

**MORTGAGE LOAN PARTICIPATION SALE AGREEMENT**  
**(AOT Program – Whole Loan Trades and Private Issue Securities)**

by and between

COLONIAL BANK, N.A.,  
as Purchaser

and

TAYLOR, BEAN & WHITAKER MORTGAGE CORP.,  
as Seller

Dated as of April 1, 2007

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**SCHEDULE I** Notices and Authorizations

<b>EXHIBIT A-1</b>	Form of Takeout Commitment Assignment (Private Issue Security)
<b>EXHIBIT A-2</b>	Form of Takeout Commitment Assignment (Whole Loan Trades)
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<b>EXHIBIT C</b>	Seller's Wire Transfer Instructions
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**MORTGAGE LOAN PARTICIPATION SALE AGREEMENT**  
**(AOT Program – Whole Loan Trades and Private Issue Securities)**

This MORTGAGE LOAN PARTICIPATION SALE AGREEMENT (AOT Program – Whole Loan Trades and Private Issue Securities) (together with the exhibits, schedules and annexes hereunder, as may be amended and supplemented from time to time, referred to hereinafter as the "Agreement") is dated as of April 1, 2007, between **COLONIAL BANK, N.A.**, a national banking association, whose address is 100 Colonial Bank Boulevard, Montgomery, Alabama 36117, its successors and assigns, as purchaser ("Purchaser") and **TAYLOR, BEAN & WHITAKER MORTGAGE CORP.**, a Florida corporation, whose address is 101 N.E. 2nd Street, Ocala, Florida 34470, as seller ("Seller").

**RECITALS**

WHEREAS, Seller desires to sell from time to time to Purchaser ninety-nine percent (99%) of Seller's right, title and interest in and to designated pools of fully amortizing first or second lien residential Mortgage Loans (defined below) (each such pool of Mortgage Loans so purchased and sold, a "Mortgage Pool"), each in the form of a ninety-nine percent (99%) participation interest in such Mortgage Pool, evidenced by a Participation Certificate, and Purchaser, at its sole election, agrees to purchase such Participation Certificate evidencing such participation interest in such Mortgage Pool, from Seller in accordance with the terms and conditions set forth in this Agreement.

WHEREAS, Seller will be retained as servicer of the Mortgage Loans (defined below) because (i) Seller (or one or more of its subsidiaries, affiliates or customers) originated the Mortgage Loans in the ordinary course of its business, (ii) Seller is familiar with servicing the Mortgage Loans and the servicing standards, and (iii) Seller has the administrative and other staff and agents necessary to most effectively service the Mortgage Loans under the servicing standards. Accordingly, other entities could not comparably service the Mortgage Loans as efficiently as Seller (or a subservicer under the control and supervision of Seller) and servicing the Mortgage Loans by any entity other than Seller (or a subservicer under the control and supervision of Seller) could result in a diminution in the value of the participation interest purchase by Purchaser.

WHEREAS, Seller acknowledges that it will use its commercially reasonable efforts to cause each Mortgage Pool purchased hereunder as evidenced by a Participation Certificate to either be purchased by a Takeout Buyer or converted into a Private Issue Security relating to such Mortgage Pool, such Private Issue Security to be backed by and to relate to the Mortgage Loans. In furtherance thereof, Seller agrees to use its commercially reasonable efforts to cause the Takeout Buyer to purchase the Mortgage Pool or related Private Issue Security to be issued and delivered on or before the Settlement Date, as the case may be, under the terms and conditions provided herein.

WHEREAS, coincident with each Mortgage Pool purchase, Seller will have validly assigned to Purchaser all of Seller's rights and obligations under one or more forward purchase commitments each evidencing an institution's commitment to purchase on a mandatory basis on a designated purchase date an agreed upon principal amount of the Mortgage Pool or related Private Issue Security, as the case may be.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Purchaser and Seller, intending to be legally bound, hereby agree as follows:

**Section 1.        Definitions.**

Capitalized terms used in this Agreement shall have the meanings ascribed to them below:

"Accepted Servicing Practices": With respect to each Mortgage Loan, such standards which comply with the applicable standards and requirements under: (i) any applicable servicing standards and requirements which are set forth in the servicing guidelines of FNMA, GNMA or FHLMC, and/or (ii) such other applicable servicing standards and requirements which are customary and usual in the mortgage servicing industry in the United States.

**"Affiliate"**: With respect to any specified entity, any other entity controlling or controlled by or under common control with such specified entity. For the purposes of this definition, "control" when used with respect to any specified entity means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" having meanings correlative to the foregoing.

**"Approvals"**: Shall have the meaning ascribed thereto in Section 9(a)(ix) of this Agreement.

**"BMA Guide"**: The uniform practices for the clearance and settlement of mortgage-backed securities and other related securities, published (and periodically updated as supplemented) by The Bond Market Association ("BMA") as such BMA Guide may be amended and supplemented from time to time.

**"Breach"**: Shall have the meaning ascribed thereto in Section 9(d) of this Agreement.

**"Business Day"**: Any day other than a Saturday, Sunday, and any other day on which banking institutions in the City of Montgomery, Alabama or the jurisdiction in which the Purchaser's offices are located are authorized or obligated by law to be closed.

**"Clearing Agreement"**: The Clearing and Custodial Agreement (AOT Program), dated as of the date hereof, by and among Seller, Purchaser and The Bank of New York Trust Company, N.A., and the exhibits, schedules and annexes thereunder, as same may be amended and supplemented from time to time, in form acceptable to the parties.

**"Collateral"**: Shall have the meaning ascribed thereto in Section 7(d) of this Agreement.

**"Custodial Account"**: Shall have the meaning ascribed thereto in Section 5(c) of this Agreement.

**"Custodian"**: Colonial Bank, N.A., a national banking association, its successors and assigns.

**"Deficient Mortgage Loans"**: Shall have the meaning ascribed thereto in Section 9(d) of this Agreement.

**"Designated Servicer"**: Shall have the meaning ascribed thereto in Section 5(e) of this Agreement.

**"Electronic Tracking Agreement"**: The Electronic Tracking Agreement, dated as of the date hereof (and the exhibits, schedules and annexes thereunder, as same may be amended and supplemented from time to time), by and among Seller, Purchaser, MERS and MERSCORP, Inc., in form and substance acceptable to the parties.

**"Eligible Mortgage Loan"**: A Mortgage Loan that is in strict compliance with the eligibility requirements for swap or purchase by (i) in the case of Whole Loan Trade Transactions, the Takeout Buyer, under the applicable Takeout Buyer Guide and/or applicable Takeout Buyer Program, or (ii) in the case of Private Issue Security Transactions, the designated Private Issuer, under the applicable Private Issuer Guide and/or applicable Private Issuer Program.

**"Escrow Payments"**: With respect to any Mortgage Loan, the amounts constituting ground rents, taxes, assessments, water rents, sewer rents, municipal charges, mortgage insurance premiums, fire and hazard insurance premiums, condominium charges, and any other payments required to be escrowed by the related mortgagor with the mortgagee pursuant to the Mortgage or any other related document.

**"FDIC"**: The Federal Deposit Insurance Corporation, or any successor thereto.

**"Federal Funds Rate"**: For any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by Purchaser from three federal funds brokers of recognized standing selected by it.

"FHA": The Federal Housing Administration, or any successor thereto.

"FNMA": The Federal National Mortgage Association or any successor thereto.

"FHLMC": The Federal Home Loan Mortgage Corporation, or any successor thereto.

"GAAP": Generally accepted accounting principles in the United States applied on a consistent basis.

"GNMA": The Government National Mortgage Association, or any successor thereto.

