PARTICIPATION AND SERVICING AGREEMENT

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PARTICIPATION AND SERVICING AGREEMENT

THIS PARTICIPATION AND SERVICING AGREEMENT (as the same shall be amended or supplemented, this "**Agreement**") is made and entered into as of the 6th day of May, 2008, by and between MSMC VENTURE, LLC, a Delaware limited liability company (the "**Company**"), and MARKET STREET MORTGAGE CORPORATION, a Florida corporation (including its successors and assigns, "**Participant**").

RECITALS

WHEREAS, on September 28, 2007, the FDIC (hereinafter defined) was appointed receiver for NetBank ("**Receiver**"); and

WHEREAS, NetBank owns all of the issued and outstanding stock of Market Street Mortgage Corporation ("**MSMC**"); and

WHEREAS, MSMC has originated a number of Loans (hereinafter defined) as described on the Loan Schedule attached hereto as Exhibit A (the "**Loan Schedule**"); and

WHEREAS, MSMC has determined to liquidate the Loans and its other assets and liabilities; and

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

WHEREAS, MSMC and the Company have entered into a Contribution and Assignment Agreement dated of even date hereof (the "**Contribution Agreement**"), pursuant to which MSMC has agreed to make a capital contribution of and transfer and convey all of MSMC's right, title and interest in and to the Loans to the Company, and the Company has agreed to transfer and convey to MSMC a participation interest in the Loans (evidenced by a participation certificate), as more fully set forth herein; and

WHEREAS, pursuant to the Limited Liability Company Interest Sale and Assignment Agreement dated of even date hereof (the "**LLC Interest Sale Agreement**"), MSMC has agreed to sell and transfer the LLC Interest to Gulf National One, L.L.C. (the completion of such sale, the "**Closing**"); and

WHEREAS, MSMC and the Company desire to memorialize their agreement relating to such participation interest and certain other matters as set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Participant and the Company 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**" shall mean any of the top three rating categories that may be assigned to any security, obligation or entity by the Rating Agencies.

"**Acquired Collateral**" shall mean Collateral to which title is acquired by or on behalf of the Company or any Ownership Entity by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, in any such case in accordance with the Loan Documents and in connection with performance by the Company of its obligations and duties under this Agreement.

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

"**Affiliate**" shall mean, with respect to any specified Person, (i) any other Person directly or indirectly controlling or controlled by or under common control with such specified Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities, voting equity interests, or beneficial interests of the Person specified, (iii) any officer, director, partner, member, trustee, employee or promoter of the Person specified or any Immediate Family Member of such officer, director, partner, member, trustee, employee or promoter, (iv) any corporation, partnership, limited liability company or trust for which any Person referred to in clause (ii) or (iii) acts in that capacity, or (v) any Person who is an officer, director, general partner, managing member, trustee or holder of 10% or more of 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 Participant shall not be deemed to be an Affiliate of the Company or any Affiliate of the Company. For the 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**" shall have the meaning given in the preamble, and shall include all exhibits and schedules hereto.

"**Ancillary Documents**" shall mean the Contribution Agreement, the LLC Interest Sale Agreement, the Company Operating Agreement, and any and all other agreements and instruments executed in connection with or contemplated by any of the foregoing.

"**Authorized Funding Draw**" shall mean any principal advance with respect to a Loan listed, up to the maximum aggregate amount of principal advances set forth in the third column of the Loan Schedule (entitled "Maximum Authorized Funding Draw"), including any such advances made by Participant prior to the Servicing Transfer Date; provided, however, that (i) if required by applicable Law or if otherwise deemed necessary by the Company, 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 equal to the principal amount of such Authorized Funding Draw, and (c) contains no new exceptions to title; (ii) upon the making of the final Authorized Funding Draw, the Loan shall be refinanced or modified to a permanent loan; (iii) notwithstanding the Guidelines, the Company shall make or permit an Authorized Funding Draw if the unpaid principal balance of the Loan exceeds the value of the Collateral 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 Advance is in the best interests (in terms of maximizing the value of the Loan) of Participant; and (iv) such advance is made in accordance with the terms of the Loan and the Loan Documents other than any such term precluding such advance in the event of a Borrower default (which term may be waived if the Company determines, in its reasonable judgment, that it is in the best interests of Participant in terms of maximizing the value of the Loan).

"**Borrower**" shall mean the borrower with respect to a Loan.

"**Borrower Reimbursable Costs**" shall mean, collectively, (i) any and all out-of-pocket fees, costs, expenses and indemnified amounts which a Borrower is obligated to pay to a third party or to reimburse to the lender pursuant to the applicable Note or any other Loan Documents, including Escrow Advances, and (ii) any and all reasonable out-of-pocket expenses necessary to protect or preserve the value of the Collateral securing a Loan 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; provided, however, that Borrower Reimbursable Costs shall not include (x) Authorized Funding Draws, (y) overhead or administrative costs incurred by the Company, or (z) servicing, management or similar fees paid to any Contract Servicer or any other third party.

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

"**Clean-Up Call**" shall have the meaning given in Article IX.

"**Closing**" shall have the meaning given in the seventh recital.

"**Collateral**" shall mean any and all real or personal property, whether tangible or intangible, securing or pledged to secure a Loan, including any account, equipment, Guarantee or contract right, or other interest that is the subject of any Collateral Document.

"**Collateral Document**" shall mean all pledge agreements, security agreements, personal or corporate guaranties, deeds of trust, mortgages, contracts for the sale of real property, assignments, collateral agreements or other agreements or documents of any kind, whether originals or copies, whether similar to or different from those enumerated, 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 Notes evidencing the Loans.

"**Collection Account**" shall mean a segregated trust account established and maintained with an Eligible Institution for the sole purpose of holding and distributing Loan Proceeds.

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

"**Company Advances**" shall mean (a) advances made by or on behalf of the Company to fund Borrower Reimbursable Costs or Post-Acquisition Costs, but shall not include, without the prior written consent of Participant (in Participant's sole and absolute discretion), any such advances for fees, costs, expenses or indemnified amounts (i) that are not incurred in accordance with Fannie Mae Guidelines governing such types of expenditures (including compliance with timelines provided for therein), or (ii) that are paid to any Affiliate of the Company, or any Affiliate of the Contract Servicer or any subservicer, or (iii) that are incurred to pay fees or other compensation to or expenses of financial advisers; (b) Advances (regardless of whether such advances meet the requirements of clause (a)); and (c) Pre-Approved Charges.

"**Company Operating Agreement**" shall mean the Limited Liability Company Operating Agreement of the Company in effect as of the Effective Date, as amended pursuant to the terms thereof.

"**Company's Share**" shall have the meaning given in Section 4.01.

"**Contract Servicer**" shall have the meaning given in Section 5.03.

"**Contribution Agreement**" shall have the meaning given in the sixth recital.

"**Custodial Agreement**" shall mean an agreement in the form of Exhibit B.

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

"**Cut-Off Date**" shall mean as of the close of business on March 31, 2008.

"**Debt**" of any Person shall mean (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person for deferred purchase price of property or services (excluding trade payables arising in the ordinary course of business), (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (v) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, or (vi) all indebtedness or obligations of others of the kinds referred to in clauses (i) through (v) above in respect of which such Person has entered into or issued any Guarantee.

"**Deemed Effective Date**" shall have the meaning given in Section 12.02(b).

"**Default Rate**" shall mean the default interest rate prescribed in a Note.

"**Effective Date**" shall mean the date first set forth above.

"**Electronic Tracking Agreement**" shall mean an agreement in the form of Exhibit C.

"**Eligible Institution**" shall mean a Person that is not an Affiliate of the Company and that is a federally insured depository institution that is well capitalized; provided that Gulf Coast Bank & Trust Company shall be deemed to constitute an Eligible Institution notwithstanding the fact that it is an Affiliate of the Company unless Participant notifies the Company, in writing, to the contrary, in which case Gulf Coast Bank & Trust Company shall no longer constitute an Eligible Institution and any accounts maintained pursuant to this Agreement at Gulf Coast Bank & Trust Company shall be moved to an Eligible Institution.

"**Enforcement Action**" shall mean the commencement of the exercise of any of the following remedies against any Borrower, any Guarantor or any other Person: (a) acceleration of the maturity of any liability or obligation of any Borrower or any Guarantor; (b) commencement of any litigation or proceeding, including the commencement of any foreclosure proceeding, the exercise of any power of sale, the sale by advertisement, obtaining of a receiver or taking of any other remedial action with respect to, or the enforcement of any remedy against, any Collateral or any of the property or assets of any Borrower or any Guarantor; (c) filing or joining in the filing of any petition against any Borrower or any Guarantor of any Insolvency Proceeding or any other commencement of an Insolvency Proceeding; (d) entering upon, taking possession of, exercising control over or taking title (legal or equitable) to any Collateral or taking of a deed or assignment in lieu of foreclosure; or (e) any legal action or proceeding pursuant to any intercreditor agreement.

"**Entitlement**" shall mean any final zoning, platting, site plan or other applicable development approval or permit from any governmental agency or instrumentality having jurisdiction relating to the development, construction, ownership or operation of any Collateral property, including a conditional use permit or a building permit.

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

"**Environmental Hazards**" shall mean 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.

"**Fannie Mae**" shall mean Federal National Mortgage Association of the United States.

"**Fannie Mae Guidelines**" shall mean those guidelines governing reimbursement of costs and expenses by Fannie Mae with respect to residential loans owned or securitized by Fannie Mae, as in effect on the date on which an expense or cost is incurred.

"**FDIC**" shall mean the Federal Deposit Insurance Corporation.

"**FHLMC**" shall mean the Federal Home Loan Mortgage Corporation.

"**Final Distribution**" shall mean the distribution of all remaining Loan Proceeds in accordance with the terms of this Agreement after liquidation of all of the Loans and related Collateral.

"**Final LIP Distribution**" shall have the meaning given in Section 4.03(c).

"**Final LIP Distribution Amount**" shall mean the amount received by Participant as a result of the Final LIP Distribution.

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

"**Guarantors**" shall mean, collectively, the guarantors 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.

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

"**Guidelines**" shall have the meaning given in Section 5.02.

"**Immediate Family Member**" shall mean, with respect to any individual, his or her spouse, parents, parents-in-law, descendents, nephews, nieces, brothers, sisters, brothers-in-law,

sisters-in-law, children (whether natural or adopted), children-in-law, grandchildren and grandchildren-in-law.

"**Indemnified Parties**" has the meaning given in Section 8.02(a).

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

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

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

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

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

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

(6) the specified Person files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the specified Person in any proceeding described in clauses (1) through (5);

(7) the specified Person becomes unable to pay its obligations 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) within 90 days of any proceeding against the specified Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law if the proceeding has not been dismissed, or within 90 days after 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, which appointment is not vacated or stayed, or if the appointment is stayed, for 90 days after the expiration of the stay if the appointment is not vacated.

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

"**Interest Rate**" shall mean the rate at which the outstanding principal balance of a Loan bears interest, as more particularly set forth in a Note, including, without limitation, the Default Rate if applicable.

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

"**Lien**" shall mean any pledges, security interests, charges, restrictions on or conditions to transfer, voting or exercise or enjoyment of any right or beneficial interest, options, rights of first refusal and other liens, claims or encumbrances of any nature whatsoever.

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

"**LIP Funds**" shall have the meaning given in Section 4.03(a).

"**LLC Interest**" shall have the meaning given in the fifth recital.

"**Loan**" shall mean any loan listed on the Loan Schedule and any loan into which any listed loan is refinanced, including participation interests and co-lending interests in Loans, as applicable, and includes with respect to each such loan: (i) any obligation evidenced by a Note; (ii) all rights, powers or Liens of the Contributing Member 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**" shall mean all documents, agreements, certificates, instruments and other writings (including all Collateral Documents) now or hereafter executed by or delivered or caused to be delivered by any Borrower, any Guarantors or any other obligor to or for the benefit of MSMC (prior to the Effective Date) or the Company (on or after the Effective Date), evidencing, creating, guaranteeing or securing, or otherwise executed or delivered in respect of, all or any part of a Loan or evidencing any transaction contemplated thereby, and all Modifications thereto.

