Affiliates may have to any Borrower, Guarantor or other obligor, or any of their respective Affiliates, including any other banking or lending relationship, (b) the Servicer's, the Company's or any Subservicer's obligation to make disbursements and advances with respect to the Loans and the Collateral, (c) any relationship that the Servicer or any Subservicer may have to each other or to the Company or any of its Affiliates, or any relationship that any of their respective Affiliates may have to the Company or any of its Affiliates (other than the contractual relationship evidenced by this Agreement or any Subservicing Agreement) and (d) the Servicer's or any Subservicer's right to receive compensation (including the Servicing Fee) for its services under this Agreement or any Subservicing Agreement.

Section 2.05 **Registration with MERS.** The Servicer shall take all actions necessary to ensure that all Loans registered on the MERS® System shall remain registered unless default, foreclosure or similar legal or MERS requirements dictate otherwise. No Person other than MERS, solely as nominee for the Company and its successors and assigns, shall be identified on the MERS® System as having any interest in any of the Loans that are so registered unless otherwise consented to by the Participant. The Servicer shall provide the Company and the Participant with such reports from MERS as either the Company or the Participant, from time to time, may request, including to allow the Company to verify the Persons identified on the MERS® System as having any interest in any of the Loans and to confirm that the Loans registered on the MERS® System continue to be so registered. The Servicer shall also execute and deliver to the Company the Electronic Tracking Agreement. Without limiting the foregoing, upon the request of the Company, the Servicer shall request that MERS 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 Company and, if requested by the Company, shall request that MERS change the information in such fields, to the extent MERS will do so in accordance with its policies and procedures, to reflect its instructions.

Section 2.06 **Collection Account.**

(a) Except as otherwise directed by the Company, the Servicer shall establish and maintain one or more Eligible Accounts, which shall be held in trust for the benefit of the Company and the Participant and shall be for the sole purpose of holding and distributing the Loan Proceeds (each, a "**Collection Account**"). The Servicer shall deposit into the Collection Account all Loan Proceeds on a daily basis (without deduction or setoff as provided in Section 11.13 hereof). No funds from any other source (other than interest or earnings on the Loan Proceeds) shall be commingled in the Collection Account.

(b) Except as otherwise directed by the Company, on each Servicer Remittance Date, the Servicer shall remit all amounts then on deposit in the Collection Account to the Company.

(c) Except as otherwise directed by the Company, any and all amounts on deposit in (or that are required to have been deposited into) the Collection Account (including interest and earnings thereon) shall be withdrawn and disbursed strictly in accordance with this Agreement; provided, however, that if the Company, the Servicer or any Subservicer at any time erroneously deposits any amount into the Collection Account, it may withdraw such amount.

(d) Amounts on deposit in the Collection Account shall be invested in Permitted Investments, but with a maturity that allows for their allocation and distribution on a monthly basis in accordance with this Agreement.

(e) The Collection Account (and all funds therein) will be subject to an account control agreement among the Company, the Participant and the Eligible Institution that will hold such Collection Account.

(f) Except as otherwise directed by the Company, any and all amounts due the Company under this Agreement shall be remitted by wire transfer, in immediately available funds, to such account or accounts as the Company may, from time to time, direct.

#### Section 2.07 **LIP Account.**

(a) Except as otherwise directed by the Company, the Servicer shall maintain the LIP Account, which shall be held in trust for the benefit of the Company and the Participant and which shall be funded with an initial principal amount equal to the aggregate Maximum Authorized Funding Draw as of the date the LLC Interest is sold (or such later time as is agreed to by the Company and the Participant) (the “**LIP Funds**”). The Participant and the Company shall, promptly upon the Company’s request therefor, deposit additional amounts into the LIP Account as may be necessary to reflect any adjustment to the Maximum Authorized Funding Draw with respect to any Loan that is permitted under the definition of the term “Maximum Authorized Funding Draw” in Section 1.01 hereof. No funds from any other source (other than interest or earnings on the LIP Funds) shall be commingled in the LIP Account.

(b) Except as otherwise directed by the Company, any and all amounts on deposit in (or that are required to have been deposited into) the LIP Account (including interest and earnings thereon) shall be withdrawn and disbursed strictly in accordance with this Agreement.

(c) The Servicer shall be authorized, at the Company’s direction, to withdraw funds (or to make draw requests on the escrow agent for funds) from the LIP Account only to make Authorized Funding Draws, and the LIP Account and the LIP Funds shall not otherwise be used for any purpose (except in connection with the liquidation of the LIP Account in accordance with Section 2.07(d)). The Servicer shall not permit withdrawals from the LIP Account for any other purpose.

(d) At the direction of the Company, the LIP Account shall be liquidated (and no further Authorized Funding Draws may be made on or after the date of such direction), and all remaining LIP Funds then on deposit in the LIP Account, including all interest and earnings thereon, shall be distributed to the Company.



(e) The LIP Account (and all funds therein) will be subject to an account control agreement among the Company, the Participant and the Eligible Institution that will hold such LIP Account.

(f) The LIP Funds shall be invested in Permitted Investments, but with a maturity that allows for (i) distribution of the LIP Funds as and when needed to make Authorized Funding Draws and (ii) liquidation of the LIP Account and distribution of the remaining LIP Funds (which liquidation and distribution shall be at such time and in such manner as the Company shall direct the Servicer).

Section 2.08 **Escrow Accounts**. Except as otherwise directed by the Company, the Servicer shall establish and maintain one or more Eligible Accounts, each of which shall be held in trust for the benefit of the Company and the Participant ("**Escrow Accounts**"). The Servicer shall deposit into the Escrow Accounts on a daily basis all collections from the Borrowers for the payment of taxes, assessments, hazard insurance premiums, and comparable items for the account of the Borrowers. The Servicer shall pay to the Borrowers interest on funds in Escrow Accounts to the extent required by law or by the Applicable Loan Documents.