"Good Delivery": The meaning ascribed to such term in the BMA Guide in connection with the standard requirements for the delivery and settlement of a Private Issue Security.

"Governmental Authority": The United States, any State and any political subdivision thereof, whether state or local, and any agency, department, commission, board, bureau, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"HUD": The United States Department of Housing and Urban Development, or any successor thereto.

"Initial Balance": The aggregate outstanding principal balance of the Mortgage Loans evidenced by a Participation Certificate as of the related Purchase Date.

"Initial Remittance Date": Shall have the meaning ascribed thereto in Section 4(c) of this Agreement.

"LIBOR": The London Interbank Offered Rate -- British Bankers Fixing to U.S. Dollars conducted each London business day at 11:00 a.m. (London Time) as quoted on the EDS screen on Bloomberg for the appropriate term(s) ranging from 7 days to 12 months. If on any Purchase Date, no quotation appears on EDS screen on Bloomberg by 9:00 a.m. (Montgomery time), LIBOR will be the rate determined by Purchaser on the basis of the rates at which deposits in United States Dollars are offered by major banks in the London interbank market at approximately 11:00 a.m. (London time) on the Purchase Date to prime banks in the London interbank market for deposits for the term of the related purchase and in a principal amount equal to an amount that is representative for a single transaction in such market at such time. Purchaser will request quotations of such rate from four such banks. If at least two such quotations are provided, LIBOR will be the arithmetic mean (rounded upward, if necessary, to the nearest one hundred thousandth of a percentage point) of the quoted rates. If fewer than two quotations are provided as requested, the rate for such Advance will be the arithmetic mean of the rates quoted by major banks in New York City, selected by Purchaser, at approximately 11:00 a.m. (Montgomery time) on the first day of such purchase for loans in United States Dollars to leading European banks for the term of the related purchase in a principal amount equal to an amount that is representative for a single transaction in such market at such time.

"Losses": Shall have the meaning ascribed thereto in Section 5(a) of this Agreement.

"MERS": Mortgage Electronic Registration Systems, Inc. which is the mortgagee of record for all Mortgage Loans in the MERS System.

"MERS Designated Mortgage Loan": A Mortgage Loan that is recorded on the MERS System.

"MERS System": The system of recording transfers of mortgages electronically maintained by MERS.

"Mortgage": A first or second lien mortgage, deed of trust or deed to secure debt, as applicable, securing a Mortgage Note.

"Mortgage File": The items pertaining to each Mortgage Loan (other than the Mortgage Loan Documents required to be delivered to the Purchaser pursuant to Exhibit F of this Agreement) and for Whole Loan Trade

Transactions, the Takeout Buyer Program as described in the relevant Takeout Buyer Guide, or for Private Issue Security Transactions, the Private Issuer Program as described in the relevant Private Issuer Guide.

**"Mortgage Loan"**: Each mortgage loan included in a Mortgage Pool, in each case secured by a Mortgage on a one- to four-family residence and, if so required by the relevant Takeout Buyer or Private Issuer Program, eligible to be either guaranteed by VA and/or insured by FHA, or insured by a private mortgage insurer, as applicable.

**"Mortgage Loan Documents"**: With respect to any Mortgage Loan, the originals of the Mortgage Notes and other documents and instruments required to be delivered to the Purchaser in connection with each Transaction, all pursuant to the Agreement.

**"Mortgage Loan Remittance Report"**: Shall have the meaning ascribed thereto in Section 5(a) of this Agreement.

**"Mortgage Loan Schedule"**: With respect to each Transaction, the list or schedule of all the Mortgage Loans prepared in the form required for submission to the applicable Takeout Buyer or Private Issuer for securitization, together with such information as is required under the relevant Takeout Buyer Program or Private Issuer Program, as the case may be.

**"Mortgage Note"**: A promissory note or other evidence of indebtedness of the obligor thereunder, representing a Mortgage Loan, and secured by the related Mortgage.

**"Mortgage Pool"**: Shall have the meaning ascribed thereto in the introductory recitals to this Agreement.

**"Mortgage Pool Ownership Interest"**: Shall have the meaning ascribed thereto in Section 2(c)(iii) of this Agreement.

**"Mortgaged Property"**: The real property securing repayment of the debt evidenced by a Mortgage Note.

**"Officer's Certificate"**: A certificate of an authorized officer of Seller, substantially in the form attached hereto as Exhibit D.

**"Outstanding Transaction"**: Shall have the meaning ascribed thereto in Section 11 of this Agreement.

**"Participation Certificate"**: A certificate issued in the name of and delivered to Purchaser by Seller in connection with each Transaction, substantially in the form attached hereto as Exhibit B, such certificate to evidence a ninety-nine percent (99%) beneficial ownership interest in the related Mortgage Pool.

**"Person"**: Any individual, partner, partnership, firm, corporation, trust, unincorporated organization or other organizational entity, or a governmental body or any department or agency thereof.

**"Pooling Documents"**: Each of the original schedules, forms and other documents (other than the Mortgage Loan Documents) required as of the date of determination to be delivered by or on behalf of Seller to the relevant Takeout Buyer or Private Issuer, as described in Exhibit G of this Agreement, as amended from time to time, which required documents may be amended by the relevant Takeout Buyer or Private Issuer at any time, and in such case the Pooling Documents hereunder will be required to satisfy such new requirements.

**"Private Issue Security"**: A mortgage-backed pass-through certificate issued by Private Issuer representing or backed by the Mortgage Pool which is the subject of a Transaction with a Private Issuer.

**"Private Issue Security Face Amount"**: The original unpaid principal balance of the Private Issue Security.

**"Private Issuer"**: A private issuer of mortgage-backed securities that is not a government sponsored entity.

**"Private Issuer Guide"**: The applicable servicing agreement to which the Seller and the Private Issuer are a party, as such Private Issuer Guide may be amended and supplemented from time to time.

**"Private Issuer Program"**: The specific whole loan purchase program under the relevant Private Issuer Guide or as otherwise approved by the Private Issuer.

**"Purchase Date"**: As to a given Transaction, the date of Seller's sale and Purchaser's purchase of the designated Mortgage Pool, as evidenced by Purchaser's payment to Seller of the Purchase Price.

**"Purchase Price"**: With respect to any Participation Certificate, an amount equal to the product of the (A) Initial Balance, (B) Takeout Price and (C) the percentage of Purchaser's beneficial ownership interest in the Mortgage Loans as set forth in the Participation Certificate.

**"Qualified Depository"**: A depository institution, the accounts of which are insured by the FDIC, which meets the applicable requirements of the relevant Takeout Buyer or Private Issuer for maintaining custodial collection accounts and escrow accounts in connection with servicing the Mortgage Loans.

**"Qualified Insurer"**: A mortgage guaranty insurance company duly authorized and licensed where required by law to transact mortgage guaranty insurance business and approved as an insurer by the applicable Takeout Buyer or Private Issuer.

**"Qualified Substitute Mortgage Loan"**: Shall mean a Mortgage Loan (i) that, when aggregated with other Qualified Substitute Mortgage Loans being substituted on such Transfer Date, has an outstanding principal loan balance, after application of all payments of principal due and received during or prior to the month of substitution, equal to the outstanding principal loan balance of the Mortgage Loan being substituted on the related Transfer Date and (ii) that complies, as of the related Transfer Date, with each of the representations and warranties made by Seller concerning the Mortgage Loan contained in this Agreement.

**"Reference Rate"**: With respect to a Participation Certificate shall have the meaning set forth in the related Participation Certificate.

**"Remittance Date"**: The 25<sup>th</sup> day of each calendar month (or if such day is not a Business Day, the Business Day immediately following such 25<sup>th</sup> day).