"**Loan Proceeds**" shall mean any and all proceeds with respect to any or all of the Loans and any or all of the Collateral that is received at any time after the Cut-Off Date, including principal, interest, Default Interest, prepayment fees, premiums and charges, extension and exit fees, late fees, assumption fees, other fees and charges, insurance proceeds and condemnation payments (or any portion thereof) that are not used and disbursed to repair, replace or restore the related Collateral in accordance with the terms of the Loan Documents, proceeds from sales or other dispositions of any or all of the Loans or the Collateral, 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, and any interest or earnings accrued and paid on any of the foregoing while held in the Collection Account or any other account.

"**Loan Schedule**" shall have the meaning given in the third recital.

"**Losses**" shall have the meaning given in Section 8.02(a).

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

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

"**MSMC**" shall have the meaning given in the second recital.

"**MSMC Advances**" shall mean (i) any and all out-of-pocket fees, costs, expenses and indemnified amounts incurred by or on behalf of MSMC on or prior to the Cut-Off Date, which a Borrower is obligated to pay or to reimburse pursuant to the applicable Note or any other Loan Documents, including Escrow Advances made by or on behalf of MSMC on or prior to the Cut-Off Date, and (ii) any advance made by or on behalf of MSMC on or prior to the Cut-Off Date in order to cover any and all expenses necessary to protect or preserve the value of the Collateral securing a Loan or the priority of the Liens and security interests created by the Loan Documents relating thereto, including taxes, insurance premiums, payment of ground rent, the costs of prevention of waste, repairs and maintenance, and foreclosure expenses and legal fees and expenses relating thereto.

"**Note**" shall mean each note or promissory note, lost instrument affidavit, loan agreement, shared credit or 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.

"**Ownership Entity**" shall have the meaning given in Section 6.02 hereof.

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

"**Participant's Share**" shall have the meaning given in Section 2.02.

"**Participation**" or "**Participation Interest**" shall mean an undivided ownership interest and participation, effective as of the Cut-Off Date, in, to and under (i) the Loans, including all future advances (including Authorized Funding Draws) made with respect thereto, (ii) the Loan Documents, (iii) all amounts payable to the Company under the Loan Documents and all obligations owed to the Company in connection with the Loans and the Loan Documents, (iv) all Collateral (including Acquired Collateral) relating to the Loans, (v) all claims, suits, causes of action and any other right of the Company, whether known or unknown, against a Borrower, any Guarantor or other obligor or any of their respective Affiliates, agents, representatives, contractors, advisors or any other Person arising under or in connection with the Loans or the Loan Documents or that is in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity arising under or in connection with the Loan Documents or the transactions related thereto or contemplated thereby, (vi) all cash, securities and other property received or applied by or for the account of the Company under the Loans, including all distributions received through

redemption, consummation of a plan of reorganization, restructuring, liquidation or otherwise of a Borrower, Guarantor or other obligor under or with respect to the Loans, and any securities, interest, dividends or other property that may be distributed or collected with respect to any of the foregoing, and (vii) all proceeds of the foregoing.

"**Participation Certificate**" shall have the meaning given in Section 2.03(a) hereof.

"**Permitted Investments**" shall mean 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 or any agency or instrumentality thereof provided that such obligations are backed by the full faith and credit of the United States of America;

(2) direct obligations of, or guaranteed as to timely payment of principal and interest by, FHLMC, Fannie Mae or the Federal Farm Credit System of the United States, provided that any such obligation, at the time of purchase or contractual commitment providing for the purchase thereof, is qualified by each agency as an investment of funds backing securities with an Acceptable Rating;

(3) 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) with an Acceptable Rating;

(4) 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;

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

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

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

"**Post-Acquisition Costs**" shall mean, collectively, any and all reasonable out-of-pocket fees, costs, expenses and indemnified amounts incurred from and after acquisition of Acquired Collateral, including any and all direct expenses related to the preservation, operation, demolition, management and sale of the Acquired Collateral; provided, however, that Post-

Acquisition Costs shall not include (x) overhead or administrative costs incurred by the Company, or (z) servicing, management or similar fees paid to any Contract Servicer or any other third party.

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

"**Qualified Custodian**" shall mean any Person that (i) is a bank, trust company or title insurance company subject to supervision and examination by any federal or state regulatory authority, (ii) is experienced in providing services of the type required to be performed by the document custodian under the Custodial Agreement, (iii) is not prohibited from exercising custodial powers in any jurisdiction in which the Custodial Documents (as defined in the Custodial Agreement) are or will be held, and is qualified and licensed to do business in each such jurisdiction to the extent required unless and to the extent the failure to be so qualified or licensed will not have a material adverse effect on the document custodian or the ability of the document custodian to perform its obligations under the Custodial Agreement, (iv) has combined capital and surplus of at least $50,000,000 as reported in its most recent report of condition, (v) is acceptable to and approved by Participant (such approval not to be unreasonably withheld, delayed or conditioned), and (vi) has the facilities to safeguard the Loan Documents as required by the Custodial Agreement.

"**Qualified Servicer**" shall mean any Person that (i) is properly licensed and qualified to conduct business in each jurisdiction in which such licenses and qualifications to conduct business are necessary for the servicing of the Loans and management of the Collateral, (ii) is a member of MERS, (iii) has the management capacity and experience to service loans of the type held by the Company, especially construction loans secured by residential 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) is acceptable to and approved by Participant (such approval not to be unreasonably withheld, delayed or conditioned).

"**Rating Agencies**" shall mean 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**" shall have the meaning given in the first recital.

"**Recovery Threshold Amount**" shall mean $51,283,805.52.

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

"**Servicing Agreement**" shall have the meaning given in Section 5.03.

"**Servicing Standards**" shall have the meaning given in Section 5.02 hereof.

"**Servicing Transfer Date**" shall be May 31, 2008, or such other date as is agreed to by the Company and Participant.

"**Single Purpose Entity**" shall mean a corporation or limited liability company that (i) is organized under the laws of any state of the United States or the District of Columbia, (ii) has no material assets other than the Loans and any Acquired Collateral, its right, title and interest in, to and under this Agreement and the other instruments contemplated by this Agreement, (iii) is not engaged in any significant business operations except its ownership of the Loans and any Acquired Collateral and the conduct of its business pursuant to this Agreement, (iv) does or causes to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises, (v) at all times holds itself out to the public as a legal entity separate from any other Person (including any Affiliate), (vi) except as expressly contemplated hereby or by the Ancillary Documents, does not commingle its assets with assets of any other Person, (vii) conducts its business in its own name and strictly complies with all organizational formalities to maintain its separate existence, (viii) maintains an arm's length relationship with any Affiliate upon terms that are commercially reasonable and on terms no less favorable to it than could be obtained in a comparable arm's length transaction with an unrelated third party, and (ix) has no Debt.

"**Site Assessment**" shall have the meaning given in Section 6.02.

"**Third Party Claim**" shall have the meaning given in Section 8.02(a).

"**Transfer Supplement**" shall have the meaning given in Section 12.02(a).

"**Uniform Commercial Code**" shall mean, 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.

Section 1.02 Construction. This Agreement shall be construed and interpreted in accordance with the following:

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

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

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

(d) Accounting terms shall have the meanings assigned to them by GAAP applied on a consistent basis by the accounting entity to which they refer.

(e) References to any document, instrument or agreement (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.

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

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

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

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

ARTICLE II

PARTICIPATION INTERESTS

Section 2.01 Acquisition and Sale. The Company hereby irrevocably grants, conveys, transfers and assigns to Participant, and Participant hereby irrevocably acquires and takes from the Company, the Participation Interest. It is the intention of the parties hereto that the conveyance of the Participation Interest as contemplated by this Agreement shall constitute a conveyance, transfer and assignment of that Participation Interest, including a beneficial interest in the Loans and the Loan Proceeds as and to the extent provided under New York law, from the Company to Participant and that such Participation Interest (including such beneficial interest in the Loans) shall not be part of the Company's estate, as determined pursuant to 11 U.S.C. § 541(d), as amended, in the event of the filing of a bankruptcy petition by or against the Company under any bankruptcy law.

Section 2.02 Participant's Share. The Participation Interest shall entitle Participant to receive 60% of all remaining Loan Proceeds, after reimbursement of Company Advances as and to the extent permitted by Section 3.03, until the later to occur of (i) the receipt by Participant of the Recovery Threshold Amount, after aggregating the proceeds received by Participant from the sale of the LLC Interest (before deducting any fees due to advisers), the proceeds received by Participant from the Final LIP Distribution Amount, and the proceeds received by Participant from Participant's share of Loan Proceeds and (ii) the date that is one (1) year after the Effective Date and, thereafter (automatically and without any action on the part of any Person), 40% of all remaining Loan Proceeds (such percentage shares, the "**Participant's Share**"). Upon the later to occur of (x) the receipt by Participant of the Recovery Threshold Amount and (y) the date that is one (1) year after the Effective Date, unless the Recovery Threshold is achieved as a result of a single sale of the remaining Loans and Acquired Collateral following a Clean-Up Call, Participant shall submit its Participation Certificate to the Company for replacement, and the Company shall issue a new Participation Certificate to Participant evidencing the change in the Participant's Share from 60% to 40%.

Section 2.03 Participation Certificates.

(a) Issuance of Certificate. The Participation Interest shall be evidenced by a Participation Certificate executed and delivered to Participant by the Company in the form of Exhibit D attached hereto (as the same may be replaced from time to time, the "**Participation Certificate**").

(b) Register. The Company shall maintain a register in which ownership of the Participation (including all transfers of all or any part thereof) is recorded. The Company and any agent of the Company may treat as the owner of the Participation the Person in whose name the Participation is registered on the register on any applicable date for the purpose of receiving payments under such Participation and on any other date for all other purposes.

(c) Missing, Damaged and Destroyed Certificates. Upon the surrender of any mutilated Participation Certificate to the Company, or upon the receipt by the Company of evidence satisfactory to it that a Participation Certificate has been destroyed, lost or stolen, the Company shall replace the damaged, lost, stolen or destroyed Participation Certificate.

Section 2.04 Nature of Participation. Except as is expressly provided in this Agreement, the Participation Interest shall not impose any obligations or liabilities on Participant with respect to the Loans and Participant shall not be liable for or obligated to pay (and the Participant's Share shall not be reduced by) any funding obligations of the Company or any costs or expenses incurred in connection with the ownership, servicing, management or administration of the Loans.

Section 2.05 Company as Lender of Record; Third Parties. Notwithstanding the Participation Interest in favor of Participant created by this Agreement, the Company shall be and remain the lender under the Loans, retaining the Loans and the Loan Documents in the Company's own name (or in the name of MERS as nominee). The Company shall be, and hereby is, authorized to deal with all third parties, including Borrowers, Guarantors, and parties to intercreditor agreements. Participant hereby authorizes any third party, without inquiry as to whether any action by the Company is authorized hereunder, to deal with the Company concerning the Loans in the same manner as if Participant's Participation Interest therein were not outstanding. As between Participant and the Company, nothing in the foregoing shall modify any obligation of Participant to the Company or of the Company to Participant set forth in this Agreement or any Ancillary Document. Subject to Participant's obligations to provide interim servicing with respect to the Loans under the Contribution Agreement, all communications with Borrowers shall be made by (or on behalf of) and through the Company, and Participant shall not communicate directly with any Borrower, Guarantor or any of their respective principals, or any property manager or leasing agent or any broker for the Collateral or any part thereof, regarding this Agreement or Participant's Participation Interest, or cause any Borrower to be involved in or affected by any dispute between Participant and the Company.