Section 2.09 **Other Accounts**. At the direction of the Company, the Servicer shall establish and maintain such other Eligible Accounts as may be directed by the Company, each of which shall be held in trust for the benefit of the Company and the Participant, and shall be funded and disbursed only in accordance with such instructions as are provided by the Company ("**Other Accounts**").

Section 2.10 **Maintenance of Insurance Policies; Errors and Omissions and Fidelity Coverage**.

(a) The Servicer and each Subservicer shall cause to be maintained for the Collateral (including any Acquired Collateral) from an insurer reasonably acceptable to the Company for each Loan and Acquired Collateral with respect to which the Borrower has failed to maintain required fire, hurricane, flood and hazard insurance with extended coverage as is customary in the area in which the Collateral is located and in such amounts and with such deductibles as, from time to time, is directed by the Company.

(b) The Servicer and each Subservicer shall at all times maintain in effect a blanket fidelity bond and an errors and omissions insurance policy affording, in each case, coverage with respect to all officers, directors, employees and other Persons acting on behalf of the Servicer or the Subservicer, as applicable, and covering errors and omissions in the performance of the Servicer's, or the Subservicer's, as applicable, obligations under this Agreement or any Subservicing Agreement. The errors and omissions insurance policy and the fidelity bond shall be, at all times, in such form and amount that would meet the requirements, as amended from time to time, of Fannie Mae if Fannie Mae were the purchaser of the Loans, unless the Servicer or Subservicer, as the case may be, has received a waiver from Fannie Mae of any requirement to maintain such insurance in the form and amount required by Fannie Mae. The Servicer and each Subservicer shall provide the Company with copies of certificates evidencing such coverage.

(c) Copies of fidelity bonds and insurance policies required to be maintained pursuant to this Section 2.10 shall be made available to the Company and its representatives upon request.

Section 2.11 **Expenses**. Except as otherwise directed by the Company, the Servicer shall use its reasonable best efforts to recover from Borrowers and Guarantors all Servicing Expenses that are Servicer Advances. All such Servicing Expenses not recovered from Borrowers or Guarantors and all other Servicer Advances shall be reimbursed only in accordance with the terms set forth on Schedule 3, as the same may be amended from time to time by the Company and the Servicer without the Participant's consent. In the event the Servicer is reimbursed for any expense that is not, or cannot be documented as, a Servicer Advance, in the reasonable determination of the Company, the Servicer shall be obligated to refund such amounts to the Company on the Servicer Remittance Date immediately following the Servicer's receipt of notice from the Company requesting the same. No Servicer Advances shall bear interest chargeable in any way to the Company or be deductible from any Loan Proceeds.

Section 2.12 **Insured or Guaranteed Loans**. If any Loans being serviced pursuant to this Agreement are insured or guaranteed by any Governmental Authority, the Servicer acknowledges and agrees that, if the Company so directs in the Servicing Obligations with respect to such Loans, it shall take any and all actions as may be necessary to insure such insurance or guarantees remain in full force and effect. The Servicer acknowledges and agrees that, upon assumption of the Servicing Obligations with respect to the Loans pursuant to this Agreement, it agrees to fulfill all of the Company's obligations under the contracts of insurance or guaranty.

### **ARTICLE III LOAN DEFAULTS; ACQUISITION OF COLLATERAL**

Section 3.01 **Delinquency Control**. Except as otherwise directed by the Company, the Servicer shall maintain a collection department that substantially complies with the Servicing Standard and protect the Company's investment in the Loans in accordance with the Servicing Standard with Borrowers who are delinquent or in default.

Section 3.02 **Discretion of the Company in Responding to Defaults of Borrower**. 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 Obligations of the Servicer and such direction as the Company may otherwise provide that is consistent with the Servicer's compliance with the Servicing Standard, the Servicer shall cause to be determined the response to such default and course of action with respect to such default, including (a) the selection of attorneys to be used in connection with any action, whether judicial or otherwise, to protect the respective interests of the Company and the Participant in the Loan and the Collateral, (b) the declaration and recording of a notice of such default and the acceleration of the maturity of the Loan, (c) the institution of proceedings to foreclose the Loan Documents securing the Loan pursuant to the power of sale contained therein or through a judicial action, (d) the institution of proceedings against any Guarantor, (e) the acceptance of a deed in lieu of foreclosure, (f) the purchase of the real property Collateral at a foreclosure sale or trustee's sale or the purchase of the personal property Collateral at a Uniform Commercial Code sale, and (g) the institution or

continuation of proceedings to obtain a deficiency judgment against such Borrower or any Guarantor and the collection of such judgment.

Section 3.03 **Acquisition of Acquired Collateral**. Any acquisition of Collateral shall conform with the terms and conditions of this Agreement (including the Servicing Obligations of the Servicer). With respect to any Loan as to which the Servicer has received actual notice of, or has actual knowledge of, any Environmental Hazard with respect to the related Collateral, the Servicer shall immediately provide written notice of same to the Company. In addition, if the Company so directs, prior to the acquisition of title to any Collateral (whether by foreclosure, deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, or otherwise), the Servicer shall cause to be commissioned with respect to such Collateral (i) a Transaction Screen Process consistent with ASTM Standard E 1528-06, by an environmental professional or (ii) such other site inspections and assessments, if any, as would be customary for the jurisdiction in which the Collateral is located (including, for the avoidance of doubt, conducting no site inspections or assessments if consistent with the standards of this clause) 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 treated as a Servicing Expense as long as the costs for such Site Assessment were not paid to any Related Person of the Company, the Servicer or any Subservicer. Except as is otherwise directed by the Company, the Servicer or any Subservicer shall not acquire or otherwise cause the Company or any other ownership entity to acquire all or any portion of any Collateral having any actual or threatened Environmental Hazard by foreclosure, deed in lieu of foreclosure, power of sale or sale pursuant to the Uniform Commercial Code or otherwise.