**"Repurchase Price"**: With respect to any Mortgage Loan, a price equal to (i) the product of the Initial Balance and the Takeout Price plus (ii) interest on such Initial Balance at a rate equal to the Reference Rate from the date on which interest has been paid and distributed to Purchaser to the date of repurchase.

**"Request for Release of Documents"**: The Request for Release of Documents set forth on Exhibit H hereto.

**"Scheduled Delivery Date"**: The date of delivery of any Private Issue Security to be delivered by a Private Issuer to Purchaser in connection with a Transaction.

**"Security Issuance Deadline"**: The date by which the Private Issue Security must be issued and delivered to Purchaser, which, unless otherwise agreed to by Purchaser as provided herein, shall occur no later than the Settlement Date.

**"Security Issuance Failure"**: Failure of the Private Issue Security to be issued for any reason whatsoever on or before the Security Issuance Deadline, or a prior good faith determination by Seller or Purchaser that such Private Issue Security will not be issued on or before such time.

**"Servicing Fee"**: With respect to each Mortgage Loan and any date of determination, the monthly fee payable to Seller (or to a successor servicer) in arrears for the servicing of such Mortgage Loan in accordance with the terms of this Agreement, such fee being calculated by taking the product of (A) the average outstanding principal balance of all Mortgage Loans (prior to any reductions for principal payments received during the preceding



calendar month) as of the preceding due date and (B) the positive difference between the (i) dollar weighted average interest rate payable under the Mortgage Loans, and (ii) the Reference Rate as set forth in the Participation Certificate in Exhibit A hereto and (C) the Purchaser's beneficial ownership interest in the Mortgage Loans hereunder (expressed as a percentage) and (D) a fraction, the numerator of which is the actual number of days in the month and the denominator of which is 360. The servicing fee shall be payable (and retained by Seller) from interest collected on the Mortgage Loans.

**"Servicing File"**: With respect to each Mortgage Loan, the file to be held by Seller in trust for the benefit of Purchaser, solely in a custodial capacity. Such file includes, but is not limited to, originals or copies of all documents in the Mortgage File, computer files, data disks, books, records, data tapes, notes and all additional documents generated as a result of or utilized in originating and servicing each Mortgage Loan.

**"Servicing Period"**: Shall have the meaning ascribed thereto in Section 2(c)(iv) of this Agreement.

**"Servicing Termination Events"**: Shall have the meaning ascribed thereto in Section 5(e) of this Agreement.

**"Servicing Transfer Date"**: Shall have the meaning ascribed thereto in Section 6 of this Agreement.

**"Settlement Date"**: With respect to each Transaction, that date specified as the contractual delivery and settlement date in the related Takeout Commitment pursuant to which Purchaser has the right to deliver (i) in the case of Whole Loan Trade Transactions, the Mortgage Loan Documents, or (ii) in the case of Private Issue Security Transactions, the Private Issue Securities in each case, to the Takeout Buyer.

**"Standard Mortgage Loan Representations"**: Shall have the meaning ascribed thereto in Section 9(b)(iii) of this Agreement.

**"Subservicer"**: Any entity which is subservicing the Mortgage Loans pursuant to a subservicing agreement with Seller. Each Subservicer and the related subservicing agreement shall be approved in advance by Purchaser and shall provide that the subservicing agreement shall automatically terminate upon the termination of Seller as servicer under this Agreement.

**"Takeout Amount"**: With respect to: (i) a Whole Loan Trade Transaction, the Takeout Price set forth in the related Takeout Commitment, plus accrued interest thereon at a rate equal to the Reference Rate from (and including) the related Purchase Date up to (but excluding) the related Settlement Date, or (ii) with respect to a Private Issue Security Transaction, the unpaid principal amount of a Private Issue Security to be issued in connection with a given Transaction and covered by a particular Takeout Commitment, determined in accordance with Good Delivery requirements, plus accrued interest thereon at a rate equal to the Reference Rate from (and including) the related Purchase Date up to (but excluding) the related Settlement Date.

**"Takeout Buyer"**: Any securities dealer or other financial institution or organization, acceptable to Purchaser, who has entered into a Takeout Commitment.

**"Takeout Buyer Guide"**: The applicable servicing agreement to which the Seller and the Takeout Buyer are a party, as such Takeout Buyer Guide may be amended and supplemented from time to time.

**"Takeout Buyer Program"**: The specific whole loan purchase program under the relevant Takeout Buyer Guide or as otherwise approved by the Takeout Buyer.

**"Takeout Commitment"**: A fully executed trade confirmation from the Takeout Buyer to Seller confirming the details of a forward trade between the Takeout Buyer (as buyer) and Seller (as seller) constituting a valid, binding and enforceable mandatory delivery commitment by a Takeout Buyer to purchase on the Settlement Date and at a given Takeout Price based on the principal amount of the Mortgage Loans (in the case of a Whole Loan Trade Transaction) or the Private Issue Security described therein (in the case of a Private Issue Security Transaction) plus accrued interest such that the total paid thereunder shall be equal to the related Takeout Amount.

**"Takeout Commitment Assignment"**: An assignment, substantially in the form attached hereto as Exhibits A-1 and A-2, fully completed and executed by Seller and the Takeout Buyer, if under the related Takeout Commitment the prior written consent of the Takeout Buyer is required, whereby Seller irrevocably assigns its rights and obligations under the Takeout Commitment to Purchaser.

**"Takeout Price"**: As to each Takeout Commitment, the purchase price (expressed as a percentage of par) set forth therein.

**"Transaction"**: Shall mean the following, in each case and collectively, (i) each commitment by Purchaser to purchase, and by Seller to sell, a Mortgage Pool Ownership Interest as evidenced by a Participation Certificate and certain assignments of the Takeout Commitment and, only with respect to a Private Issue Security Transaction, the Private Issue Security from Seller in accordance with the terms and conditions of this Agreement; (ii) Seller's performance of its obligations under this Agreement and, only with respect to a Private Issue Security Transaction, the Clearing Agreement respecting such Mortgage Pool Ownership Interest and the issuance of the Private Issue Securities; (iii) only with respect to a Private Issue Security Transaction, the issuance and delivery of the related Private Issue Security together with Seller's undertakings respecting the facilitation of such Private Issue Security issuance; (iv) the delivery of the related Mortgage Loans (in the case of a Whole Loan Trade Transaction) or the Private Issue Security (in the case of a Private Issue Security Transaction) to the related Takeout Buyer under each Takeout Commitment; (v) Purchaser's exercise of its rights and remedies under this Agreement in the event of a Security Issuance Failure, the Security Issuance Deadline is extended or a failure of a Takeout Buyer to fulfill its obligations under the related Takeout Commitment; and (vi) as appropriate, Seller's servicing of the Mortgage Pool as described herein.

**"Transaction Documents"**: This Agreement, the Clearing Agreement and any other documents, certificates and affidavits executed in connection therewith.

**"Transfer Date"**: Shall mean with respect to a Qualified Substitute Mortgage Loan, the date on which the Seller substitutes one or more Mortgage Loan in accordance with Section 9(d) of this Agreement.

**"UCC"**: The Uniform Commercial Code adopted and in effect in such applicable jurisdiction.

**"VA"**: The Department of Veterans Affairs, or any successor thereto.

**"Wire Instructions"**: The wiring instructions, substantially in the form attached hereto as Exhibit C, as provided by Seller to Purchaser.

**"Whole Loan Trade"**: A forward trade between the Takeout Buyer (as buyer) and Seller (as seller) to purchase the Mortgage Loans set forth in the related Takeout Commitment on the prescribed Settlement Date.