Section 2.06 Security Interest. This Agreement shall constitute a security agreement under applicable Law and, in furtherance thereof the Company shall be deemed to have granted, and does hereby grant, to Participant a perfected first priority security interest in the Loans (and all Loan Documents) and all proceeds thereof for the benefit of Participant and its assignees as

security for the Company's obligations under this Agreement, including its obligation to pay the Participant's Share hereunder. All of the Notes and other Custodial Documents shall be held by a document custodian as set forth in Section 8.01(c) (except and to the extent the same are permitted to be removed from the document custodian's possession as provided in the Custodial Agreement). The Participant shall retain possession of the Notes and other Custodial Documents with respect to the Loans until such time as the Company retains the document custodian pursuant to the provisions of Section 8.01(c) and, at such time, shall cause the document custodian to take possession of the Notes and other Custodial Documents with respect to the Loans on behalf of Participant. The Company hereby authorizes the filing by Participant of such financing statements in such jurisdictions as Participant deems appropriate (in its sole and absolute discretion) with respect to the Loans, the Loan Documents and the proceeds of the Loans. The Company shall deliver to Participant, (i) for each Loan, an allonge, endorsed in blank, and executed by the Company, and (ii) for each Loan that is not registered on the MERS® system, an assignment, in blank, and executed by the Company. Such allonges and assignments shall be held by the document custodian with the Notes and other Custodial Documents. Participant shall not use the allonge to effect the endorsement of a Note or the assignment to effect the assignment of a mortgage to Participant unless Participant is entitled to exercise its rights as a secured party. The Company shall also execute and deliver to Participant, and cause the Contract Servicer to execute and deliver to Participant, the Electronic Tracking Agreement. The Company shall be designated as the "servicer" with respect to the Loans on the MERS® system, and the Contract Servicer shall be designated as the "subservicer" with respect to the Loans on the MERS® system. No other Person shall be identified on the MERS® system as having any interest in any of the Loans. The Company shall provide Participant with such reports from the MERS® system as Participant, from time to time, may request, including to allow Participant to verify the Persons identified on the MERS® system as having any interest in any of the Loans and to confirm that the Loans required to be registered on the MERS® system are so registered. Without limiting the foregoing, upon the request of Participant, the Company shall cause MERS to run a query with respect to any and all specified fields on the MERS® system with respect to any or all of the Loans registered on the MERS® system and provide the results to Participant and, if requested by Participant, shall cause MERS to change the information in such fields, to the extent MERS will do so in accordance with its policies and procedures, to reflect its instructions.

ARTICLE III

DISBURSEMENTS; REIMBURSEMENTS

Section 3.01 Advances To Be Company Obligation. Subject to the obligations of Participant to provide interim servicing for the Loans under the Contribution Agreement, and subject to the provisions of Section 3.03, all disbursements and advances under any Loan that are made to or for the account of Borrowers pursuant to the Loan Documents after the date hereof, and all other advances required to be made by (or on behalf of) the Company pursuant to this Agreement, shall be funded by (or through or on behalf of) the Company, and not by Participant or through any reduction in Participant's Share or the amounts due hereunder.

Section 3.02 Advances. The Company shall cause all Borrower Reimbursable Costs (including Escrow Advances) and Post-Acquisition Costs to be funded and advanced in

accordance with the Loan Documents and the terms of this Agreement (including as is necessary to comply with the Servicing Standards). Notwithstanding anything to the contrary contained herein, in no event shall the Company be obligated to advance any Borrower Reimbursable Costs or Post-Acquisition Costs if the Company determines, in its discretion exercised in accordance with the Servicing Standards, that such amount, when combined with all previous such Company Advances and MSMC Advances for such Loan, would not ultimately be recoverable from the Loan Proceeds from such Loan (including from the related Collateral).

Section 3.03 Borrower Reimbursable Costs and Post-Acquisition Costs.

(a) Permitted Reimbursements. If a Company Advance is authorized pursuant to the Loan Documents to be reimbursed or paid from the Loan Proceeds from that Loan then, subject to any requirements of the Loan Documents, the Company may be reimbursed for such Company Advance from the Loan Proceeds, without any specific consent or authorization from Participant. Notwithstanding the foregoing, Company Advances shall be paid or reimbursed to the Company first from any repayment thereof by the applicable Borrower and then from the Loan Proceeds. The Company shall not otherwise be entitled to reimbursement or payment of Company Advances.

(b) Costs That Are Not Reimbursable. Notwithstanding anything else to the contrary contained herein or in any Ancillary Document, in no event (i) shall MSMC Advances be treated as Company Advances; (ii) shall Participant have any liability for any Borrower Reimbursable Costs or Post-Acquisition Costs other than to the extent the same may be reimbursed from Loan Proceeds as and to the extent expressly provided for in this Section 3.03; (iii) shall any of the following be treated as Company Advances or be reimbursable to the Company: any fine, tax or other penalty, late fee, service charge, interest or similar charge, costs to release Liens or any other costs or expenses incurred by or on behalf of the Company as a result of the Company's or any Contract Servicer's or subservicer's failure to service any Loan or Collateral properly in accordance with the applicable Loan Documents, this Agreement or otherwise, or failure to make a payment in a timely manner, or failure otherwise to act in a timely manner; and (iv) are any advances made by (or on behalf of) the Company to bear interest that is charged or chargeable in any way to Participant.

Section 3.04 Authorized Funding Draws. The Company shall cause Authorized Funding Draws to be disbursed from the LIP Account in accordance with Section 4.03, as and when requested by or on behalf of the Borrower.

ARTICLE IV

ALLOCATIONS; ACCOUNTS

Section 4.01 Allocations and Distributions.

(a) Allocations. After reimbursement of Company Advances as and to the extent permitted by Section 3.03, the remaining Loan Proceeds (including any recoveries of MSMC Advances) shall be allocated as follows: Participant shall be allocated and entitled to receive the Participant's Share and, following the disbursement of the Participant's Share (and

not until the Participant's Share has been disbursed to Participant), the remaining Loan Proceeds shall be for the benefit of the Company (such proceeds, the "**Company's Share**").

(b) Distributions. The Company shall cause to be forwarded to Participant on or prior to the fifteenth (15) day of each month (or if the fifteenth (15th) day is not a Business Day, the immediately following Business Day of the month), commencing on May 15, 2008, Participant's Share of all Loan Proceeds received in the prior calendar month. All amounts due to Participant under this Agreement shall be remitted by wire transfer, in immediately available funds, to such account or accounts as Participant may, from time to time, direct. Upon the receipt by Participant of the Participant's Share of Loan Proceeds, Participant shall be deemed to have released its security interest in the Company's Share with respect to such Loan Proceeds and the Company's Share may be disbursed to the Company. At such time as a Loan or the related Collateral is liquidated in its entirety (and the balance of the Loan reduced to zero, all related Collateral is sold or otherwise disposed of in accordance with this Agreement, a discounted payoff is accepted as payment in full, or the Loan is otherwise satisfied or discharged or the remaining balance charged-off in accordance with this Agreement), and upon receipt by Participant of the Participant's Share with respect thereto, Participant shall be deemed to have released its security interest in the Note related to such Loan and the Company's Share with respect to such Loan Proceeds. At such time, the Company may (and is hereby authorized by Participant to) request the release of such Note from the document custodian.

Section 4.02 Collection Account. The Company shall establish and, until such time as the Contract Servicer is retained, maintain and, thereafter, cause the Contract Servicer to maintain the Collection Account, held in trust for the benefit of Participant and the Company. The Company shall cause all Loan Proceeds to be deposited into the Collection Account on a daily basis. No funds from any other source (other than interest or earnings on the Loan Proceeds) shall be commingled in the Collection Account. Amounts on deposit in (or that are required to have been deposited into) the Collection Account (including interest and earnings thereon) shall be allocated and may be withdrawn and disbursed only in accordance with the provisions of Section 4.01; provided, however, that if the Company, a Contract Servicer or a subservicer at any time erroneously deposits any amount into the Collection Account, it may withdraw such amount. 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 Section 4.01. The Contract Servicer shall be authorized and directed to withdraw funds from the Collection Account only to make disbursements in accordance with this Agreement and not for any purpose.

Section 4.03 LIP Account. The Company shall establish and, until such time as the Contract Servicer is retained, maintain and, thereafter, cause the Contract Servicer to maintain the LIP Account, held in trust for the benefit of Participant and the Company.

(a) The LIP Account shall be funded at such time as the LLC Interest is sold (or such later time as is agreed to by Participant and the Company) with an initial principal amount of $8,384,749.56 (the "**LIP Funds**"), as follows: Participant shall deposit cash in the amount of $5,030,849.74 (an amount equal to 60% of the initial principal amount of the LIP Account) into the LIP Account, and the Company shall deposit cash in the amount of $3,353,899.82 (an amount equal to 40% of the initial principal amount of the LIP Account) into

the LIP Account. No funds from any other source (other than interest or earnings on the LIP Funds) shall be commingled in the LIP Account.

(b) Withdrawals. The Contract 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. The Company shall not permit withdrawals from the LIP Account for any other purpose. On the Servicing Transfer Date, Participant shall be reimbursed from the LIP Account an amount equal to the Authorized Funding Draws made by it at any time after March 31, 2008 and on or before the Servicing Transfer Date.

(c) Investment of LIP Funds. 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 as required by this Section. On the date that is one (1) year after the Effective Date, unless otherwise agreed by the parties, the LIP Account shall be liquidated (and no further Authorized Funding Draws may be made on or after such date), and all remaining LIP Funds then on deposit in the LIP Account, including all interest and earnings thereon, shall be distributed. Interest and earnings on the LIP Funds and the final distribution of cash remaining upon the liquidation of the LIP Account (the "**Final LIP Distribution**") shall be distributed 60% to Participant and 40% to the Company along with Participant's Share and the Company's Share of Loan Proceeds (in accordance with Section 4.01) for the month in which the LIP Account is liquidated.

ARTICLE V

SERVICING OBLIGATIONS OF THE COMPANY

Section 5.01 Appointment and Acceptance as Servicer. Effective as of the Cut-Off Date, the Company is appointed (and accepts the appointment as) servicer for the Loans and any Collateral (sometimes referred to herein as the "servicer").

Section 5.02 Servicing Standards. The Company shall be responsible for servicing the Loans and the Collateral in accordance with the provisions of this Section 5.02 (collectively, the "**Servicing Standards**") and the other provisions of this Article 5, including the provisions of Section 5.03 (which require that servicing be performed through a Contract Servicer). The Company shall cause the Loans and the Collateral to be serviced, administered, managed and disposed of (collectively, the "servicing obligations") (i) in the best interests and for the benefit of 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 Article III and Article IV and this Article V), (iv) in accordance with all applicable Law, (v) in compliance with the Statement on Loss Mitigation Strategies for Servicers of Residential Mortgages (September 2007), issued by the federal financial institutions regulatory agencies and the Conference of State Bank Supervisors, and the Statement on Working with Mortgage Borrowers (April 2007), issued by the federal financial institutions regulatory agencies (collectively, the "**Guidelines**"), and, (vi) 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, but using no less care and diligence than would be customarily employed by a prudent servicer following customary and usual standards of practice of prudent mortgage lenders, loan servicers and asset managers servicing, managing and administering similar loans and properties on an arms' length basis, provided that in the absence of a customary and usual standard of practice, the Company shall comply with the Fannie Mae Guidelines applicable to similar Loans or Collateral in similar situations. The Company shall cause its servicing obligations with respect to the Loans and the Collateral to be performed without regard to (i) any relationship that the Company, or any Contract Servicer or 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, (ii) the Company's, or any Contract Servicer's or subservicer's, obligation to make disbursements and advances with respect to the Loans and Collateral, (iii) any relationship that the Contract Servicer or any subservicer or any of their respective Affiliates may have to the Company or any of its Affiliates, and (iv) the Company's, or any Contract Servicer's or subservicer's, right to receive compensation (including any portion of the Company's Share) for its services. Without limiting the generality of the foregoing, the Company's servicing obligations hereunder shall include the following:

(a) discharging in a timely manner each and every obligation which the Loan Documents provide is to be performed by the lender thereunder, on its own behalf and on behalf of Participant;

(b) incurring costs (including Borrower Reimbursable Costs and Post-Acquisition Costs) in accordance with the provisions of the Loan Documents;

(c) causing to be maintained for the Collateral (including any Acquired Collateral) with respect to each Loan with respect to which the Borrower has failed to maintain required insurance, fire, hurricane, flood and hazard insurance with extended coverage as is customary in the area in which the Collateral is located and, except as is otherwise agreed by Participant in writing, in an amount which is at least equal to the lesser of (i) the current principal balance (including, with respect to any second or other junior lien Loan, the outstanding principal balance of the related first or other senior lien Loans) of such Loan or, if a Loan has been converted to Acquired Collateral, the outstanding principal balance (including, with respect to any second or other junior lien Loan, the outstanding principal balance of the related first or other senior lien Loans) of the Loan at the time that the Loan was converted to the Acquired Collateral, (ii) the maximum insurable value of the improvements which are part of the Acquired Collateral, and (iii) the amount necessary to compensate fully for any damage or loss to improvements which are part of the Collateral on a replacement cost basis, in each case (i), (ii) and (iii) in an amount not less than such amount as is necessary to avoid the application of any coinsurance clause contained in the related hazard insurance policy; provided, that in the event the Company (or any Contract Servicer or subservicer) or any Ownership Entity maintains a blanket policy with an insurer which provides for a deductible, the Company (and not Participant) shall be liable for the amount of any deductible, and shall deposit as Loan Proceeds into the Collection Account from its own funds the amount not otherwise covered by such policy because of such deductible clause;

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

(e) supervising and coordinating the construction, ownership, management, leasing and preservation of the Collateral as well as all other matters involved in the administration, preservation and ultimate disposition of the Collateral;

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

(g) making all Authorized Funding Draws pursuant to the Loan Documents and this Agreement;

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

(i) ensuring that all filings required to maintain perfection in any Collateral remain up to date and in force, including UCC financing statements.