#### **ARTICLE IV SUBSERVICING**

Section 4.01 **Retention of Subservicer**. The Servicer may engage or retain one or more subservicers, including Affiliates of the Company or the Servicer (individually and collectively, “**Subservicer**”), as it may deem necessary and appropriate, provided that any Subservicer meets the requirements set forth in clauses (i) and (iv) and, to the extent applicable to the services to be performed by such Subservicer, clauses (ii) and (iii) of the definition of Qualified Servicer.

Section 4.02 **Subservicing Agreement Requirements**. Any subservicing agreement with any Subservicer (“**Subservicing Agreement**”) shall, among other things:

(a) provide for the servicing of the Loans and management of the Collateral (including the Acquired Collateral) by the Subservicer in accordance with the Servicing Standard and the other terms of this Agreement;

(b) be terminable upon no more than thirty (30) days’ prior notice upon the occurrence and during the continuance of an Event of Default under the Participation Agreement or any Default under this Agreement or any default under the Subservicing Agreement as set forth in **Section 4.02(n)** below;

(c) provide that the Servicer, as well as the Company and the Participant, shall be entitled to exercise termination rights thereunder upon the occurrence and during the continuance of an Event of Default under the Participation Agreement or any Default under this Agreement;

(d) provide that each of the Subservicer and Servicer acknowledge that the Subservicing Agreement constitutes a personal services agreement between the Servicer and the Subservicer;

(e) provide that each of the Participant and the Company is a third party beneficiary thereunder and entitled to enforce the Subservicing Agreement upon the occurrence and during the continuance of an Event of Default under the Participation Agreement or any Default under this Agreement;

(f) provide that (i) upon the occurrence and during the continuance of an Event of Default under the Participation Agreement or any Default under this Agreement, the Participant may exercise all of the rights of the Servicer thereunder and cause the termination or assignment of the Subservicing Agreement to any other Person, without penalty or payment of any fee;

(g) provide that the Company and the Participant (and each of their respective representatives) shall have access to and the right to review, copy and audit the books and records of the Subservicer and that the Subservicer shall make available its officers, directors, employees, accountants and attorneys to the Company and the Participant (and each of their respective representatives) to answer questions or to discuss any matter relating to the Subservicer's affairs, finances and accounts, as they relate to the Loans, the Collateral, the Acquired Collateral, the Servicing Obligations, the Collection Account, the LIP Account, the Escrow Accounts or any Other Accounts established or maintained pursuant to the Participation Agreement, this Agreement or the Subservicing Agreement or any matters relating to the Participation Agreement, this Agreement or the Subservicing Agreement or the rights or obligations thereunder;

(h) provide that all Loan Proceeds are to be deposited into the Collection Account on a daily basis (without reduction or setoff as provided in Section 11.13 hereof) and that under no circumstances are funds other than Loan Proceeds and interest and earnings thereon to be deposited into the Collection Account;

(i) provide that under no circumstances are any funds, other than the LIP Funds and interest and earnings thereon, to be deposited into the LIP Account;

(j) provide that the Subservicer shall not transfer or assign its rights under the Subservicing Agreement with the Servicer and that any prohibited transaction shall be void *ab initio*;

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

(l) provide that there shall be no right of setoff on the part of the Subservicer;

(m) provide for such other matters as are necessary or appropriate to ensure that the Subservicer is obligated to comply with the Servicing Obligations of the Servicer hereunder in the conduct of such matters as are delegated to the Subservicer;

(n) (i) contain default provisions that relate to the actions of the Subservicer that parallel the provisions of Sections 7.01(a), (b), (c), (d), (e), (f) and (h) of this Agreement, and (ii) provide that each of the Participant and the Company has the right (x) to terminate the Subservicing Agreement by providing written notice upon the occurrence and during the continuance of any such default (except that, with respect to default under the provision that parallels Section 7.01(c), only with respect to the provisions that parallel Sections 5.02(f) and (g) referred to therein), without any cure period other than as may be provided for in the default provisions that parallel provisions in Section 7.01, and upon the occurrence and during the continuance of any Default under any of Sections 7.01(a), (b), (c) (but, with respect to a Default under clause (c), only with respect to Sections 5.02(f) and (g) referred to therein), (d), (e), (f) or (h) of this Agreement, and (y) otherwise to enforce the rights of the Servicer under the Subservicing Agreement;

(o) provide that (i) the Subservicer consents to its immediate termination under the Subservicing Agreement upon a Default under Section 7.01(b) of this Agreement and upon the occurrence of any Insolvency Event with respect to the Subservicer or any of its Affiliates, and (ii) the occurrence of any Insolvency Event with respect to the Subservicer or any Affiliate thereof constitutes a default under the Subservicing Agreement;

(p) provide a full release and discharge of the Participant and any predecessor servicer, and all of their respective officers, directors, employees, agents, attorneys, contractors and representatives, and all of their respective successors, assigns (other than the Company) and Affiliates, from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the Subservicer 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 Participant or such other predecessor servicer prior to the Effective Date (other than due to gross negligence or willful misconduct of the Participant or other predecessor servicer); and

(q) not conflict with the provisions of this Agreement or the Participation Agreement.

Section 4.03 **Servicer Liable for Subservicers.** Notwithstanding anything to the contrary contained herein, the use of any Subservicer shall not release the Servicer from any of its Servicing Obligations or other obligations under this Agreement, and the Servicer shall remain responsible and liable for all acts and omissions of each Subservicer as fully as if such acts and omissions were those of the Servicer. All actions of any Subservicer performed pursuant to the Subservicing Agreement with the Servicer shall be performed as an agent of the Servicer. No Subservicer shall be paid any fees or indemnified out of any Loan Proceeds.