## **Section 2. Purchases of Participation Certificates.**

(a) Purchaser may, in its sole discretion, from time to time, purchase one or more Participation Certificates from Seller at the Purchase Price, which the parties believe to be fair market value and adequate consideration for the participation interests purchased by Purchaser pursuant to this Agreement together with the servicing rights hereunder and which was determined as the result of arm's length negotiations. Prior to Purchaser's election to purchase any Participation Certificate, Purchaser shall have received from Seller:

(i) an electronic copy of the original Participation Certificate fully completed and executed by Seller with a copy of the Mortgage Loan Schedule pertaining to the relevant pool of Mortgage Loans attached thereto;

(ii) an electronic copy of the original fully completed and executed written release of security interest from any warehouse lender having a security interest in the Mortgage Loans, addressed to Purchaser, releasing any and all of such warehouse lender's right, title and interest or claim in such Mortgage Loans, substantially in the form of Exhibit A hereto;

(iii) to the extent not previously delivered to Purchaser, an original, fully executed Clearing Agreement;

(iv) to the extent not previously delivered to Purchaser, an original, fully executed Takeout Buyer Guide and Takeout Buyer Program and Private Issuer Guide and Private Issuer Program;

(v) the Mortgage Loan Documents in such form required on Exhibit F hereto;

(vi) an electronic copy of the original Pooling Documents, if any, which Pooling Documents shall be determined by the related Takeout Buyer or Private Issuer, as applicable, and included in Exhibit G hereto upon such determination by the related Takeout Buyer or Private Issuer; and

(vii) the documents described in Section 8 of this Agreement to be received by Purchaser prior to the commencement of the first Transaction under this Agreement in such form required thereunder.

(b) As a condition to the closing by Purchaser of the purchase of any Participation Certificate, Purchaser shall have received from Seller:

(i) an electronic copy of the original Takeout Commitment, which in the case of a Private Issue Security Transaction, covers a Takeout Amount equal to the Private Issue Security Face Amount, or such other instrument evidencing the terms of a forward purchase trade between the Takeout Buyer and Seller as provided in the BMA Guide in connection with the related Transaction; provided that Seller shall deliver to Purchaser an electronic copy of the original Takeout Commitment for the related Transaction within three (3) days of the Purchase Date;

(ii) an electronic copy of the original Takeout Commitment Assignment, duly executed by Seller and the Takeout Buyer, if under the related Takeout Commitment the prior written consent of the Takeout Buyer is required (or an amendment to the Takeout Commitment permitting the assignment of such Takeout Commitment without the consent of the Takeout Buyer) and evidence that notice of the assignment of such Takeout Commitment to Purchaser has been given to the Takeout Buyer;

(iii) to the extent not previously delivered to the Purchaser, an original, fully executed Electronic Tracking Agreement covering any Mortgage Loans which are registered on the MERS System; and

(iv) Such other documents Purchaser may request from time to time.

All originals of the foregoing documents described in Sections 2(a) and (b) (other than the Mortgage Loan Documents) shall be maintained in trust by Seller as agent and Custodian for the benefit of Purchaser unless Purchaser requests that such original documents be delivered to and held by the Purchaser or to its designee, in which case, Seller shall promptly deliver same to Purchaser or to its designee. To the extent that Seller retains possession of any original documents hereunder, Seller shall maintain all such Purchaser documents segregated from its own documents and assets, clearly marked to identify such documents as assets owned by Purchaser.

(c) Simultaneously with the payment by Purchaser of the Purchase Price, in accordance with the warehouse lender's wire instructions or Seller's Wire Instructions, as applicable, with respect to a Participation Certificate, Seller shall:

(i) irrevocably and absolutely sell, transfer, assign, set over, release and convey to Purchaser, without recourse but subject to the terms of this Agreement, and Purchaser shall immediately become vested with beneficial ownership of a ninety-nine percent (99%) undivided interest in (A) all of the Mortgage Loans (but subject to Seller's servicing rights and obligations, as described herein), (B) subject to the terms hereunder, any payments and recoveries of principal and interest and proceeds respecting any Mortgage Loan due on or after the Purchase Date, (C) any payments or proceeds under any related primary

insurance, hazard insurance and FHA insurance policies and VA guarantees (if any) and (D) the related Mortgage Loan Documents, Mortgage Files and Servicing Files;

(ii) irrevocably and absolutely assign and set over to Purchaser all of Seller's right, title and interest in and to each Takeout Commitment and shall deliver to Purchaser the Takeout Commitment Assignment;

(iii) only for Private Issue Security Transactions, sell, transfer, set over and convey to Purchaser all of Seller's right, title and interest in and to the Private Issue Security scheduled to be issued by the applicable Private Issuer (the items in the foregoing clauses (i), (ii) and (iii) of this Section 2(c) are collectively, the "Mortgage Pool Ownership Interest"); and

(iv) accept Seller's appointment and perform its obligations hereunder as servicer of all of the Mortgage Loans and as agent of and for the benefit of Purchaser (and any other subsequent holder of the Participation Certificate) during the period (the "Servicing Period") from and after the Purchase Date through the earliest to occur of (A) (i) the date of actual purchase of the Mortgage Loans by the Takeout Buyer pursuant to a Whole Loan Trade Transaction in which the servicing rights are not retained by the Seller, or (ii) the date of actual issuance, delivery and settlement of the Private Issue Security to Purchaser, provided such issuance and delivery occurs on or before the Security Issuance Deadline, unless otherwise mutually agreed to by the parties, (B) in the case of a Security Issuance Failure, either (x) any date so designated by Purchaser, but in all events a date occurring no later than the last calendar day of the second month following the month in which the Settlement Date for the related Private Issue Security was originally scheduled to occur; or (y) the date of Seller's purchase of the entire Mortgage Pool Ownership Interest from Purchaser pursuant to Section 32 hereof, and (C) the date of the termination of Seller as the servicer in accordance with the terms of this Agreement.

Notwithstanding the foregoing, so long as Seller is acting as servicing agent of Purchaser hereunder, Seller shall enforce any and all remedies, or exercise any defenses of setoff or otherwise, directly against any mortgagor(s) under the Mortgage Loans.

(d) From time to time Seller may make a request of Purchaser by telephone or otherwise to enter into a Transaction. Purchaser shall be under no obligation to enter into the Transaction unless and until: (i) it elects to do so, which election shall be evidenced solely by its transfer of appropriate funds to Seller and (ii) the conditions specified herein have been satisfied. Notwithstanding anything to the contrary in this Agreement, the Purchaser shall not be required to purchase Mortgage Loans which are registered on the MERS System unless the Electronic Tracking Agreement is in full force and effect.

(e) If Purchaser elects to purchase any Participation Certificate, Purchaser shall pay an amount equal to the Purchase Price for such Participation Certificate by wire transfer of immediately available funds in accordance with the warehouse lender's wire instructions or, if there is no warehouse lender, Seller's Wire Instructions. In the event that Purchaser rejects a Participation Certificate for purchase for any reason and/or does not transmit the Purchase Price, (i) any Participation Certificate delivered to Purchaser in anticipation of such purchase shall automatically be null and void and shall be returned by Purchaser to Seller and (ii) if Purchaser shall nevertheless receive any portion of the related Takeout Amount, Purchaser shall hold such funds in trust for Seller and shall immediately pay such portion of the Takeout Amount received to Seller in accordance with Seller's Wire Instructions on the date of receipt thereof by Purchaser if Purchaser receives such portion of the Takeout Amount prior to 11:00 a.m. (Montgomery time) and otherwise, on the next Business Day.