Section 5.03 Retention of Contract Servicer. The Company shall enter into a servicing agreement (the "**Servicing Agreement**") to provide for the servicing and administration and management of the Loans and Collateral by a Qualified Servicer (the "**Contract Servicer**"). No less than five (5) days prior to entering into the Servicing Agreement, the Company shall provide a copy of the proposed Servicing Agreement to Participant and shall seek Participant's approval thereto (which approval shall not re unreasonably withheld, delayed or conditioned). The Company shall enter into the Servicing Agreement with the Contract Servicer no later than fifteen (15) days before the Servicing Transfer Date. Except for the period between the Cut-Off Date and the Servicing Transfer Date, during which time the Loans shall be serviced by Participant pursuant to its interim servicing obligations in the Contribution Agreement, the Loans shall at all times be serviced (and any Collateral managed) by or through the Contract Servicer (including any subservicers permitted hereunder) and the performance of all day-to-day servicing obligations of the Company shall be conducted by or through the Contract Servicer (including any subservicers permitted hereunder). Subject to the other terms and conditions of this Agreement, the Contract Servicer may be an Affiliate of the Company. The Contract Servicer may engage or retain subservicers, including Affiliates of the Company, as it may deem necessary and appropriate, provided that any subservicer meets the requirements set forth in clause (i) and, to the extent applicable to the services to be performed by such subservicer, clauses (ii) and (iii) of the definition of Qualified Servicer. The costs and fees of the Contract Servicer (and any subservicers) shall be borne exclusively by the Company (and not Participant and, except for Company Advances that are reimbursed in accordance with this Agreement, without reduction in Participant's Share or the amounts due hereunder with respect thereto). Under no circumstances is the Company to transfer to any Contract Servicer any ownership interest in the servicing to the Loans or any right to transfer or sell the servicing to the Loans

(other than in connection with the sale of any Loan), and no Contract Servicer shall assign, pledge or otherwise transfer or purport to assign, pledge or otherwise transfer any interest in the servicing to the Loans (other than in connection with the sale of any Loan), and any purported assignment, pledge or other transfer in violation of this provision shall be void *ab initio* and of no effect.

(a) Servicing Agreement Requirements. The Servicing Agreement (or any subservicing agreement with any subservicer) shall, among other things, (i) provide for the servicing of the Loans and management of the Collateral by the Contract Servicer (or subservicer) in accordance with the Servicing Standards and the other terms of this Agreement; (ii) be terminable upon no more than 30 days prior notice in the Event of Default or any default under the Servicing Agreement (or subservicing agreement); (iii) provide that Participant as well as the Company (and, in the case of any subservicing agreement, the Contract Servicer) shall be entitled to exercise termination rights thereunder; (iv) provide that the Contract Servicer (or subservicer) and the Company acknowledge that the Servicing Agreement (or subservicing agreement) constitutes a personal services agreement between the Company and the Contract Servicer (or between the Contract Servicer and the subservicer); (v) provide that Participant is a third party beneficiary thereunder and entitled to enforce the same; (vi) upon an Event of Default hereunder or any default under the Servicing Agreement (or any subservicing agreement), provide that Participant may exercise all of the rights of the Company (or, in the case of a subservicing agreement, the Contract Servicer) thereunder and cause the termination or assignment of the same to any other Person, without penalty or payment of any fee; (vii) provide that Participant (and its representatives) shall have access to and the right to review, copy and audit the books and records of Contract Servicer and any subservicers and that the Contract Servicer and all subservicers shall make available their respective officers, directors, employees, accountants and attorneys to answer Participant's (and its representatives') questions or to discuss any matter relating to the Contract Servicer's or subservicer's affairs, finances and accounts, as they relate to the Loans, the Collateral, the Servicing, or the Collection Account, or any matters relating to this Agreement or the rights or obligations hereunder (to the extent provided in Section 5.05); (viii) provide that all Loan Proceeds are to be deposited into the Collection Account on a daily basis and that under no circumstances are funds, other than Loan Proceeds and interest and earnings thereon, to be deposited into the Collection Account, and under no circumstances are any funds, other then LIP Funds and interest and earnings thereon, to be deposited into the LIP Account; (ix) provide that the Contract Servicer consents to the immediate termination of the Contract Servicer upon the occurrence of any Event of Default as described in Section 10.01(b); (x) provide that the Contract Servicer shall not transfer or assign its rights under the Servicing Agreement, other than its rights to delegate to subservicers certain responsibilities thereunder as and to the extent permitted by this Agreement, and that any prohibited transfer shall be void *ab initio*; (xi) provide that all of the Loans shall be registered on the MERS® system unless default, foreclosure or similar legal or MERS requirements dictate otherwise; and (xii) to provide for such other matters as are necessary or appropriate to ensure that the Contract Servicer is obligated to comply with the servicing obligations of the Company hereunder.

(b) Company Liable for Contract Servicer and Subservicers. Notwithstanding anything to the contrary contained herein, the use of the Contract Servicer (or subservicer) shall not release the Company from any of its servicing obligations or other obligations under this

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

(c) Participant Approval Required. Each Servicing Agreement, and all amendments and modifications thereto, and the selection of the Contract Servicer, regardless of whether the Contract Servicer is an Affiliate of the Company, shall be subject to the prior written approval of Participant (which approval shall not be unreasonably withheld, delayed or conditioned). A copy of all subservicing agreements shall be provided to Participant.

(d) Regulation AB Requirements. The Company shall ensure that each Contract Servicer (and any subservicer) (A) has in place policies and procedures to comply with the provisions of Section 1122(d)(1)(i) through (iv) of Regulation AB, and (B) complies with the provisions of Sections 1122(d)(2)(i) through (vii), 1122(d)(3)(i) through (iv), and 1122(d)(4)(i) through (xv) of Regulation AB (regardless of whether any such requirements apply, by their terms, only to companies registered or required to file reports with the Securities and Exchange Commission).

(e) Contract Servicer Fees. No Contract Servicer or subservicer shall be paid any fees or indemnified out of any Loan Proceeds other than that portion of the Loan Proceeds distributed to the Company in accordance with Section 4.01.

(f) MERS Requirements. The Loans shall be registered on the MERS® system unless default, foreclosure or similar legal or MERS requirements dictate otherwise.

Section 5.04 Fidelity Bond; E&O Insurance. The Contract 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 Contract Servicer or the subservicer, as applicable, and covering errors and omissions in the performance of the Contract Servicer's, or the subservicer's, as applicable, obligations under this Agreement, the Servicing Agreement and any subservicing agreement. The errors and omissions insurance policy and the fidelity bond shall be in such form and amount that would meet the requirements of Fannie Mae if Fannie Mae were the purchaser of the Loans.

Section 5.05 Books and Records; Reports; Certifications; Audits.

(a) Maintenance of Books and Records. The Company shall cause to be kept and maintained (including by the Contract Servicer and any Ownership Entity and including records transferred by Participant to the Company in connection with its conveyance of the Loans to the Company under the Contribution Agreement), at all times, at the Company's principal place of business, a complete and accurate set of files, books and records regarding the Loans and the Collateral, and the Company's and Participant's interests in the Loans and the Collateral, including records relating to the LIP Account, the Collection Account and Company Advances. This obligation to maintain a complete and accurate set of records shall encompass

all files in the Company'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 Company's (and Contract Servicers' and subservicers') internal memoranda pertaining to the Loans and the Collateral.

(b) Retention of Books and Records. The Company 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 Distribution is made. All such books and records shall be available during such period for inspection by Participant or its representatives (including any government agency or instrumentality) and agents at the office of the Company described in Article XV hereof 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 Participant), in each instance upon two (2) Business Days' prior notice to the Company. Upon request by Participant, the Company, at the sole cost and expense of Participant, shall promptly send copies (the number of copies of which shall be reasonable) of such books and records to Participant. The Company shall provide Participant with reasonable advance notice of the Company's intention to destroy or dispose of any documents or files relating to the Loans and, upon the request of Participant, shall allow Participant, at its own expense, to recover the same from the Company.

(c) Monthly Reports. The Company shall cause to be furnished to Participant, on or prior to the fifteenth (15th) day of each month (or if the fifteenth (15th) day is not a Business Day, then the first Business Day thereafter), commencing on May 15, 2008, an electronic report on the Loans and Collateral (including the LIP Account, the Collection Account and Company Advances) containing the information and substantially in the form set forth on Exhibit E or as may otherwise be agreed by the parties.

(d) Annual Compliance Certificates. The Company shall, and shall cause the each Contract Servicer and subservicer to, deliver to Participant, on or before March 15 of each year, commencing in the year 2009, 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, the Servicing Agreement or any subservicing agreement) has been made under such officer's supervision, and (ii) to the best of such officer's knowledge and belief, based on such review, such party has fulfilled all of its obligations under this Agreement (or, as applicable, the Servicing Agreement or subservicing agreement) in all material respects throughout such year or 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 a Contract Servicer or any subservicer was terminated, resigned or otherwise performed in such capacity for only part of a year, such party shall provide an officer's certificate pursuant to this Section with respect to such portion of the year.

(e) Annual Compliance Report. On or before March 15 of each year, commencing in the year 2009, the Company shall cause each Contract Servicer and subservicer, each at its own expense or the expense of the Company, to provide a report on an assessment of compliance with the servicing requirements in this Agreement that contains (i) a statement by

such party of its responsibility for assessing compliance with such servicing requirements, (ii) a statement that such party used such servicing requirements to assess compliance with such servicing requirements, and (iii) such party's assessment of compliance with such servicing requirements for the preceding calendar year, including if there has been any material instance of noncompliance with such servicing requirements, a discussion of each such failure and the nature and status thereof.

(f) Audits. 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 Final Distribution, the Company shall, and shall cause each Contract Servicer and subservicer to, (i) provide any representative of Participant (including any government agency or instrumentality), during normal business hours and on reasonable notice, with access to all of the books of account, reports and records relating to the Loans or any Collateral or the servicing thereof, the LIP Account or the Collection Account, or any matters relating to this Agreement or the rights or obligations hereunder, (ii) permit such representatives to make copies of and extracts from the same, (iii) allow Participant to cause such books to be audited by accountants selected by Participant, and (iv) allow Participant's representatives to discuss the Company's and Contract Servicer's and subservicer's affairs, finances and accounts, as they relate to the Loans, the Collateral, the Servicing, the LIP Account or the Collection Account, or any matters relating to this Agreement or the rights or obligations hereunder, with its officers, directors, employees, accountants (and by this provision the Company hereby authorizes such accountants to discuss such affairs, finances and accounts with such representatives), Contract Servicers and subservicers, and attorneys. Any expense incurred by Participant and any reasonable out-of-pocket expense incurred by the Company in connection with the exercise by Participant of its rights in this Section shall be borne by Participant; provided, however, that any expense incident to the exercise by Participant of its rights pursuant to this Section as a result of or during the continuance of an Event of Default shall in all cases be borne by the Company.