Section 4.04 **Company Approval Required.** Each Subservicing Agreement and all amendments and modifications thereto and the selection of the Subservicer, regardless of whether the Subservicer is a Related Person of the Servicer, shall be subject to the prior written approval of the Company (which approval shall not be unreasonably withheld, delayed or conditioned). A copy of all Subservicing Agreements, as executed and delivered and all amendments thereto, shall be provided to the Company.

## **ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE SERVICER**

Section 5.01 **Representations and Warranties.** The Servicer hereby makes the following representations and warranties as of the date hereof:

(a) The Servicer (i) is a federal savings bank, duly organized, validly existing and in good standing under the laws of the United States; (ii) has qualified or will qualify to transact business as a foreign entity, and will remain so qualified, in the state or states and other jurisdictions where the Loans or the nature of the Servicer's activities under this Agreement makes such qualification necessary; (iii) has all licenses and other governmental approvals necessary to carry on its business as now being conducted and to perform its obligations hereunder; and (iv) has established and shall maintain its principal place of business in the United States.

(b) The Servicer has all requisite power, authority and legal right to service each Loan, and to execute, deliver and perform, and to enter into and consummate the transactions contemplated by, this Agreement, and this Agreement has been duly authorized by all requisite corporate action on the part of the Servicer.

(c) This Agreement and all agreements contemplated hereby to which the Servicer is or will be a party constitute the valid, legal, binding and enforceable obligations of the Servicer, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law); and all requisite corporate action has been taken by the Servicer to make this Agreement and all agreements contemplated hereby to which the Servicer is or will be a party valid and binding upon the Servicer in accordance with their terms and conditions.

(d) The Persons executing this Agreement on behalf of the Servicer are duly authorized to do so.

(e) The execution and delivery of this Agreement by the Servicer, the servicing of the Loans and the Collateral under this Agreement, the consummation of any other of the transactions contemplated by this Agreement, and the fulfillment of or compliance with the terms hereof are in the ordinary course of business of the Servicer and will not (i) result in a breach of any term or provision of the articles or charter or bylaws or operating agreement of the Servicer; (ii) conflict with, result in a breach, violation or acceleration of, or result in a default (or an event which, with notice or lapse of time, or both, would constitute a default) under the terms of any agreement or other instrument to which the Servicer is a party or by which it may

be bound; or (iii) constitute a violation of any Law applicable to the Servicer, and the Servicer is not in breach or violation of any agreement or instrument, or in violation of any Law of any Governmental Authority having jurisdiction over it which breach or violation may impair the Servicer's ability to perform or meet any of its obligations under this Agreement.

(f) No litigation is pending or threatened against the Servicer that would prohibit the Servicer from entering into this Agreement or is likely to materially and adversely affect either the ability of the Servicer to perform its obligations under this Agreement or the financial condition of the Servicer.

(g) Any consent, approval, authorization or order of any Governmental Authority required for the execution, delivery and performance by the Servicer of or compliance by the Servicer with this Agreement or the consummation of the transactions contemplated by this Agreement has been obtained and is effective.

(h) Neither the Servicer nor any Subservicer or their respective Affiliates shall, at any time, (i) be a partner or joint venturer with any Borrower, (ii) be an agent of any Borrower, or allow any Borrower to be an agent of the Servicer or any Subservicer, or (iii) have any interest whatsoever in any Borrower, Guarantor or other obligor with respect to any Loan or any of the Collateral.

Section 5.02 **Reporting, Books and Records and Compliance Covenants.** The Servicer covenants to the Company as follows:

(a) The Servicer shall be responsible for submitting all Internal Revenue Service information returns related to the Loans for all applicable periods commencing with the period beginning January 1, 2009. Information returns include reports on Forms 1098 and 1099 and any other reports required by Law. The Servicer shall be responsible for submitting all information returns required under applicable Law of any foreign Governmental Authority, to the extent such are required to be filed by the Company under such Law, relating to the Loans, for the calendar or tax year in which the Effective Date falls and thereafter.

(b) The Servicer shall cause to be kept and maintained (including by any Subservicer and including records transferred by the Company to the Servicer), at all times, at the Servicer's principal place of business, a complete and accurate set of files, books and records regarding the Loans and the Collateral (including the Acquired Collateral), and the Company's and the Participant's interests in the Loans, the Collateral and the Acquired Collateral, including records relating to the Collection Account, the LIP Account and any Other Accounts maintained in connection with the Loans and Servicer Advances and the disbursement of the Loan Proceeds.

(c) The Servicer 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 Effective Date of this Agreement or three (3) years after the date on which the final Loan Proceeds are distributed to the Company, which date shall be established by notice to the Servicer from the Company. All such books and records shall be available during such period for inspection by the Company and the Participant (and their representatives, including any applicable Government Authority) at all reasonable times during business hours on any Business Days (or, in the case of any such inspection after

the term hereof, at such other location as is provided by notice to the Company or the Participant, as applicable), in each instance upon two (2) Business Days' prior notice to the Servicer. Upon request by the Company, the Servicer, at the sole cost and expense of the Company, shall promptly send copies (the number of copies of which shall be reasonable) of such books and records to the Company. The Servicer shall provide the Company with reasonable advance notice of the Servicer's intention to destroy or dispose of any documents or files relating to the Loans and, upon the request of the Company, shall allow the Company, at its own expense, to recover the same from the Servicer. The Servicer shall also maintain complete and accurate records reflecting the status of taxes, ground rents and other recurring charges generally accepted by the mortgage servicing industry, which would become a Lien on the security property.

(d) The covenants set forth in Section 5.02(b) and (c) above to maintain a complete and accurate set of records shall encompass all files in the Servicer's custody, possession or control pertaining to the Loans and the Collateral, including all original and other documentation pertaining to the Loans and the Collateral, all documentation relating to items of income and expense pertaining to the Loans and the Collateral, and all of the Servicer's (and Subservicer's) internal memoranda pertaining to the Loans and the Collateral.