(f) In the event that the Private Issue Security is not issued on or before the Security Issuance Deadline due to non-performance by a Private Issuer of any of its obligations under the related Private Issuer Guide in connection with a Transaction or in the event that the applicable Private Issuer fails to issue the Private Issue Security in the amount set forth in the related Takeout Commitment, Purchaser may consider the Private Issuer in material breach of its Private Issuer Guide in respect of such Transaction and pursue any remedies available to it under such Private Issuer Guide or applicable law. In the event that the Takeout Buyer does not comply with any of its obligations under the related Takeout Commitment, Takeout Buyer Guide in connection with a Whole Loan

Trade Transaction, Purchaser may consider the Takeout Buyer in material breach and pursue any remedies available to it under such Takeout Commitment, Takeout Buyer Guide or applicable law.

(g) To the extent the Private Issue Security is not issued on or before the Security Issuance Deadline, or a Security Issuance Failure is otherwise determined to have occurred or a Takeout Buyer fails to fulfill its obligations under the related Takeout Commitment, then all payments and recoveries of principal and interest and insurance and disposition proceeds respecting any Mortgage Loan due on or after the Purchase Date, net of the Servicing Fee, shall be payable to Purchaser in accordance with Section 4(c) hereof. All scheduled payments due prior to the Purchase Date shall be retained by Seller.

(h) The terms and conditions of the purchase of each Participation Certificate shall be as set forth in this Agreement and in each Participation Certificate. Each Participation Certificate shall be deemed to incorporate, and Seller shall be deemed to make as of the applicable dates specified herein, for the benefit of Purchaser, the representations and warranties set forth herein in respect of such Participation Certificate and the Mortgage Loans evidenced by such Participation Certificate.

### **Section 3. Takeout Commitments.**

(a) Seller, coincident with the commencement of each Transaction, hereby and thereby assigns and sets over to Purchaser, without recourse, free and clear of any lien, claim, participation or encumbrance of any kind, all of Seller's right, title and interest under each Takeout Commitment, including without limitation, its right and entitlement to receive from the related Takeout Buyer the entire Takeout Amount specified in each Takeout Commitment. Purchaser agrees that for Private Issue Security Transaction Purchase will deliver to the Takeout Buyer the related Private Issue Security which is sufficient to satisfy the related Takeout Commitment, provided that: (i) the Private Issue Security shall have been issued and delivered to Purchaser in the Private Issue Security Face Amount, and at least equal to the Purchase Price, on or before the Settlement Date so as to allow Purchaser to effect Good Delivery of the Private Issue Security to the related Takeout Buyer; (ii) the Takeout Commitment Assignment is fully completed and executed by Seller in favor of Purchaser and executed by the Takeout Buyer, if under the related Takeout Commitment the prior written consent of the Takeout Buyer is required (or an amendment of the Takeout Commitment permitting the assignment of such Takeout Commitment without the consent of the Takeout Buyer, which shall be provided by Seller to Purchaser upon entering into the related Transaction); and (iii) notice of Seller's assignment of the Takeout Commitment to Purchaser has been given to the Takeout Buyer. The parties hereto agree that time is of the essence in connection with the Transactions and the fulfillment of their respective obligations thereunder.

(b) As provided herein, in the event a Takeout Buyer fails to perform its obligations under the related Takeout Commitment as determined under the express terms set forth in such Takeout Commitment, Purchaser may consider the Takeout Buyer in material breach of its Takeout Commitment and pursue any remedies available to it under such Takeout Commitment or applicable law.

### **Section 4. Issuance and Delivery of Participation Certificate.**

(a) In connection with each Transaction, Seller shall (i) issue and deliver to Purchaser an electronic copy of a fully executed and completed original Participation Certificate; and (ii) deliver, or caused to be delivered, and release to Purchaser each of the documents listed in clauses (i) through (v) inclusively of Sections 2(a) and (b). The Participation Certificate shall evidence the entire Mortgage Pool Ownership Interest. The Participation Certificate shall, by its terms, cease to evidence a Mortgage Pool Ownership Interest in any or all of the related Mortgage Loans upon (i) (1) payment to Purchaser of the Takeout Amount set forth under the Takeout Commitment (with respect to Whole Loan Trade Transactions) or (2) the issuance and delivery to Purchaser of the related Private Issue Security covered by a Takeout Commitment (with respect to a Private Issue Security Transaction), (ii) a repurchase of a Deficient Mortgage Loan by Seller at the Repurchase Price, or (iii) a repurchase of the entire Mortgage Pool Ownership Interest by Seller at the Repurchase Price in accordance with the terms hereof; provided, however, Purchaser may, at its option, cause the Participation Certificate to be canceled in exchange for an absolute assignment and delivery by Seller to Purchaser of the entire Mortgage Pool Ownership Interest, and provided further, however, that such Participation Certificate and this Agreement shall continue to be

effective in determining the rights of Purchaser (or other holder of the Participation Certificate) to receive the benefit of any required payments derived from the Mortgage Pool.

(b) Purchaser and any subsequent transferee under the Participation Certificate shall be entitled during the term in which a Participation Certificate remains in force and effect to sell, transfer, assign, pledge, or otherwise dispose of such Participation Certificate, all without the consent of Seller. Seller agrees to treat any holder of the Participation Certificate as the beneficial owner of the Mortgage Pool evidenced thereby and Seller shall have no right or obligation to sell, pledge, repurchase, substitute other mortgage loans for, or otherwise dispose of, any of the Mortgage Loans except as otherwise set forth in this Agreement.

(c) Subject to the terms hereof, each Participation Certificate shall provide for monthly remittance by Seller to Purchaser and its successors and assigns of Purchaser's portion of the payments of principal (including principal prepayments), interest and other amounts received by Seller (or Subservicer) from mortgagors under the Mortgage Loan during the Servicing Period. The first scheduled Remittance Date for Seller's remittance of Mortgage Loan payments to Purchaser and its successors and assigns shall occur on the 25<sup>th</sup> day (or if such day is not a Business Day, on the next Business Day) of each calendar month following the Purchase Date (the "Initial Remittance Date"). The remittance on the Initial Remittance Date, and on each Remittance Date thereafter, shall include Purchaser's portion of all Mortgage Loan payments plus any unscheduled payments and insurance and disposition proceeds received by Seller on or after the Purchase Date less the Servicing Fee. All such Mortgage Loan payments received by Seller shall be held by Seller in trust for the benefit of Purchaser and its successors and assigns. Seller shall not commingle such Mortgage Loan payments with its own funds and, at all times, shall keep such Mortgage Loan payments segregated from its own funds by depositing such Mortgage Loan payments in a separate Custodial Account established pursuant to Section 5(c) hereof. Seller acknowledges and agrees that such Custodial Account and the funds deposited therein shall not be property of the estate of Seller as that term is defined in Section 541 of Title 11 of the United States Code in the event of Seller's bankruptcy.

(d) Seller acknowledges that in connection with the purchase and sale of the Participation Certificate under this Agreement, Seller shall immediately cause Purchaser to be designated as "interim funder" in the interim funder field of the MERS System.

(e) Purchaser (or a subsequent holder of a Participation Certificate) shall surrender, or cause to be surrendered, the Participation Certificate (to the extent in its possession) to Seller upon the earliest to occur of (i) the sale or transfer of such Participation Certificate to a subsequent transferee, and (ii) the absolute assignment and delivery to Purchaser of the entire Mortgage Pool Ownership Interest.