Section 5.06 Expenses. The Company shall cause commercially reasonable efforts to be used to recover from Borrowers and Guarantors all Company Advances and all MSMC Advances. To the extent not paid or reimbursed by a Borrower or Guarantor, the Company shall cause Company Advances to be made to pay Borrower Reimbursable Costs and Post-Acquisition Costs. No Company Advances shall bear interest chargeable in any way to Participant.

Section 5.07 Company's Duty To Advise Participant; Delivery of Certain Notices. In addition to such other reports and access to records and reports as are required to be provided to Participant hereunder, the Company shall cause to be delivered to Participant such information relating to the Loans and Collateral as Participant may reasonably request from time to time and, in any case, shall ensure that Participant is promptly advised, in writing, of any matter of which the Company or the Contract Servicer becomes aware relating to the Loans, any of the Collateral, the LIP Account, the Collection Account, or any Borrower or Guarantor that materially and adversely affects the interests of Participant hereunder. Without limiting the generality of the foregoing, the Company shall cause to be delivered to Participant information indicating any possible Environmental Hazards with respect to any Collateral. To the extent Participant requests information which is dependent upon obtaining such information from a Borrower, Guarantor or other third party, the Company shall cause to be made commercially reasonable efforts to obtain such information but it shall not be a breach by the Company of this

Agreement if the Company fails to cause such information to be provided to Participant because a Borrower, Guarantor or other third party has failed to provide such information after such efforts have been made.

Section 5.08 Releases of Collateral. The Company is authorized to cause the release or assignment of any Lien granted to or held by the Company on any Collateral upon payment of any Loan in full and satisfaction in full of all of the secured obligations with respect to a Loan, upon receipt of a discounted payoff as payment in full of a Loan, or upon a sale of the Loan to a third party.

Section 5.09 Certain Servicing and Loan Administration Decisions. Subject to the other terms and conditions of this Agreement (including the Servicing Standards), the Company shall have full power and authority, acting alone or through the Contract Servicer and any subservicers, to cause to be done any and all things in connection with the servicing and administration of the Loans that the Company may deem necessary or desirable, and cause to be made all servicing decisions in its reasonable discretion, including the following:

(a) (i) modify or amend in any material respect any of the Loan Documents, (ii) waive any of the Lenders' material rights thereunder, (iii) waive any material condition to any Borrower's right to receive disbursements, insurance proceeds, condemnation awards or other sums pursuant to the Loan Documents or to the completion of the construction or any restoration following a casualty or condemnation, and (iv) grant any material approvals or determinations with respect to modifications of or reallocations within any sources and uses schedule related to any Note;

(b) forgive or reduce the indebtedness of a Borrower under any of the Loan Documents (including interest at the Default Rate and late fees), increase the indebtedness evidenced by the Notes or any of the other Loan Documents, and permit the Loan Documents to secure any indebtedness other than the indebtedness secured by the Collateral on the Effective Date;

(c) reduce the Interest Rate under, or modify the maturity date of, any Note;

(d) release or approve a transfer or encumbrance of any of the Collateral or accept substitute collateral for the Loan;

(e) release any party or parties now or hereafter liable for the payment of the Loan or the performance of any other obligation relating thereto, including in connection with any Guarantee or any environmental indemnity;

(f) permit the Collateral, or any portion thereof or any interest therein, or the beneficial ownership of Borrower, or any portion thereof, to be conveyed or transferred to any other Person or Persons or permit the indebtedness, or any portion thereof, to be assumed by any other Person or Persons;

(g) cancel or agree to the termination of any of the Loan Documents;

(h) approve any change order, even if the same would materially alter the use, type or construction quality of the Collateral;

(i) consent to any agreement in any Insolvency Proceeding relating to any Loan, any Borrower, any Guarantor, any other obligor with respect to a Loan, or any Collateral, including voting for a plan of reorganization, and take any and all actions reasonably necessary to obtain relief from any stay imposed as part of (or seek dismissal of) any Insolvency Proceeding relating to any Loan, any Borrower, any Guarantor, any other obligor with respect to a Loan or any Collateral;

(j) consent to any direct or indirect transfers or pledges of the ownership interests in any Borrower, any change in management of any Borrower (or its permitted successors and assigns), or any material change in the organizational documents of any Borrower;

(k) approve any material modification, extension or termination of any lease to the extent such material modification, extension or termination requires the Company's consent pursuant to the terms of the Loan Documents;

(l) subordinate the Liens of the Collateral Document or any other Loan Document;

(m) consent to any senior or subordinate financing affecting Borrower or the Collateral, or any mezzanine financing affecting Borrower or any direct or indirect member of Borrower;

(n) waive any material default under the Loan Documents;

(o) consent to material physical alterations of the Collateral;

(p) settle, or consent to the settlement of, (i) any insurance claim or (ii) any condemnation claim or (iii) any deficiency;

(q) consent to the application of condemnation awards or insurance proceeds for any purpose for the restoration of any Collateral in accordance with the terms of the Loan Documents or application to the secured obligations;

(r) amend, or waive any provision of, any intercreditor agreement, and make all decisions with respect to the Loans under any intercreditor agreement;

(s) take any Enforcement Action;

(t) sell any Loan or deficiency to a third party;

(u) accept a deed in lieu or in aid of foreclosure;

(v) approve a mezzanine loan on the terms set forth in the Note or other Loan Documents and enter into an intercreditor agreement in connection therewith; and

(w) if the applicable Loan is subject to an intercreditor agreement with any entity other than Affiliate of the Company, exercise any buy-sell rights, redemption rights or similar rights.

Section 5.10 Management and Disposition of Collateral. The Company's asset management rights and obligations under this Agreement, including in its capacity as the manager of any Ownership Entity, shall include the following:

(a) The Company may cause the retention of property management and leasing firms and other agents and contractors.

(b) If required because construction has not been completed, the Company may cause to be entered into contracts for the completion and maintenance of the construction project, including contracts with the general contractor, the architect and the major subcontractors.

(c) The Company (i) shall have the right but not the obligation to cause the termination of any property manager or exclusive sales agent (if any) and (ii) shall have the sole right to cause to be hired and terminated any property managers, sales agents and, if the project is not then fully complete at the time in question, contractors, architects and other design and construction professionals and consultants.

(d) The Company shall cause reasonable efforts to be used to sell any Acquired Collateral to unaffiliated third parties for cash, and shall be responsible for the documentation of such sales.

(e) The Company shall cause legal counsel to be hired when necessary or desirable in connection with any Acquired Collateral.

(f) The Company may permit the sale, transfer or release of all or any portion of any Acquired Collateral.

(g) The Company may permit capital improvements and physical or structural changes to be made to the Collateral, and the costs of all such improvements shall be deemed to be Post-Acquisition Costs.

(h) The Company may permit the authorization of any easements or other changes to title.

(i) The Company may permit the settlement of any insurance claim or condemnation awards.

(j) The Company may release a Borrower, any Guarantor, or any other party now or hereafter liable for the payment of a Loan or the performance of any other obligation relating thereto, including in connection with any Guarantee, any environmental indemnity, or any intercreditor agreement, or amendment in any way any intercreditor agreement.

(k) The Company may permit any lease for the Acquired Collateral or any new property management agreement relating to the property, or approve any modification to a lease, property management agreement, exclusive sales agreement, architect's agreement, construction agreement, or other material agreements relating to the property.

(l) The Company may permit any change in the property that would result in the termination or unavailability of any material Entitlement, franchise, license or approval for the property as contemplated by the Loan Documents.

(m) The Company may permit the institution of any new Enforcement Action against a Borrower, any Guarantor or any other Person.

(n) To the extent not precluded by Section 2.6 of the Contribution Agreement, the Company shall seek to recover from third parties, such as title and other insurers, such amounts as the Company may be entitled to claim therefore with respect to any Loan or Collateral.

Section 5.11 Bulk Sales. In the event of any sale or liquidation of the Loans or any Acquired Collateral in any bulk sale (or any sale in which more than one Loan or piece of Acquired Collateral is sold), the price received for the Loans and Acquired Collateral included in the sale shall be allocated by the purchaser among the different Loans and Acquired Collateral included in the sale so that each Loan and each piece of Acquired Collateral is designated a sale price, in a manner that reflects the fair market value thereof, for the purposes of this Agreement.

ARTICLE VI

LOAN DEFAULTS; ACQUISITION OF COLLATERAL

Section 6.01 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 Company), the Company 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 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.

Section 6.02 Acquisition of Collateral. Nothing in this Section 6.02 or anything else in this Agreement shall be deemed to affirmatively require the Company to cause to be acquired all or any portion of any Collateral with respect to which there exists any Environmental Hazards.

Prior to 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 Company shall cause to be commissioned with respect to such Collateral either (i) a Transaction Screen Process consistent with ASTM Standard E 1528-06, by an environmental professional or (ii) such other site inspections and assessments as would customarily be undertaken or obtained by a prudent lender in order to ascertain whether there are any actual or threatened Environmental Hazards (a "**Site Assessment**"), and the cost of such Site Assessment shall be reimbursable as if it were a Company Advance as long as the costs for such Site Assessment were not paid to any Affiliate of the Company, or any Affiliate of the Contract Servicer or any subservicer. If title to any Collateral with respect to which there exists any Environmental Hazards is to be acquired by foreclosure, by deed in lieu of foreclosure, by power of sale or by sale pursuant to the Uniform Commercial Code, or otherwise, title to such Collateral shall be taken and held in the name of a limited liability company or such other entity that is a Single Purpose Entity as the Company may choose (the "**Ownership Entity**"), whether already in existence or formed by the Company for such purpose. The Company or its wholly-owned subsidiary or Affiliate shall be the sole managing member of any Ownership Entity and Participant shall have a participation interest in the Acquired Collateral held by the Ownership Entity that provides for it to receive its Participant's Share in accordance with Section 4.01 as if the Acquired Collateral were held by the Company. The purposes of the Ownership Entity shall be to hold the Acquired Collateral pending sale, complete construction of such Collateral, and operate the Collateral as efficiently as possible in order to minimize financial loss to the Company and Participant and to sell the Acquired Collateral as promptly as practicable in a way designed to minimize financial loss to the Company and Participant. Notwithstanding anything to the contrary contained herein, either the Ownership Entity shall be a pass-through entity with no entity-level income tax obligations, or Participant's Share shall be allocated before accrual or payment of any income tax due by such Ownership Entity, and the Company shall indemnify and hold harmless Participant from and against any liability for any income taxes due by the Ownership Entity.

ARTICLE VII

PARTICIPANT CONSENT; LIMITS ON LIABILITY

Section 7.01 Actions Requiring Participant Consent. Notwithstanding anything to the contrary contained in this Agreement, the Company shall not permit to be taken any of the following actions without the prior written consent of Participant, which may be withheld or conditioned in Participant's sole and absolute discretion:

(a) the sale or other transfer of any Loan or Collateral (or any portion thereof) to any Affiliate of the Company, any Contract Servicer or subservicer, or any Affiliate of any Contract Servicer or subservicer;

(b) the financing of the sale or other transfer of any Loan or Collateral (or any portion thereof), unless cash in an amount equal to the Participant's Share of the sale price, after deduction of Company Advances pursuant to the provisions of Section 3.03, is distributed to Participant;

(c) the sale of any Loan or Collateral (or any portion thereof) that provides for any recourse against Participant or Participant's Share of the Loan Proceeds;

(d) any disbursement of any LIP Funds other than to fund an Authorized Funding Draw;

(e) any disbursement of any funds in the Collection Account other than in accordance with the provisions of this Agreement;

(f) the Company ceasing to be a member in good standing of MERS;

(g) other than capitalizing accrued and unpaid interest, Company Advances and MSMC Advances, and other than through the making of Authorized Funding Draws, advancing additional funds that would increase the unpaid principal balance; or

(h) reimbursement for any expense or cost incurred (or paid) to any Affiliate of the Company or any Affiliate of the Contract Servicer or any subservicer

Section 7.02 Limitation of Liability.