(e) The Servicer shall cause to be furnished to the Company, each month on the Servicer Remittance Date, commencing the first month following the Effective Date, a monthly Electronic Report on the Loans and Collateral containing such information and substantially in the form set forth on Schedule 4, as the same may be amended from time to time by the Company and the Servicer without the Participant's consent.

(f) The Servicer shall deliver, and shall cause each Subservicer to deliver, to the Company, on or before March 10<sup>th</sup> of each year, or such other day as the Company and the Servicer may agree, commencing in the year 2010, an officer's certificate stating, as to the signer thereof, that (i) a review of such party's activities during the preceding calendar year (or portion thereof) and of its performance under this Agreement (or, as applicable, 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 has fulfilled all of its obligations under this Agreement (or, as applicable, any Subservicing Agreement) in all material respects throughout such year or portion thereof 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. In the event any Subservicer was terminated, resigned or otherwise performed in such capacity for only part of a year, such party shall provide such annual compliance certificate with respect to such portion of the year.

(g) On or before March 10<sup>th</sup> of each year, or such other day as the Company and the Servicer agree, commencing in the year 2010, the Servicer shall, and shall cause each Subservicer to, each at its own expense or the expense of the Company provide a report prepared by a nationally recognized firm of independent certified public accountants to the effect that, with respect to the most recently ended fiscal year, such firm has examined certain records and documents relating to compliance with the servicing requirements in this Agreement and that, on the basis of such examination conducted substantially in compliance with the Uniform Single Attestation Program for Mortgage Bankers, such firm is of the opinion that the Company or the Servicer's (or Subservicer's) activities have been conducted in compliance with this Agreement,



or that such examination has disclosed no material items of noncompliance except for (i) such exceptions as such firm believes to be immaterial, and (ii) such other exceptions as are set forth in the report.

Section 5.03 **Audits by the Company and the Participant.** Until the later of the date that is ten (10) years after the Effective Date and the date that is three (3) years after the date on which the final Loan Proceeds are distributed to the Company, which date shall be established by notice to the Servicer from the Company, the Servicer shall, and shall cause each Subservicer to, (a) provide the Company and the Participant and their respective representatives (including any government agency or instrumentality), during normal business hours and on reasonable notice, with access to and the right to review all of the books of account, reports and records relating to the Loans or any Collateral, the Servicing Obligations, the Collection Account, the LIP Account, the Escrow Accounts, any Other Accounts or any matters relating to this Agreement or the rights or obligations hereunder, (b) permit such representatives to make copies of and extracts from the same, (c) allow the Company and the Participant to cause such books to be audited by accountants selected by the Company or the Participant, as applicable, and (d) allow the Company and the Participant to discuss the Servicer's and Subservicer's affairs, finances and accounts, as they relate to the Loans, the Collateral, the Servicing Obligations, the Collection Account, the LIP Account, the Escrow Accounts and any Other Accounts or any other matters relating to this Agreement or the rights or obligations hereunder, with its officers, directors, employees, accountants (and by this provision the Servicer hereby authorizes such accountants to discuss such affairs, finances and accounts with such representatives), Subservicers and attorneys.

Section 5.04 **No Liens.** The Servicer shall not place or permit (voluntarily or involuntarily) any Lien to be placed on any of the Loans, the Collateral, the Loan Documents or the Loan Proceeds, and shall not take any action to interfere with the Participant's rights as a secured party with respect to the Loans, the Collateral and the Loan Proceeds.

Section 5.05 **Servicer's Duty to Advise; Delivery of Certain Notices.** In addition to such other reports and access to records and reports as are required to be provided to the Company and the Participant hereunder, the Servicer shall cause to be delivered to the Company and the Participant such information relating to the Loans, the Collateral, the Servicer and any Subservicer as the Company or the Participant may reasonably request from time to time and, in any case, shall ensure that the Company and the Participant are promptly advised, in writing, of any matter of which the Servicer or Subservicer becomes aware relating to the Loans, any of the Collateral, the Collection Account, the LIP Account, the Escrow Accounts, any Other Accounts or any Borrower or Guarantor that materially and adversely affects the interests of the Company or the Participant. Without limiting the generality of the foregoing, the Servicer shall immediately notify the Company and the Participant of any claim, threatened claim or litigation against the Company arising out of any Loan and shall cause to be delivered to the Company and the Participant information indicating any possible Environmental Hazards with respect to any Collateral.

Section 5.06 **Notice of Breach.** The Servicer shall immediately notify the Company and the Participant of any failure or anticipated failure on its part to observe and perform any

warranty, representation, covenant or agreement required to be observed and performed by it as the Servicer.

## **ARTICLE VI PARTICIPANT CONSENT**

Section 6.01 **Actions Requiring Participant Consent.** Notwithstanding anything to the contrary contained in this Agreement, neither the Company nor the Servicer shall permit to be taken any of the following actions without the prior written consent of the Participant, which may be withheld or conditioned in the Participant's sole and absolute discretion:

(a) the sale or other transfer of any Loan, Collateral or Acquired Collateral (or any portion thereof) to any Related Person of the Company or to the Servicer or any Subservicer, or any Related Person of the Servicer or any Subservicer;

(b) the financing of the sale or other transfer of any Loan, Collateral or Acquired Collateral (or any portion thereof), unless such financing is approved by the Company consistent with the Company's obligations under the Participation Agreement;

(c) the sale of any Loan, Collateral or Acquired Collateral (or any portion thereof) that provides for any recourse against the Company or the Participant, unless such sale is approved by the Company consistent with the Company's obligations under the Participation Agreement;

(d) any disbursement of any funds in the Collection Account, the LIP Account or any Other Accounts other than in accordance with the provisions of this Agreement;

(e) where applicable the Servicer or any Subservicer ceases to be a member in good standing of MERS when any Loan is registered on the MERS® System;

(f) other than capitalizing accrued and unpaid interest and Servicing Expenses and other than through the making of Authorized Funding Draws, advancing additional funds that would increase the Unpaid Principal Balance of any Loan; or

(g) reimbursement for any expense or cost incurred (or paid) to any Related Person of the Company or any Related Person of the Servicer or any Subservicer, except as otherwise expressly permitted by this Agreement.