(f) On or prior to the settlement of a Whole Loan Transaction or the issuance of a Private Issue Security, upon notification in writing by Seller to Purchaser that the Takeout Buyer is ready to review the Mortgage Loan Documents and Pooling Documents for a Whole Loan Trade Transaction or that the Private Issuer is prepared to issue the Private Issue Security for a Private Issue Security Transaction, Purchaser shall deliver all of the Mortgage Loan Documents and Pooling Documents to the Takeout Buyer or the Private Issuer, as the case may be, or its designated custodian under a bailment agreement between Purchaser, Takeout Buyer or the Private Issuer, as the case may be, and/or such designated custodian, in form and substance acceptable to Purchaser. In each case of transmittal of the Mortgage Loans Documents and Pooling Documents pursuant to this subsection (f), the recipient thereof shall be required to return such documentation to the Purchaser if the related Mortgage Loans are not purchased and the Takeout Amount paid in accordance with the bailment agreement and Section 4(g) hereof within forty-five (45) days after such recipient's receipt of such documentation or, if earlier, the expiration of the applicable Takeout Commitment. In such case, the Purchaser shall promptly send a "bailee violation letter" to such recipient of the Mortgage Loans Documents and Pooling Documents and, if the documentation is then not promptly returned to the Purchaser or the purchase and payment of such Mortgage Loans is then not promptly completed, the Seller, if required by the Purchaser, shall immediately be obligated to repurchase such Mortgage Loan at the Repurchase Price. Upon receipt of payment of the Takeout Amount set forth in the related Takeout Commitment from the Takeout Buyer for a Whole Loan Trade Transaction or issuance of the Private Issue Security and receipt from the Takeout Buyer of the Takeout Amount by Purchaser for a Private Issue Security Transaction, Purchaser shall release all of its right, title and interest in and to the Mortgage Loan Documents and Pooling Documents to the Takeout Buyer or Private Issuer, as the case may be, and shall execute and deliver to the Takeout Buyer or the Private Issuer,

as applicable, or its designated custodian such form of release as may be reasonably requested by the Takeout Buyer or the Private Issuer, as applicable.

(g) All proceeds or other amounts payable on account of the sale of the Mortgage Loans shall be paid directly by the Takeout Buyer or other purchaser (and the Seller shall so notify each Takeout Buyer and/or purchaser, as applicable, of this requirement) by wire transfer to such account maintained with the Purchaser as may be designated by the Purchaser for such purpose, pursuant to the Purchaser's wire transfer instructions provided by the Purchaser to the Seller, accompanied by a copy of the Takeout Buyer's or other purchaser's, as applicable, written purchase advice. Unless such wire is received by the Purchaser on or prior to 1:00 p.m. (Montgomery time) on the date of closing of the Transaction, for purposes of calculation and payment of the amounts due the Purchaser on its Participation Certificate, the proceeds of such Transaction shall be deemed to have been received by the Purchaser on the next succeeding Business Day. All such proceeds or other amounts payable on account of the Transactions shall be applied in the manner set forth in Section 4(h) hereof.

(h) All proceeds or other amounts payable on account of the Transactions or other disposition of the Mortgage Loan, in each case, net of Servicing Fees and other servicing compensation due to the Seller which shall be retained by the Seller, shall be applied pro rata in accordance with the beneficial ownership interests in the Mortgage Loans owned by each party.

## **Section 5. Mortgage Pool Servicing.**

(a) General Servicing Standards; Indemnification; Servicing Compensation. Seller and Purchaser each agrees and acknowledges that each Mortgage Pool shall be sold to Purchaser on a servicing-retained basis. Purchaser and Seller agree, however, that Purchaser is engaging, and Purchaser does hereby engage, Seller to provide servicing of each Mortgage Pool as agent of and for the benefit of Purchaser and its successors and assigns from the Purchase Date for each Transaction until the expiration or earlier termination of the Servicing Period. Except as otherwise provided hereunder, Seller shall have no further servicing obligations or duties to Purchaser under the terms of this Agreement with respect to the relevant Mortgage Pool upon the expiration of the applicable Servicing Period.

Seller shall separately service and administer each Mortgage Pool (which servicing duties shall include special servicing, default administration, workout and liquidation or foreclosure) in a manner that Seller reasonably believes to be in the best interest of Purchaser and in accordance with Accepted Servicing Practices and the terms hereunder, and Seller shall at all times comply with applicable law, FHA regulations and VA regulations, as applicable, and any other applicable rules or regulations so that (among other things) FHA insurance, VA guarantee, or private mortgage insurance in respect of any Mortgage Loan remains in full force and effect and is not reduced. Seller shall at all times maintain accurate and complete records of its servicing of the Mortgage Loans, and Purchaser may, at any time during Seller's normal business hours, on reasonable notice, examine such records. In addition, Seller shall deliver to Purchaser on each Remittance Date (or other date of required remittance of Mortgage Loan payments) occurring during the Servicing Period a written report regarding the status of those Mortgage Loans, in form and substance of the remittance reports required under the relevant Private Issuer Guide and Private Issuer Program respecting the applicable Private Issue Security originally scheduled to be issued pursuant to the Transaction (each, a "Mortgage Loan Remittance Report"). Seller, within three (3) Business Days following request of Purchaser, shall provide to Purchaser a detailed report of the status of the Mortgage Loan and relevant payment information and such other information (including, without limitation, a reconciliation detailing the source of each payment made by the obligors under the Mortgage Loans so that such payments are traceable) as Purchaser may require as of the date of such request or such other date required by Purchaser.

Seller shall not consent to a modification of the interest rate of a Mortgage Note, defer or forgive the payment thereof or of any principal, reduce the outstanding principal amount (except for actual payments of principal) or extend the final maturity date of a Mortgage Loan during the Servicing Period or at any other time that it is servicing such Mortgage Loan hereunder for the benefit of Purchaser and its successors and assigns.

Seller shall indemnify and hold Purchaser and its successors and assigns harmless against any and all actions, claims, liabilities or other losses ("Losses") resulting from or otherwise arising in connection with the failure of Seller to perform its obligations in strict compliance with the terms of this Agreement (which



indemnification shall not include consequential damages but shall include, without limitation, any failure to perform its servicing obligations as set forth hereunder, any failure of a Takeout Buyer to perform in a timely manner under its Takeout Commitment if such failure was caused directly by Seller's required action or failure to take action (to the extent that such action is material) under the terms of this Agreement or the Takeout Commitment, any Losses directly attributable to a failed or delayed trade in respect of a Whole Loan Trade Transaction or a Security Issuance Failure in respect of a Private Issue Security Transaction if such failure was caused directly by Seller's required action or failure to take action (to the extent that such action is material) under the terms of this Agreement or the Takeout Commitment, any Losses directly attributable to the improper servicing of the Mortgage Loans and any Losses directly attributable to the failure of a Private Issuer to deliver a Private Issue Security on the Scheduled Delivery Date if such failure was caused directly by Seller's required action or failure to take action (to the extent that such action is material) under the terms of this Agreement or the Takeout Commitment). Upon a failed or delayed trade in respect to a Whole Loan Trade Transaction or a Security Issuance Failure in respect of a Private Issue Security Transaction within thirty (30) days after delivery of the related Participation Certificate to Purchaser, Purchaser may complete, or cause to be completed, the endorsements on the Mortgage Notes and complete and record, or cause to be completed and recorded, the assignments of Mortgages relating to the affected Mortgage Loans.

As compensation for Seller undertaking servicing duties, during the Servicing Period, Seller shall be entitled to receive the Servicing Fee and such other servicing compensation (e.g., late fees and assumption fees) as permitted and in such manner provided for under the applicable provisions of the relevant Takeout Buyer Guide, Takeout Buyer Program, Private Issuer Guide and Private Issuer Program, which the parties believe to be fair market value and adequate consideration for the servicing duties provided pursuant to this Agreement and which was determined as the result of arm's length negotiations.