(a) Company Liability Generally. Neither the Company nor any of its Affiliates, nor any of their respective officers, directors, employees, partners, principals or agents, including the Contract Servicer and any subservicer, shall be liable for any action taken or omitted to be taken by them or any one of them under this Agreement or in connection with any Loan or Collateral or any portion thereof, except for any act or omission constituting (i) gross negligence, bad faith or willful misconduct (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law) or (ii) a material breach of this Agreement. The failure to obtain Participant consent as required by any provision of this Agreement and the failure to comply with the obligations in Section 8.01 shall be considered a material breach of this Agreement and gross negligence on the part of the Company. Neither the Company nor any of its Affiliates, nor any of their respective officers, directors, employees, partners, principals or agents, including the Contract Servicer and any subservicer, shall be liable for any action taken or omitted to be taken by Participant.

(b) Reliance on Notices, etc. Neither the Company nor Participant shall incur any liability to the other by acting in good faith upon any notice, consent, certificate or other instrument or writing (including telegram, cable, telex or telecopy) that is reasonably believed by the Company or Participant, as applicable, to be genuine and to have been signed or sent by the proper party and that on its face is properly executed.

(c) Participant Liability Generally. In the event Participant exercises its rights pursuant to Article X, neither Participant nor any of its officers, directors, employees, attorneys or agents, including any Contract Servicer and any subservicer, shall be liable for any action taken or omitted to be taken by them or any one of them under this Agreement or in connection with any Loan or Collateral or any portion thereof, except for any act or omission constituting willful misconduct.

(d) No Consequential Damages. Regardless of the legal theory upon which any claim by or against the Company or Participant is based, including any claim based on contract, tort, strict liability, or fraud, neither Participant nor the Company shall be liable for, or may recover from the other, any amounts other than actual losses, costs and expenses (including reasonable attorneys' fees and litigation and similar costs to pursue such recovery) incurred by the party asserting the claim. Without limiting the foregoing, neither party shall be liable for, or entitled to recover from the other party, any consequential, special, indirect, punitive, treble, nominal or exemplary damages, business interruption costs or expenses, or damages for lost profits, operating losses or lost investment opportunity (regardless of whether any such damages are characterized as direct or indirect), each of which is and all of which are hereby excluded by agreement of Participant and the Company, regardless of whether the party against whom such damages may be claimed has been advised of the possibility of any such damages, unless (in each case) such losses are incurred by the party asserting the claim as a direct result of a claim asserted against such party by a third party. For purposes of this Section, claims asserted by a third party shall exclude, (A) with respect to the Company, (1) any claims asserted by any Contract Servicer or subservicer, (2) any Affiliate of the Company or any Contract Servicer or subservicer, and (3) any officer, director, employee, partner, principal or agent of the Company, any Contract Servicer or subservicer, or any Affiliate of the Company, any Contract Servicer or subservicer; and (B) with respect to Participant, any Affiliate or officer, director, employee, partner, principal or agent of Participant or any Affiliate.

ARTICLE VIII

ADDITIONAL COMPANY COVENANTS; INDEMNIFICATION

Section 8.01 Covenants. The Company hereby covenants with Participant as follows:

(a) Company Status. The Company shall, at all times, constitute a single member limited liability company organized under the laws of the State of Delaware and a Single Purpose Entity.

(b) Company Obligations. The Company (i) shall at all time have in effect and be subject to the Company Operating Agreement, (ii) except as is otherwise expressly permitted therein, shall amend the Company Operating Agreement only with the prior written approval of Participant, and (iii) shall not enter into or allow itself to become subject to any other constituent documents inconsistent with any terms of the Company Operating Agreement.

(c) Document Custodian. The Company shall retain and enter into and, at all times, be a party to a Custodial Agreement with a document custodian who is a Qualified Custodian and that custodian shall at all times have custody and possession of the Notes and other Custodial Documents. At no time shall the Company have more than one document custodian. The fees and expenses paid to the document custodian shall be no more that market rates and the Custodial Agreement shall be terminable by Participant upon no more than thirty (30) days notice, without cause thereunder. In the event that the Company (or its Contract Servicer) removes any Notes from the possession of the document custodian (which shall be done only in accordance with the Custodial Agreement), any loss or destruction of or damage to such Notes shall be the liability of the Company (who, along with its Contract Servicer shall be

responsible for safeguarding such Notes). If any Notes are removed in connection with the modification or restructuring of a Loan, the modified or restructured Notes shall be returned to the document custodian as soon as possible following the completion of the restructuring or modification. The Company shall ensure that Participant receives a copy of each demand, notice or other communication given under the Custodial Agreement at the time that such notice or other communication is given thereunder.

(d) Relationships with Borrowers, etc. The Company shall not, 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 Company, or (iii) except as is otherwise contemplated by its ownership of the Loans and its right to hold Acquired Collateral, have any interest whatsoever in any Borrower, Guarantor or other obligor with respect to any Loan or any of the Collateral.

(e) No Conflicting Obligations. The Company shall not, at any time, enter into or become a party to any agreement that would conflict with the terms of this Agreement.

(f) Compliance with Law. The Company shall, at all times, comply with applicable Law in connection with the performance of its obligations under this Agreement.

(g) No Company Debt. Without limiting its obligation to constitute a Single Purpose Entity, the Company shall not, at any time, incur any Debt.

(h) No Dissolution or Liquidation. The Company shall not dissolve or liquidate at any time prior to such time as the Company makes the Final Distribution and this Agreement is terminated.

(i) No Bankruptcy Filing. The Company shall not (i) file a voluntary petition for bankruptcy, (ii) file a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Law, (iii) make an assignment for the benefit of creditors, (iv) seek, consent or acquiesce in the appointment of a trustee, receiver or liquidator or of all or any substantial part of its properties, (v) file an answer or other pleading admitting or failing to contest the material allegations of (A) a petition filed against it in any proceeding described in clause (i) through (iv), or (B) any order adjudging it a bankrupt or insolvent or for relief against it in any bankruptcy or Insolvency Proceeding, or (vi) allow itself to become unable to pay its obligations as they become due or allow the sum of its debts to be greater than all of its property, at a fair valuation.

(j) No Liens. The Company shall not place or permit (voluntarily or involuntarily) any Lien to be placed on any of the Loans, the Loan Documents or the Loan Proceeds (other than the security interest granted to Participant hereunder), and shall not take any action to interfere with Participant's rights as a secured party with respect to the Loans.

(k) Contract Servicer. The Company shall at all times cause its servicing obligations under this Agreement to be performed by a Contract Servicer that is a Qualified Servicer.

(l) MERS Member. The Company shall become a member of MERS on or before the Servicing Transfer Date and, for so long as this Agreement is in effect, maintain itself

as a MERS member in good standing (including paying all dues and other fees required to maintain its membership and complying with MERS policies and procedures). The Company shall give prompt written notice of any disciplinary action instituted with respect to its failure to pay any fees required in connection with its use of the MERS® system or otherwise comply with any MERS policies or procedures.

Section 8.02 Indemnification.

(a) The Company shall indemnify and hold harmless Participant and Participant's Affiliates, and their respective officers, directors, employees, partners, principals, agents and contractors (the "**Indemnified Parties**") from and against any losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating, defending, asserting or preparing the defense or assertion of any of the foregoing), deficiencies, claims, interest, awards, judgments, penalties and fines (collectively, "**Losses**") arising out of or resulting from (i) any breach by the Company or any of its Affiliates or any of their respective officers, directors, employees, partners, principals, agents or contractors (including any Contract Servicer or subservicer) of any of the Company's obligations under or covenants or agreements contained in this Agreement (including any claim asserted by Participant against the Company to enforce its rights pursuant to Section 10.02 or by any third party and including any breach caused by any Contract Servicer or subservicer), or any third-party allegation or claim based upon facts alleged that, if true, would constitute such a breach, or (ii) any gross negligence, bad faith or willful misconduct (including any gross negligence, bad faith or willful misconduct of any Contract Servicer or subservicer and including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law). Such indemnity shall survive the termination of this Agreement. In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a Loss or a claim or demand made by any Person against the Indemnified Party (a "**Third Party Claim**"), such Indemnified Party shall deliver notice thereof to the Company promptly after receipt by such Indemnified Party of written notice of the Third Party Claim, describing in reasonable detail the facts giving rise to any claim for indemnification hereunder, the amount of such claim (if known) and such other information with respect thereto as is available to the Indemnified Party and as the Company may reasonably request. The failure or delay to provide such notice, however, shall not release the Company from any of its obligations under this Section 8.02 except to the extent that it is materially prejudiced by such failure or delay.

(b) If for any reason the indemnification provided for herein is unavailable or insufficient to hold harmless the Indemnified Parties, the Company shall contribute to the amount paid or payable by the Indemnified Parties as a result of the Losses of the Indemnified Parties in such proportion as is appropriate to reflect the relative fault of the Indemnified Parties, on the one hand, and the Company (including any Contract Servicer or subservicer), on the other hand in connection with a breach of the Company's obligations under this Agreement.

(c) If the Company confirms in writing to the Indemnified Party within fifteen (15) days after receipt of a Third Party Claim the Company's responsibility to indemnify and hold harmless the Indemnified Party therefor, the Company may elect to assume control over the compromise or defense of such Third Party Claim at the Company's own expense and by the

Company's own counsel, which counsel must be reasonably satisfactory to the Indemnified Party, provided that (i) the Indemnified Party may, if such Indemnified Party so desires, employ counsel at such Indemnified Party's own expense to assist in the handling (but not control the defense) of any Third Party Claim; (ii) the Company shall keep the Indemnified Party advised of all material events with respect to any Third Party Claim; (iii) the Company shall obtain the prior written approval of the Indemnified Party before ceasing to defend against any Third Party Claim or entering into any settlement, adjustment or compromise of such Third Party Claim involving injunctive or similar equitable relief being asserted against any Indemnified Party or any of its or his Affiliates; and (iv) the Company will not, without the prior written consent of each Indemnified Party, settle or compromise or consent to the entry of any judgment in any pending or threatened action in respect of which indemnification may be sought hereunder (whether or not any such Indemnified Party is a party to such action), unless such settlement, compromise or consent by its terms obligates the Company to satisfy the full amount of the liability in connection with such Third Party Claim and includes an unconditional release of all such Indemnified Parties from all liability arising out of such Third Party Claim.

(d) Notwithstanding anything contained herein to the contrary, the Company shall not be entitled to control (and if the Indemnified Party so desires, it shall have sole control over) the defense, settlement, adjustment or compromise of (but the Company shall nevertheless be required to pay all Losses incurred by the Indemnified Parties in connection with such defense, settlement or compromise): (i) any Third Party Claim that seeks an order, injunction or other equitable relief against any Indemnified Party or any of its Affiliates; (ii) any action in which both the Company (or any Affiliate) and the Indemnified Party are named as parties and either the Company (or such Affiliate) or the Indemnified Party determines with advice of counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the other party or that a conflict of interest between such parties may exist in respect of such action; and (iii) any matter that raises or implicates any issue relating to any power, right or obligation of the Federal Deposit Insurance Corporation (in any capacity) under any Law. If the Company elects not to assume the compromise or defense against the asserted liability, fails to timely and properly notify the Indemnified Party of its election as herein provided, or, at any time after assuming such defense, fails to diligently defend against such Third Party Claim in good faith, the Indemnified Party may pay, compromise or defend against such asserted liability (but the Company shall nevertheless be required to pay all Losses incurred by the Indemnified Party in connection with such defense, settlement or compromise). In connection with any defense of a Third Party Claim (whether by the Company or the Indemnified Parties), all of the parties hereto shall, and shall cause their respective Affiliates to, cooperate in the defense or prosecution thereof and to in good faith retain and furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested by a party hereto in connection therewith.