Section 6.02 **Amendments, Modification and Waivers.** No provision of this Agreement may be amended, modified or waived except in writing executed by the Company and the Servicer and, except for those provisions that may be amended without the Participant's consent, as and to the extent expressly provided in this Agreement, each such amendment and modification shall be subject to the prior written consent of the Participant (which consent shall not be unreasonably withheld, delayed or conditioned).

**ARTICLE VII**  
**DEFAULTS; TERMINATION; TERMINATION WITHOUT CAUSE**

Section 7.01 **Defaults**. A default (“**Default**”) means the occurrence of:

(a) any failure by the Servicer to remit to the Company or deposit in the Collection Account, the LIP Account, the Escrow Accounts or any Other Accounts any amount required to be so remitted or deposited under the terms of this Agreement in any case which continues unremedied until 12:00 p.m. New York time on the Business Day immediately following the date upon which written notice of such failure requiring the same to be remedied shall have been given by the Company to the Servicer; or

(b) any Insolvency Event (without any cure period other than as may be provided for in the definition of Insolvency Event) with respect to the Servicer or any Affiliate thereof, or any Subservicer or any Affiliate thereof; or

(c) any failure by the Servicer to duly perform its obligations in (i) Section 5.02(e), which failure continues unremedied for a period of five (5) Business Days, or such other period as the Company and the Servicer agree, after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Company to the Servicer, or (ii) Section 5.02(f) or 5.02(g), which failure continues unremedied for a period of twenty-five (25) days, or such other period as the Company and the Servicer agree, after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Company to the Servicer; or

(d) any failure by the Servicer to cause to be remitted to the Company any payment required to be made to the Company under the terms of this Agreement, as set forth in the monthly cash flow and distribution report, in either case which continues unremedied until 12:00 p.m. New York time on the Business Day immediately following the date upon which written notice of such failure requiring the same to be remedied shall have been given by the Company to the Servicer; or

(e) any failure by the Servicer at any time (i) to comply with its obligation to be a Qualified Servicer and to renew or maintain any permit or license necessary to carry out its responsibilities under this Agreement in compliance with Law, or (ii) to cause each Subservicer to be a Qualified Servicer and to renew or maintain any permit or license necessary to carry out its responsibilities under any Subservicing Agreement, which, in the case of either (i) or (ii), 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 Company to the Servicer; or

(f) the occurrence of any event of default or material breach by the Servicer under 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 Company to the Servicer; or

(g) any failure by the Servicer to cause any Subservicer to comply with the terms of its Subservicing Agreement with the Servicer, the occurrence of a default or material

breach by any Subservicer under its Subservicing Agreement or the failure by the Servicer to replace any Subservicer upon the occurrence of any such event in accordance with the terms governing material breach or default under the applicable Subservicing Agreement; or

(h) any other failure (other than those specified in any of Sections 7.01(a) through (g)) by the Servicer to duly observe or perform in any material respect any other covenants or agreements on the part of the Servicer contained in this Agreement or to perform any Servicing Obligation in compliance with the Servicing Standard, and such failure continues unremedied for a period of thirty (30) days, or such other period as the Company and the Servicer agree, after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Company to the Servicer; provided, however, that in the case of a failure that cannot be cured within sixty (60) days (or such other period as the Company and the Servicer agree), the cure period shall be extended for an additional sixty (60) days if the Servicer can demonstrate to the reasonable satisfaction of the Company that the Servicer is diligently pursuing remedial action.

**Section 7.02 Termination with Cause.**

(a) Upon the occurrence and during the continuance of any Default pursuant to this Agreement (without any cure period other than as may be provided for in Section 7.01 above), the Company, in addition to any other rights the Company may have pursuant to this Agreement, at law (including the Uniform Commercial Code), or in equity, including injunctive relief, specific performance or otherwise, may terminate this Agreement by providing a Termination Notice to the Servicer.

(b) Upon the occurrence and during the continuance of a Default pursuant to any of clauses (a), (b), (c), (d), (e), (f) or (h) of Section 7.01 (but, with respect to a Default under clause (c), only with respect to Sections 5.02(f) and (g) referred to therein), in each case, without any cure period other than as may be provided for in Section 7.01, the Participant, in addition to any other rights the Participant may have at law or equity, including injunctive relief, specific performance or otherwise, may (i) terminate this Agreement by providing a Termination Notice to the Servicer and the Company, (ii) terminate the Subservicing Agreements by providing a written termination notice to the Subservicers and the Company and (iii) otherwise enforce this Agreement, in any case, without penalty or payment of any fee.

(c) The Servicer hereby consents to its immediate termination under this Agreement by the Participant upon a Default under Section 7.01(b) of this Agreement.

**Section 7.03 Termination without Cause.** The Company may at any time, without cause, terminate this Agreement, upon providing a Termination Notice to the Servicer, but only as and in accordance with the provisions set forth on Schedule 5, as the same may be amended from time to time by the Company and the Servicer without the Participant's consent.

**Section 7.04 Effective Date.** Termination as specified in this Article VII shall be effective at such time as is specified in the Termination Notice. In the event of such termination, all authority and power of the Servicer under this Agreement, whether with respect to the Loans or otherwise, shall pass to and be vested in the Company, the Participant or the successor

servicer as designated by the Company in the case of termination by the Company, or as designated solely by the Participant in the case of termination by the Participant. The Servicer agrees to cooperate with the Company, the Participant and such successor servicer with respect to the timely and orderly transition of its obligations under this Agreement. The Servicer shall be liable for all obligations of the Servicer that have accrued under this Agreement or at Law prior to such termination.