(b) Seller's Retention of Mortgage Files and Servicing Files. Each Servicing File and Mortgage File shall be held by Seller in order to service the Mortgage Loans pursuant to this Agreement and are and shall be held in trust by Seller for the benefit of Purchaser as the owner thereof during the Servicing Period or at any other time that it is servicing such Mortgage Loan hereunder for the benefit of Purchaser and its successors and permitted assigns. Seller's possession of each Servicing File and Mortgage File is at the will of Purchaser for the sole purpose of facilitating servicing of the related Mortgage Loan during the Servicing Period pursuant to this Agreement, and such retention and possession by Seller shall be in an agency and custodial capacity only. The ownership of each Mortgage Note, Mortgage and related Mortgage Loan Documents, and the contents of each Servicing File and Mortgage File is vested in Purchaser in accordance with its ownership interest hereunder and the ownership of all records and documents with respect to the related Mortgage Loan prepared by or which come into the possession of Seller shall immediately vest in Purchaser in accordance with its ownership interest hereunder and shall be retained and maintained, in trust, by Seller at the will of Purchaser in such custodial capacity only. The books and records of Seller (which shall include, without limitation, Seller's computer records and systems used in originating and servicing Mortgage Loans) and any loan documents related to such Mortgage Loans and held by Seller in trust for the Purchaser shall be appropriately marked to clearly reflect the ownership of the related Mortgage Loans by Purchaser (subject to the rights of the relevant Private Issuer upon issuance of the Private Issue Security). Seller shall release from its custody the contents of any Mortgage File or Servicing File retained by it only in accordance with this Agreement and/or any applicable Private Issuer Guide, unless such release is required as incidental to the servicing of a Mortgage Loan. From time to time and as appropriate for the foreclosure or servicing of any of the Mortgage Loans, upon written request by Seller (using a Request for Release of Documents, substantially in the form of Exhibit H hereto) and with the prior consent of Purchaser, Purchaser shall release to Seller the related Mortgage File, set forth in such request by Seller. All documents so released to Seller shall be held by it in trust for the benefit of Purchaser. Seller shall segregate and maintain continuous custody of all documents constituting the Mortgage File received by it in secure and fireproof facilities and shall clearly mark the file folders therefor to indicate that the Mortgage File is being held for the benefit of Purchaser. Seller shall promptly return to Purchaser the Mortgage File when Seller's need therefor in connection with such foreclosure or servicing no longer exists, unless the Mortgage Loan shall be liquidated, in which case, upon receipt of a separate Request for Release of Documents (with a certification that all amounts received in connection with such payment or repurchase have been credited to the Custodial Account as provided in the Participation Agreement) and with the Purchaser's prior consent, Purchaser shall release the Mortgage File and its right, title and interest thereunder to Seller. Upon the payment in full of any Mortgage Loan, and upon receipt by Purchaser of Seller's Request for Release of Documents (with a certification that all amounts received in connection with such payment or repurchase have been credited to



the Custodial Account as provided in the Participation Agreement), Purchaser shall promptly release the related Mortgage File and its right, title and interest thereunder to Seller.

(c) Collection and Escrow Accounts. Seller shall establish one or more collection and escrow accounts, each in the form of a demand deposit account, and each titled "Taylor, Bean & Whitaker Mortgage Corp., in trust for Colonial Bank, N.A. -- AOT Program" (each such account, a "Custodial Account"). Such account shall at all times be established with a Qualified Depository acceptable to Purchaser and Seller shall promptly deliver to Purchaser evidence of the establishment of such account by delivery to Purchaser of the account information and such other information and certifications as may be required by Purchaser from time to time with respect to such Custodial Account.

Any funds deposited in the Custodial Account shall at all times be fully insured by the FDIC to the full extent permitted under applicable law. Seller shall not maintain any of its own funds in the Custodial Account. Seller must deposit all funds (net of the applicable Servicing Fee and other servicing compensation) received with respect to the Mortgage Loans in the Custodial Account immediately upon receipt thereby. Seller shall withdraw promptly any funds from the Custodial Account deposited thereto in error, any funds payable to other purchasers and for other purposes consistent with the applicable servicing provisions of the relevant Takeout Buyer Guide, Takeout Buyer Program, Private Issuer Guide and Private Issuer Program relating to the applicable Transaction. Seller may invest and reinvest the funds in the Custodial Account solely in a manner consistent with the relevant Takeout Buyer Guide and Private Issuer Guide. Seller shall be liable for any investment losses resulting from its investment or disposition of the funds other than in accordance with the terms of this Agreement and shall indemnify Purchaser and its successors and assigns for such losses. Purchaser shall have the option and authority to withdraw funds from the Custodial Account at any time and Seller shall provide Purchaser with access to and "control" (as defined in the UCC) of such Custodial Account or shall remit any such funds to Purchaser immediately upon request thereby.

(d) Subservicers. The Mortgage Loans may be subserviced by a Subservicer on behalf of Seller provided that the Subservicer is a GNMA-approved issuer, Fannie Mae-approved lender, FHLMC seller/servicer, FHA-approved mortgagee and/or VA-approved lender, in each case in good standing, and no event has occurred, including but not limited to a change in insurance coverage, that would make it unable to comply with the eligibility requirements for lenders/servicers imposed by the relevant Takeout Buyer Guide and Private Issuer Guide or which would require notification to the relevant Takeout Buyer and Private Issuer. The Subservicer shall fully comply with the provisions hereunder. Seller shall notify all relevant Subservicers, at the commencement of each Transaction, of Purchaser's Mortgage Pool Ownership Interest and rights and benefits under this Agreement. Seller shall pay all fees and expenses of a Subservicer from its own funds, and a Subservicer's fee shall not exceed the Servicing Fee respecting a particular Mortgage Pool.

At the cost and expense of Seller, without any right of reimbursement from any custodial collection account, Seller shall be entitled to terminate the rights and responsibilities of a Subservicer and arrange for any servicing responsibilities to be performed by a successor Subservicer meeting the requirements in the preceding paragraph; provided, however, that nothing contained herein shall be deemed to prevent or prohibit Seller, at Seller's option, from electing to service the related Mortgage Loans itself. In the event that Seller's responsibilities and duties respecting a particular Mortgage Pool expire by reason of expiration or earlier termination of the Servicing Period, if requested to do so by Purchaser, Seller shall, at its own cost and expense, terminate the rights and responsibilities of any Subservicers as soon as is reasonably possible.

Notwithstanding any of the provisions of this Agreement relating to agreements or arrangements between Seller and a Subservicer or any reference herein to actions taken through a Subservicer or otherwise, Seller shall not be relieved of its obligations to Purchaser and its successors and assigns and shall be obligated to the same extent and under the same terms and conditions as if it alone were servicing and administering the Mortgage Loans and Seller shall remain responsible hereunder for all acts and omissions of a Subservicer as fully as if such acts and omissions were those of Seller. Seller shall be entitled to enter into an agreement with a Subservicer for indemnification of Seller by the Subservicer and nothing contained in this Agreement shall be deemed to limit or modify such indemnification.

Any subservicing agreement and any other transactions or services relating to the Mortgage Loans involving a Subservicer shall be deemed to be between the Subservicer and Seller alone, and Purchaser shall have no obligations, duties or liabilities with respect to the Subservicer including no obligation, duty or liability to pay the Subservicer's fees and expenses.