(e) Under no circumstances shall any liability of the Company under the provisions of this Section 8.02 constitute a Company Advance or otherwise be charged to Participant or deducted from the Participant's Share.

ARTICLE IX

CLEAN-UP CALL

Section 9.01 Clean-Up Call Rights. Participant shall have the right, exercisable in its sole and absolute discretion, to require the liquidation and sale, for cash consideration, of any remaining Loans and Acquired Collateral held by the Company or any Ownership Entity (the "**Clean-Up Call**") at any time after the earlier to occur of (i) the date that is seven (7) years after the Effective Date and (ii) the date on which the unpaid principal balance of the remaining Loans (including the balance of any Loan with respect to which the Company or any Ownership Entity holds Acquired Collateral) is ten percent (10%) or less of the unpaid principal balance of the Loans as of March 31, 2008, as set forth on the Loan Schedule.

Section 9.02 Exercise of Clean-Up Call Rights. In order to exercise its rights under this Section, Participant shall give notice in writing to the Company, setting forth the date by which the remaining Loans and Acquired Collateral are to be liquidated by the Company, which date shall be no less than 150 calendar days after the date of such notice.

Section 9.03 Company To Proceed Expeditiously. The Company shall proceed expeditiously to cause to be commenced the liquidation of the remaining Loans and Acquired Collateral by means of sealed bid sales to Persons other than Affiliates of the Company, the Contract Servicer or any subservicer, or Affiliates of the Contract Servicer or any subservicer. The selection of any financial adviser or other third party broker or sales agent retained for the liquidation of the remaining Loans and Acquired Collateral pursuant to this Section shall be subject to the prior approval of Participant, such approval not to be unreasonably withheld, delayed or conditioned. In the event the remaining Loans and Collateral are not liquidated by the date specified in the notice provided by Participant pursuant to Section 9.02, Participant shall be entitled to liquidate the remaining Loans and Collateral in its discretion and the Company shall cooperate and assist with such liquidation to the extent reasonably requested by Participant. In the event the Company or any Affiliate thereof desires to bid to acquire the remaining Loans and Collateral, then Participant shall be entitled to liquidate the remaining Loans and Collateral in its discretion. In the event Participant undertakes to liquidate the remaining Loans and Collateral pursuant to this Section, all costs and expenses incurred by it shall be deducted from the Loan Proceeds and, after reimbursing the Company for any Company Advances to which it is entitled pursuant to this Agreement, the remaining Loan Proceeds shall be allocated between and distributed to Participant and the Company in accordance with Section 4.01.

ARTICLE X

EVENTS OF DEFAULT OF THE COMPANY

Section 10.01 Events of Default. An "**Event of Default**" means the occurrence of any of the following:

(a) Any failure by the Company to cause to be allocated any amount required to be allocated to Participant under the terms of this Agreement or to cause to be remitted to Participant any payment required to be made to Participant 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 to the Company; or

(b) There occurs any Insolvency Event (without any cure period other than as may be provided for in the definition of Insolvency Event) with respect to the Company, any Affiliate of the Company, the Contract Servicer or any Affiliate thereof, or any subservicer or any Affiliate thereof, or the Guarantor under the Guaranty required to be delivered pursuant to the LLC Interest Sale Agreement (or any replacement thereof); or

(c) Any failure of the Company to duly perform, within the required time period (without any cure period), its obligations in Section 5.05(d) or Section 5.05(e); or

(d) Any failure of the Company to cause to be made any Authorized Funding Draw from the LIP Account in accordance with the provisions of Section 4.03, or any failure to cause to be made any Company Advance pursuant to Section 3.01 and Section 3.02, 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 to the Company; or

(e) The failure by the Company at any time to comply with its obligation to retain and maintain the retention of a Contract Servicer that is a Qualified Servicer, or to comply with its obligation to retain and maintain the retention of a document custodian that is a Qualified Custodian, which, in either case, 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 to the Company; or

(f) The failure of the Company or any member of the Company to comply with and enforce the provisions of the Company Operating 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 to the Company; or

(g) The failure of the Company to cause the liquidation of the remaining Loans and Acquired Collateral in accordance with Section 9.03, and within the time specified by Participant (without any cure period) upon the exercise by Participant of the Clean-Up Call; or

(h) The occurrence of an event of default or material breach by the Contract Servicer under the Servicing Agreement, which continues unremedied for a period of thirty (30) days after the date on which written notice of such failure requiring the same to be remedied shall have been given by the Company to the Contract Servicer or by Participant to the Company, or the failure by the Company to replace the Contract Servicer upon the occurrence of either an Event of Default under this Agreement as a result of the Contract Servicer's acts or omissions or a material breach or event of default of the Servicing Agreement by the Contract Servicer, in either case which continues unremedied for a period of thirty (30) days after the date on which written notice of such failure requiring the same to be remedied shall have been given to the Company; or

(i) The occurrence of any event of default or material breach by the Company under the Servicing Agreement or the Custodial Agreement (including any failure to pay fees or

expenses due thereunder by the Company) which, in either case, remains unremedied following the expiration of any cure period provided for therein (with no additional cure period hereunder); or

(j) The failure, as a result of any act or omission of the Company or its Contract Servicer, of the parties to complete the transfer of the servicing to the Loans to the Contract Servicer on or prior to the Servicing Transfer Date; or

(k) Any other failure (other than those specified in this Section 10.01) on the part of the Company duly to observe or perform in any material respect any other covenants or agreements on the part of the Company contained in this Agreement (including any obligations imposed upon any Contract Servicer or subservicer), 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 to the Company; provided, however, that in the case of a failure that cannot be cured within thirty (30) days, the cure period shall be extended for an additional thirty (30) days if the Company can demonstrate to the reasonable satisfaction of Participant that the Company is diligently pursuing remedial action..

Section 10.02 Remedies Upon Events Of Defaults.

(a) General. Upon the occurrence of an Event of Default, in addition to any other rights it may have pursuant to this Agreement, any Ancillary Document or applicable Law (including the Uniform Commercial Code), whether at law or in equity and whether pursuant to statute or regulation or otherwise, and any or all of which may be exercised at Participant's option and the Company's expense, Participant shall have the right to take, at Participant's option and the Company's expense, one or more of the following actions: (i) upon notice in writing to the Company (effective at such time as is specified in such notice), to act on behalf of the Company to terminate the existing Contract Servicer (and any subservicers) and to cause the Company to enter into a new Servicing Agreement with a servicer (a "successor Contract Servicer") selected by Participant (in its sole and absolute discretion), and (ii) upon notice in writing to the Company (effective at such time as is specified in such notice), to terminate the Company's rights as servicer pursuant to this Agreement and, in such case, (A) to terminate the Contract Servicer and select (in its sole and absolute discretion), and enter into a Servicing Agreement with, a successor Contract Servicer, such Servicing Agreement to be between Participant and the successor Contract Servicer chosen by Participant, or (B) to retain the existing Contract Servicer and to enter into a new Servicing Agreement between Participant and the Contract Servicer (or to effect an assignment of the existing Servicing Agreement from the Company to Participant). Participant shall have no obligation to assume any obligations or liabilities of the Company under or in connection with any Servicing Agreement. Notwithstanding the foregoing, Participant shall not exercise its right to terminate the Contract Servicer in the absence of (1) an Event of Default as described in Section 10.01(a), (2) an Event of Default as described in Section 10.01(b) or Section 10.01(c) with respect to the Contract Servicer or, if the Contract Servicer is an Affiliate of the Company, with respect to the Company or any Affiliate of the Company, (3) an Event of Default as described in Section 10.01(e) or Section 10.01(h), or (4) any other Event of Default that consists of a breach of a servicing obligation under this Agreement. In addition, the Company hereby consents to the immediate

termination of the Contract Servicer upon the occurrence of any Event of Default described in Section 10.01(b).

(b) Appointment of Successor Servicer. If Participant exercises its right to act on behalf of the Company to appoint a successor Contract Servicer, the costs and expenses associated with such successor Contract Servicer (including any servicing fees) shall be borne by the Company (and not Participant), and no termination or other fee shall be due to the Company or the Contract Servicer or any subservicer in connection with or as a result of any such action. All authority and power of the Company to act with respect to the terminated Contract Servicer shall pass to and be vested in Participant under this Section and, without limitation, Participant is hereby authorized and empowered, as attorney-in-fact or otherwise, to execute and deliver, on behalf of and at the expense of the Company, any and all documents and other instruments and to do or take any and all acts necessary or appropriate to effect the termination of the Contract Servicer and the replacement of the Contract Servicer with a successor Contract Servicer.

(c) Termination of Company's Rights as Servicer. If Participant exercises its right pursuant to this Section to terminate the Company's rights as servicer under this Agreement, all authority and power of the Company to act as servicer under this Agreement shall pass to and be vested in Participant under this Section and, without limitation, Participant is hereby authorized and empowered, as attorney-in-fact or otherwise, to execute and deliver, on behalf of and at the expense of the Company, any and all documents and other instruments and to do or take any and all acts necessary or appropriate to effect the termination and replacement of the Contract Servicer and, in the event Participant decides to retain the Contract Servicer, to enter into a new Servicing Agreement between Participant and the Contract Servicer or to effect an assignment of the existing Servicing Agreement from the Company to Participant. Participant shall have and be entitled to exercise all rights of the Company as servicer under this Agreement and the costs and expenses associated with any such successor Contract Servicer or the existing Contract Servicer (including any servicing fees) shall be borne by the Company (and not Participant).

(d) Cooperation To Facilitate Transfer. In any event, if a Contract Servicer or subservicer is terminated pursuant to the provisions of this Article X, the Company shall, and shall cause any Contract Servicer (and any subservicer) to, provide Participant and any successor Contract Servicer in a timely manner with all documents, records and data (including electronic documents, records and data) requested by Participant or any successor Contract Servicer to enable it and any successor Contract Servicer to assume the responsibilities as servicer under this Agreement, and to cooperate with Participant in effecting the termination of any Contract Servicer (or subservicer) or the Company's rights as servicer under this Agreement, including (x) the transfer within one (1) Business Day of all cash amounts which, at the time, shall be or should have been credited to the Collection Account or are thereafter received with respect to any Loans or Acquired Collateral, and (y) the transfer of all lockbox accounts with respect to which payments or other amounts with respect to the Loans are directed or the redirection of all such payments and other amounts to such account as Participant may specify, and (z) the assignment to Participant of the right to access all such lockbox accounts, the Collection Account, the LIP Account and any other account into which Loan Proceeds or Borrower escrow payments are deposited or held. Following the taking of any action pursuant to this Article X, the Company shall continue to be entitled to be reimbursed for Company Advances but only to

the extent that it was entitled to reimbursement of Company Advances prior to such action. The Company shall be liable for, and Participant shall be entitled to deduct from the Company Share, all costs and expenses incurred by Participant (x) associated with the complete transfer of the servicing data, (y) associated with the completion, correction or manipulation of servicing data as may be required to correct errors or insufficiencies in the servicing data to enable Participant and any successor Contract Servicer (and subservicers) to service the Loans and Acquired Collateral properly and effectively, and (z) to retain and maintain the services of a successor Contract Servicer (and any subservicers). Within a reasonable time after receipt of a written request of the Company for the same, Participant shall provide reasonable documentation evidencing such costs and expenses, but Participant's right to deduct such costs and expenses from the Company's Share shall not be subject to or contingent upon the provision of such documentation.