Section 7.05 **Accounting**. Upon termination of this Agreement as set forth herein, the Servicer shall account for and turn over to the Company or the Participant, or the designee of either, funds collected under the terms of this Agreement. The Servicer shall provide written notice in conformance with all applicable Law to the Borrowers to indicate that their Loans will henceforth be serviced by the Participant, the Company or any successor servicer designated by either the Participant or the Company, as the case may be, and transfer its duties as the Servicer to either the Participant, the Company or any successor Servicer as applicable.

## **ARTICLE VIII INDEPENDENCE OF PARTIES; INDEMNIFICATION**

Section 8.01 **Independence of Parties**. The Servicer shall have the status of, and act as, an independent contractor. Nothing herein contained shall be construed to create a partnership or joint venture or any similar relationship between the Company and the Servicer.

Section 8.02 **Indemnification**. The Servicer agrees to indemnify, defend and hold harmless the Company, the Participant and each of their respective Affiliates, directors, officers, employees and agents and each of their respective successors and assigns (the “**Indemnified Parties**”) from and against any and all claims, demands, suits, actions, proceedings, assessments, losses, costs, expenses (including attorneys’ fees), damages and liabilities of any kind or nature whatsoever directly or indirectly resulting from or arising out of or related to (i) any inaccuracy in any of the Servicer’s warranties or representations contained in this Agreement, (ii) any failure by the Servicer or any Subservicer to observe or perform any or all of the Servicer’s covenants, agreements or warranties contained in this Agreement, (iii) any act taken by or on behalf of the Servicer purportedly pursuant to a power of attorney granted by the Company which act results in a claim related to the unlawful use of such power of attorney, or (iv) failure by the Servicer or any Subservicer to discharge obligations on any Collateral relating to taxes, ground rents or other such recurring charges generally accepted by the mortgage servicing industry, which would become a Lien on the Collateral. The Servicer shall immediately notify the Indemnified Party if a claim is made with respect to this Agreement or any Loans or Collateral, assume (with prior consent of the Indemnified Party) the defense of any such claim and pay all expenses in connection therewith, including attorneys’ fees, and promptly pay, discharge and satisfy any judgment or decree which may be entered against it or any Indemnified Party in respect of such claim. No expenses incurred by the Servicer or any Subservicer in connection with its obligations under this **Section 8.02** shall constitute a Servicer Advance. The Servicer shall follow any reasonable written instructions received from the Indemnified Party in connection with such claims, it being understood that the Indemnified Party shall have no duty to monitor or give instructions with respect to such claims.

Section 8.03 **Procedure for Indemnification.** Promptly upon receipt of written notice of any claim in respect of which indemnity may be sought pursuant to the terms of this Agreement, the Indemnified Party will use its best efforts to notify the Servicer in writing thereof in sufficient time for the Servicer to respond to such claim. Except to the extent that the Servicer is prejudiced thereby, the failure of the Indemnified Party to promptly notify the Servicer of any such claim shall not relieve the Servicer from any liability which it may have to the Indemnified Party in connection therewith. If any claim shall be asserted or commenced against the Indemnified Party, the Servicer will be entitled to participate therein, and to the extent it may wish to assume the defense, conduct or settlement thereof, it shall be entitled to do so with counsel reasonably satisfactory to the Indemnified Party; provided, however, that in the event the Servicer fails, in the reasonable judgment of the Indemnified Party, to vigorously defend or pursue or attempt to settle such claim, the Company shall have the right to assume the conduct, defense or settlement thereof, provided that the Company shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any claim or entering into any settlement, adjustment or compromise of such claim involving injunctive or similar equitable relief being imposed upon any Indemnified Party or any of its Affiliates. After notice from the Servicer to the Company of its election to assume the defense, conduct or settlement thereof, the Servicer will not be liable to the Company for any legal or other expenses consequently incurred by the Company in connection with the defense, conduct or settlement thereof.

## **ARTICLE IX 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, or, delivered by hand or by nationally recognized air courier service, directed to the address of such Person set forth below:

If to the Company:	888 East Walnut Street Pasadena, CA 91101-7211 Attention: Steven T. Mnuchin
with a copy to:	Cleary Gottlieb Steen & Hamilton LLP One Liberty Plaza New York, NY 10006 Attention: Paul E. Glotzer
If to the Participant:	Manager, Structured Transactions c/o Federal Deposit Insurance Corporation 550 17 <sup>th</sup> Street, NW (Room F-7008) Washington, D.C. 20429-0002 Attention: George Alexander

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

If to the Servicer: 888 East Walnut Street  
Pasadena, CA 91101-7211  
Attention: Steven T. Mnuchin

with a copy to: Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, NY 10006  
Attention: Paul E. Glotzer

Any such notice shall become effective when received (or receipt is refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day of the recipient. From time to time, any Person may designate a new address for purposes of notice hereunder by notice to such effect to the other Persons identified above.

## **ARTICLE X GOVERNING LAW; JURISDICTION**

Section 10.01 **Governing Law**. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION. Nothing in this Agreement shall require any unlawful action or inaction by any party hereto.

Section 10.02 **Jurisdiction; Venue and Service**. Each of the parties hereto, for itself and each of its Affiliates, hereby irrevocably and unconditionally:

(a) (i) agrees that any suit, action or proceeding instituted against it by any other party with respect to this Agreement may be instituted, and that any suit, action or proceeding instituted by it against any other party with respect to this Agreement shall be instituted, only in the U.S. District Court for the Southern District of New York or the United States District Court for the District of Columbia (and appellate courts from any of the foregoing), (ii) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it by any other party and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law;

(b) agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 10.02(a) 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 Article IX (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 10.02(a) shall affect the ability of any party to be served process in any other manner permitted by Law;

(c) (i) waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any court specified in Section 10.02(a), (ii) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and (iii) agrees not to plead or claim either of the foregoing; and

(d) agrees that nothing contained in this Section 10.02 shall be construed as a limitation on any removal rights the FDIC may have.

Section 10.03 **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO, FOR ITSELF AND EACH OF ITS AFFILIATES, 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.

## ARTICLE XI MISCELLANEOUS

Section 11.01 **No Assignment by Servicer; No Transfer of Ownership Interests in Servicing Rights.**

(a) The Servicer hereby acknowledges that this Agreement constitutes a personal services agreement between the Company and the Servicer. The Servicer shall not assign any rights or obligations hereunder to any other Person other than as is expressly provided in this Agreement. Any purported sale, sub-participation or assignment or delegation in violation of this Section 11.01(a) shall be void *ab initio* and of no force or effect whatsoever.

(b) Under no circumstances shall the Servicer transfer to any Subservicer or any other Person any ownership interest in the servicing of the Loans or any right to transfer or sell the servicing to the Loans (other than in connection with the sale of any Loan). The Servicer shall not assign, pledge or otherwise transfer or purport to assign, pledge or otherwise transfer any interest to any Person in the servicing of the Loans (other than in connection with the sale of any Loan). Any purported assignment, pledge, delegation or other transfer in violation of this Section 11.01(b) shall be void *ab initio* and of no force or effect whatsoever.

Section 11.02 **Legal Fees.** No party to this Agreement shall be responsible for the payment of the legal fees or expenses incurred by the other party hereto in connection with the negotiation and execution of this Agreement or any subsequent modifications or supplements hereto.



Section 11.03 **Entire Agreement**. This Agreement contains the entire agreement between the Company and the Servicer and supersedes any and all other prior agreements, whether oral or written, with respect to the subject matter hereof.

Section 11.04 **Counterparts; Facsimile Signatures**. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Agreement and any amendments hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No signatory to this Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

Section 11.05 **Headings**. Paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof. All Section and paragraph references contained herein shall refer to Sections and paragraphs in this Agreement unless otherwise specified.

Section 11.06 **Construction**. This Agreement shall be construed and interpreted in accordance with the following:

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

(b) The term “or” is not exclusive.

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

(d) References to any document, instrument or agreement (including this Agreement) (a) 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 (b) shall mean such document, instrument or agreement, or replacement thereto, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time.

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

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

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

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

Section 11.07 **Compliance with Law**. Except as otherwise specifically provided herein, each party to this Agreement shall, at its own cost and expense, obey and comply with all applicable Laws, as they may pertain to such party’s performance of its obligations hereunder.

Section 11.08 **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, 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 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 10.01.

Section 11.09 **Third Party Beneficiary**. The Participant shall be and is hereby designated as a third party beneficiary under this Agreement and, as such, the Participant is entitled to enforce this Agreement upon the occurrence and during the continuance of any Event of Default under the Participation Agreement as if the Participant were a party hereto. Notwithstanding the foregoing the Participant shall have no obligation to undertake any of the duties of the Company hereunder and shall have no liability whatsoever to the Servicer, any

Subservicer or any other party related to this Agreement. There shall be no other third party beneficiaries.

Section 11.10 **Protection of Confidential Information**. The Servicer shall keep confidential and shall not divulge to any party, without the Company's prior written consent, any information pertaining to the Participation Agreement, the Loans or any Borrower thereunder, or any Collateral except as required pursuant to this Agreement and except to the extent that it is necessary and appropriate for the Servicer to do so in working with legal counsel, auditors, taxing authorities, regulatory authorities or other Governmental Authorities or in accordance with the Servicing Standard.

Section 11.11 **No Presumption**. This Agreement shall be construed fairly as to each party hereto and if at any time any such term or condition is desired or required to be interpreted or construed, no consideration shall be given to the issue of who actually prepared, drafted or requested any term or condition of this Agreement or any agreement or instrument subject hereto.

Section 11.12 **No Right of Setoff**. The Servicer hereby waives any and all rights it may otherwise have (whether by contract or operation of Law or otherwise) to any setoff, offset, counterclaim or deduction (or to assert any claim for any setoff, offset counterclaim or deduction) against the Loan Proceeds.

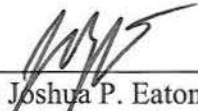
Section 11.13 **Release of Participant and Predecessor Servicers**. The Servicer hereby releases and discharges the Participant and any predecessor servicer, and all of their respective officers, directors, employees, agents, attorneys, contractors and representatives, and all of their respective successors, assigns (other than the Company) and Affiliates, from any and all claims (including any counterclaim or defensive claim), demands, causes of action, judgments or legal proceedings and remedies of whatever kind or nature that the 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 Participant or such other predecessor servicer prior to the Effective Date (other than due to gross negligence or willful misconduct of the Participant or other predecessor servicer).

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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


COMPANY:

**INDYMAC VENTURE, LLC**

By:   
Name: Joshua P. Eaton  
Title: Authorized Signatory

SERVICER:

**ONEWEST BANK, FSB**

By:   
Name: Joshua P. Eaton  
Title: Authorized Signatory

**EXHIBIT A**

**LOAN SCHEDULE**

SEE SECTION VI (GROUPS 6-8), SCHEDULES TO SERVICING AGREEMENT, ON THE SCHEDULES CD.

**EXHIBIT B**

**ELECTRONIC TRACKING AGREEMENT**

SEE TAB 74 FOR EXECUTED COPY.

## **SCHEDULES**

SEE SECTION VI (GROUPS 6-8), SCHEDULES TO SERVICING AGREEMENT, ON THE SCHEDULES CD.

Schedule 1	Fee Schedule
Schedule 2	Servicing Obligations
Schedule 3	Reimbursement of Servicer Advances
Schedule 4	Form of Electronic Report on the Loans and Collateral
Schedule 5	Termination Without Cause