(e) Power of Attorney. The Company hereby irrevocably constitutes and appoints Participant and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact for the purposes of this Agreement and allowing Participant to perfect, preserve the validity, perfection and priority of, and enforce any lien granted by this Agreement and, after the occurrence and during the continuance of any Event of Default, to exercise its rights, remedies and powers and privileges under this Agreement. This appointment as attorney-in-fact is irrevocable and coupled with an interest until this Agreement is terminated and the security interests created hereby are released. Without limiting the generality of the foregoing, Participant shall be entitled under this Section 10.02(e) to do any of the following if an Event of Default has occurred and is continuing: (i) ask, demand, collect, sue for, recover, receive and give receipt and discharge for amounts due and to become due under and in respect of any or all of the Loans; (ii) file any claims or take any action or proceeding in any court of law or equity that Participant may reasonably deem necessary or advisable for the collection of all or any part of the Loans, defend any suit, action or proceeding brought against the Company with respect to any Loan, and settle, compromise or adjust any such suit, action or proceeding; (iv) execute, in connection with any sale or disposition of the Loans, any endorsements, assignments, bills of sale or other instruments of conveyance or transfer with respect to all or any part of the Loans; (v) enforce the rights of the Company under any provision of any Servicing Agreement to the extent permitted thereunder and under the terms of this Agreement; (vi) pay or discharge taxes and Liens levied or placed on the Loans; (vii) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Loans as fully and completely as though Participant were the absolute owner thereof for all purposes; and (viii) do, at Participant's option and the Company's expense, at any time and from time to time, all acts and things that Participant reasonably deems necessary to protect, preserve, or realize upon the Loans and Participant's security interests therein and to effect the intent of this Agreement, all as fully and effectively as the Company might do. Anything in this Section to the contrary notwithstanding, Participant agrees that it shall not exercise any right under the power of attorney provided for in this Section unless an Event of Default shall have occurred and be continuing.

(f) Offsets. Without limiting any other rights of Participant hereunder, in the event Participant exercises any rights or remedies as a result of or in connection with the occurrence of an Event of Default, all costs and expenses (including reasonable attorneys' fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating,

defending, asserting or preparing the defense or assertion of any claim) incurred by Participant with respect thereto may be offset by Participant against the Company's Share.

ARTICLE XI

RELATIONSHIP BETWEEN PARTICIPANT AND THE COMPANY

It is expressly understood and agreed that, with respect to this Agreement and the transactions contemplated hereby, as between themselves, Participant and the Company each hereby acknowledge and agree that Participant is participating in the ownership of the Loans and Participant and the Company are not investing in a common enterprise or partnership with each other. Each of the Company and Participant acknowledges that it shall occupy the status of, act as and be considered independent contractors and neither shall in any event be considered an agent, creditor, partner or employee of the other, it being the intent of the Parties that this Agreement shall not constitute nor be construed to create a partnership or joint venture of any kind between Participant and the Company.

ARTICLE XII

ASSIGNMENT

Section 12.01 No Assignment b y Company. The Company shall not sell participations in the Loans or assign or delegate this Agreement or, except as is required by Section 5.03, any rights or obligations hereunder to any other Person, without the prior written consent of Participant, which consent may be withheld or conditioned in Participant's sole and absolute discretion. Any purported sale, sub-participation or assignment or delegation in violation of the preceding sentence shall be void *ab initio* and of no force or effect whatsoever. Subject to the foregoing, this Agreement shall be binding on and shall inure to the benefit of the Company and its respective successors and permitted assigns. The Company hereby acknowledges and agrees that this Agreement constitutes a personal services agreement between the Company and Participant.

Section 12.02 Assignments b y Participant. Participant shall be entitled to sell and assign all (but not part) of its Participation Interest (and the entire Participation Interest will be sold and transferred as a single participation interest) and, in conjunction therewith, its rights and obligations under this Agreement subject to applicable Law and the provisions of this Article XII. Participant's right to sell and transfer its Participation Interest (and assign its rights and obligations under this Agreement) to any other Person, shall be subject to the following provisions:

(a) Transfer Supplement. Except as provided in Section 12.02(b), any such assignment shall be made pursuant to a Transfer Supplement in substantially the form attached hereto as Exhibit F, duly completed, with such immaterial changes thereto as Participant and the transferee shall agree upon (a "**Transfer Supplement**"). Upon the execution and delivery of a Transfer Supplement by Participant and transferee, the same shall be delivered to the Company and, upon receipt, the Company shall acknowledge the same and be deemed to have accepted such Transfer Supplement. From and after the close of business at the Company's office at 200

St. Charles Street, New Orleans, LA, on the Transfer Effective Date specified in such Transfer Supplement, the transferee shall be a party hereto and, to the extent provided in such Transfer Supplement, shall have the rights and obligations of Participant hereunder.

(b) Transfer to Receiver or FDIC. MSMC, as the initial Participant, shall be entitled to transfer the Participation Interest to the Receiver and the Receiver shall be entitled to transfer the Participation Interest to the FDIC at any time, without the execution and delivery of a Transfer Supplement. Upon written notice of any such transfer delivered to the Company, the Company shall be deemed to have acknowledged such transfer and shall reflect such transfer on its books and in the register in which ownership of the Participation is recorded. The transfer of the Participation Interest shall be deemed to be effective on the date on which such notice is received by the Company (the "**Deemed Effective Date**"). From and after the Transfer Effective Date specified in such Transfer Supplement or the Deemed Effective Date, as applicable, the transferring Participant shall be released from any obligations it may have under this Agreement and shall cease to be a party to this Agreement.

(c) Exchange of Participation Certificate. Upon any such assignment, the Participation Certificate held by the transferor shall be exchanged and a new Participation Certificate, as necessary to evidence each transferee and its interest, evidencing such transfer shall be issued.

ARTICLE XIII

LENDERS' TITLE INSURANCE; RIGHTS TO PAYMENTS

Section 13.01 Title Policies. The Company and Participant hereby acknowledge and agree that the title policies insuring the Lien of the Collateral Documents securing the Loans which are required by the Loan Documents were issued in favor of Participant as the only insured thereunder; and have been or will be endorsed to reflect the Company as the only insured, but that Participant shall share in the Company's interest therein, including any recovery thereunder, in accordance with the terms of this Agreement.

Section 13.02 Sharing of Pa yments. Except as otherwise expressly set forth herein, neither the Company nor Participant shall obtain any payment or payments (whether voluntary or involuntary, through the exercise of any right of set-off or otherwise) to be applied on account of its interest in the Loans unless such payment or payments shall be shared by Participant and the Company in accordance with the terms of this Agreement. If any such payment or payments are rescinded, set aside or otherwise recovered by or on behalf of the Person from whom the payment or payments are received, or by or for the creditors of such Person, then any such payment or payments made to the Company or Participant pursuant to the preceding sentence shall be returned by the Company or Participant against whom such recovery is made.

ARTICLE XIV

TERMINATION

At such time as the Final Distribution has been made, and all amounts due to Participant under and in accordance with this Agreement have been received by Participant, this Agreement shall be terminated and Participant shall have no further rights or remedies under this Agreement or with respect to the Loans, provided, however, that the provisions of Section 5.05(b), Section 5.05(f), Section 7.02, Section 8.02, Article X, Article XI, Article XV, Article XVI, Article XVII and Article XIX and Participant's rights thereunder and remedies for a breach thereof, shall survive the termination of this Agreement until such time as the obligations under Section 5.05(b) and Section 5.05(f) expire by their terms.

ARTICLE XV

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 Participant:	Manager, Capital Markets & Resolutions c/o Federal Deposit Insurance Corporation 550 17th Street, NW (F-7014) Washington, D.C. 20429-0002 Attention: Ralph Malami
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 Company before the Closing:	Manager, Capital Markets & Resolutions c/o Federal Deposit Insurance Corporation 550 17th Street, NW (F-7014) Washington, D.C. 20429-0002 Attention: Ralph Malami

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 Company after the Closing:	MSMC Venture, LLC c/o Gulf National One, L.L.C. 200 St. Charles Street New Orleans, LA 70130 Attention: Guy T. Williams
with a copy to:	Jack A. Ricci 4016 Canal Street New Orleans, LA 70119

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 XVI

GOVERNING LAW; JURISDICTION

Section 16.01 GOVERN ING 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 A 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 16.02 Jurisdiction ; Venue and Service. The Company, for itself and 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 by him, her or it against any other party with respect to this Agreement shall be instituted, only in the Supreme Court of the State of New York, County of New York, or 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) as the party instituting such suit, action or proceeding may in his, her or its sole discretion elect, (ii) consents and

submits, for himself, herself or itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against him, her or 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 16.02(a) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Company at its address for notices pursuant to Article XV (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 16.02 shall affect the ability of the Company 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 16.02(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.

Section 16.03 Waiver of Jur y Trial. THE COMPANY, FOR ITSELF AND 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 XVII

RIGHT TO SPECIFIC PERFORMANCE

THE COMPANY HEREBY ACKNOWLEDGES AND AGREES THAT THE DAMAGES TO BE INCURRED BY PARTICIPANT AS A RESULT OF THE COMPANY'S DEFAULT WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN, THAT DAMAGES WILL NOT BE AN ADEQUATE REMEDY AND THAT ANY BREACH OR THREATENED BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT BY THE COMPANY MAY CAUSE IMMEDIATE IRREPARABLE HARM FOR WHICH THERE MAY BE NO ADEQUATE REMEDY AT LAW. ACCORDINGLY, THE PARTIES AGREE THAT, IN THE EVENT OF ANY SUCH BREACH OR THREATENED BREACH, PARTICIPANT SHALL BE ENTITLED TO IMMEDIATE AND PERMANENT EQUITABLE RELIEF (INCLUDING INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE OF THE PROVISIONS OF THIS AGREEMENT) FROM A COURT OF COMPETENT JURISDICTION (IN ADDITION TO ANY OTHER REMEDY TO WHICH IT MAY BE ENTITLED AT LAW OR IN EQUITY). THE PARTIES AGREE AND STIPULATE THAT PARTICIPANT SHALL BE ENTITLED TO SUCH EQUITABLE (INCLUDING INJUNCTIVE) RELIEF WITHOUT POSTING A BOND OR OTHER SECURITY AND THE COMPANY FURTHER WAIVES ANY DEFENSE IN ANY SUCH ACTION FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF THAT A REMEDY AT LAW WOULD BE ADEQUATE AND ANY REQUIREMENT UNDER LAW TO POST SECURITY AS A

PREREQUISITE TO OBTAINING EQUITABLE RELIEF. NOTHING CONTAINED IN THIS SECTION SHALL LIMIT THE PARTIES' RIGHT TO ANY REMEDIES AT LAW, INCLUDING THE RECOVERY OF DAMAGES FOR BREACH OF THIS AGREEMENT.

ARTICLE XVIII

WITHHOLDING

The Company shall be entitled to deduct and withhold such amounts required to be deducted and withheld under any applicable provision of federal, state or local tax Law from any distribution otherwise payable to Participant hereunder. To the extent that amounts are so deducted and withheld and paid over to the appropriate taxing authority, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to Participant. Notwithstanding the foregoing, no amounts shall be deducted or withheld from any distribution to Participant hereunder provided that Participant delivers to the Company a properly completed Internal Revenue Service Form W-9, W-8ECI or W-8BEN (or an applicable successor form) that exempts such distributions from such deductions and withholding.

ARTICLE XIX

MISCELLANEOUS

Section 19.01 Entire A greement. This Agreement and the Ancillary Documents contain the entire agreement between Participant and the Company with respect to the subject matter hereof and supersedes any and all other prior agreements, whether oral or written.

Section 19.02 Counterparts; Fa csimile 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 means of a facsimile machine, 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 to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

Section 19.03 Headin gs. 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 19.04 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 19.05 Severabilit y. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including without limitation, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 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 16.01.

Section 19.06 No Third Part y Beneficiaries. This Agreement is made for the sole benefit of Participant and the Company and their respective successors and permitted assigns, and no other Person or Persons (including Borrowers or any co-lender or other Person with any interest in or liability under any of the Loans) shall have any rights or remedies under or by reason of this Agreement.

Section 19.07 L egal 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 19.08 Time of Essence . Time is hereby declared to be of the essence of this Agreement and of every part hereof.

Section 19.09 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 19.10 Amendments and Waiver s. No provision of this Agreement may be amended or waived except in writing executed by all of the parties to this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

PARTICIPANT:

MARKET STREET MORTGAGE CORPORATION

By: Daniel M. Bell
Name: Daniel M. Bell
Title: President

THE COMPANY:

MSMC VENTURE, LLC

By: Market Street Mortgage Corporation
Sole Member and Manager

By: Daniel M. Bell
Name: Daniel M. Bell
Title: President