(e) Early Servicing Termination. Purchaser (or any other subsequent holder of the related Participation Certificate) shall be entitled, by written notice to Seller, to effect immediately after any applicable grace period the termination of Seller's servicing rights and obligations respecting the affected Mortgage Pool in the event any of the following circumstances or events ("Servicing Termination Events") occur and are continuing:

- (i) any failure by Seller to remit to Purchaser and its successor and assigns any payment required to be made under the terms of this Agreement or such Participation Certificate which payment failure continues unremedied for a period of two (2) Business Days after Seller's receipt of demand for payment from Purchaser and its successor and assigns; or
- (ii) failure by Seller to observe or perform in any material respect any of Seller's other covenants or agreements set forth in this Agreement or in the other Transaction Documents (after expiration of any grace periods) which continues unremedied for a period of two (2) Business Days (or such longer period provided in the relevant notice to Seller) after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to Seller by Purchaser; or
- (iii) a decree or order of a court or agency or supervisory authority having jurisdiction for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against Seller; or
- (iv) Seller shall consent to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to Seller or of or relating to all or substantially all of its property; or
- (v) Seller shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of any applicable insolvency or reorganization statute, make an assignment for the benefit of its creditors, or voluntarily suspend payment of its obligations; or
- (vi) Seller ceases to meet the qualifications for maintaining all Private Issuer Approvals; or
- (vii) Seller attempts to assign its right to servicing compensation hereunder or to resell an ownership interest in a Mortgage Pool in a manner inconsistent with the terms of the related Transaction, or Seller attempts without the consent of Purchaser to sell or otherwise dispose of all or substantially all of its property or assets or to assign this Agreement or the servicing responsibilities hereunder or to delegate its duties hereunder or any portion thereof (to other than a Subservicer wherein Seller remains responsible for the servicing of the Mortgage Pool); or
- (viii) Seller experiences any material adverse change in its business operations or financial condition, and such event continues unremedied for more than five (5) Business Days; or
- (ix) any failure of Seller to pay the required fees for the use of MERS System, which failure remains unremedied for a period of five (5) Business Days or more after Seller's receipt of written notice from MERS or Purchaser, or
- (x) any failed or delayed trade in respect of a Whole Loan Trade Transaction or a Security Issuance Failure in respect of a Private Issue Security Transaction if such failure or delay is caused by Seller's action or failure to take action under the terms of this Agreement.

In the case of the events described in subclauses (iii), (iv) and (v) of this subsection, all servicing rights and future obligations of Seller under this Agreement and all Outstanding Transactions shall terminate immediately upon the occurrence of any such event(s), regardless of whether notice of such event shall have been given to or by Purchaser or Seller. In the case of the events described in subclauses (i),(ii) and (vi) through (x) inclusive of this subsection, so long as the Servicing Termination Event shall not have been remedied (but only to the extent, and within the time period, of any remedy period provided above), Purchaser may terminate all the servicing rights and obligations of Seller under this Agreement and all Outstanding Transactions by notice in writing to Seller. In all cases, Purchaser shall have the right to enforce any or all remedies available to Purchaser under this Agreement or applicable law, including seeking injunctive relief and specific performance.

Upon such automatic termination or receipt by Seller of written notice of termination from Purchaser, all authority and power of Seller respecting its mortgage servicing rights and duties under this Agreement and any affected Transactions shall pass to and be vested in either the Purchaser or in the successor servicer duly appointed by Purchaser (such successor servicer being a "Designated Servicer") and Seller's obligations respecting transfer of servicing to a successor servicing entity shall remain in force.

#### **Section 6. Seller Covenants Regarding Transfer of Servicing.**

In the event a Servicing Termination Event occurs, upon Purchaser giving notice to Seller of Purchaser's intention to transfer servicing to the Designated Servicer as of a certain date specified therein, or as soon thereafter as is feasible ("Servicing Transfer Date"), then, in each such case, upon request of Purchaser, Seller agrees, at its sole expense, to take all reasonable and customary actions, to assist Purchaser and Designated Servicer in effectuating and evidencing transfer of servicing to the Designated Servicer in compliance with applicable law on or before the Servicing Transfer Date, including:

- (a) Notice to Mortgagors. Seller shall mail to the mortgagor under each Mortgage Loan, by such date as may be required by law, a letter advising such mortgagor of the transfer of the servicing thereof to the Designated Servicer. Seller shall promptly provide the Designated Servicer with copies of all such letters. Purchaser shall, or shall cause the Designated Servicer to, mail a letter to each such mortgagor advising such mortgagor that the Designated Servicer is the new servicer of the related Mortgage Loan. Such letter shall be mailed by such date as may be required by applicable law.
- (b) Notice to Taxing Authorities, Insurance Companies and HUD (if applicable). Seller shall transmit or cause to transmit to the applicable taxing authorities and insurance companies (including primary mortgage insurers, if applicable) and/or agents, not less than fifteen (15) days prior to the Servicing Transfer Date, notification of the transfer of the servicing to the Designated Servicer and instructions to deliver all notices, tax bills and insurance statements, as the case may be, to the Designated Servicer from and after the Servicing Transfer Date. Seller shall promptly provide the Designated Servicer with copies of all such notices. With respect to any FHA-insured/VA guaranteed Mortgage Loans in the Mortgage Pool in addition to the requirements set forth above, Seller shall provide notice to HUD on such forms prescribed by HUD, or to the VA respecting the transfer of insurance credits, as the case may be. Seller shall be obligated to pay all mortgage insurance premiums with respect to FHA/VA Mortgage Loans until such notice is received by HUD and/or the VA.
- (c) Assignment and Endorsements. At Purchaser's (or Designated Servicer's) direction and in Purchaser's sole discretion, Seller shall, to the extent Seller has not already done so, prepare and/or complete any endorsements to Mortgage Notes and any assignments of Mortgages (including any interim endorsements or assignments) which are necessary to effectuate the terms of this Agreement prior to the Servicing Transfer Date, at Seller's own cost and expense.
- (d) Delivery of Servicing Records. Seller shall promptly forward to the Designated Servicer, but in no event more than thirty (30) days after the Servicing Transfer Date, all Servicing Files, Mortgage Loan Files and any other Mortgage Loan Documents in Seller's (or any Subservicer's) possession relating to each Mortgage Loan which are used in, and necessary and helpful for, the servicing and administration of any Mortgage Loans.
- (e) Escrow Payments. Seller shall provide the Designated Servicer on or before the Servicing Transfer Date with immediately available funds by wire transfer in the amount of the net Escrow

Payments and suspense balances and all loss draft balances associated with the Mortgage Loans in an affected Mortgage Pool. Seller shall provide the Designated Servicer on or before the Servicing Transfer Date with an accounting statement of Escrow Payments and suspense balances and loss draft balances sufficient to enable the Designated Servicer to reconcile the amount of such payment with the accounts of the Mortgage Loans in the affected Mortgage Pool. Additionally, Seller shall wire to the Designated Servicer on or before the Servicing Transfer Date the amount of any agency, trustee or prepaid Mortgage Loan payments and all other similar amounts held by Seller (or Subservicer).

(f) Payoffs and Assumptions. Seller shall provide to the Designated Servicer, on or before the Servicing Transfer Date, copies of all assumption and payoff statements generated by Seller (or Subservicer) on the Mortgage Loans.

(g) Mortgage Payments Received Prior to Servicing Transfer Date. Seller shall forward by wire transfer to an account designated by Purchaser, on or before the Servicing Transfer Date, all payments received by Seller (or Subservicer) on each Mortgage Loan in the affected Mortgage Pools prior to the Servicing Transfer Date to Purchaser.

(h) Mortgage Payments Received After Servicing Transfer Date. Seller shall forward the amount of any monthly payments received by Seller (or Subservicer) after the Servicing Transfer Date to the Designated Servicer by overnight mail on the date of receipt. Seller shall notify the Designated Servicer of the particulars of the payment, which notification requirement shall be satisfied (except with respect to Mortgage Loans then in foreclosure or bankruptcy) if Seller (or Subservicer) forwards with its payments sufficient information to the Designated Servicer. Seller shall assume full responsibility for the necessary and appropriate legal application of monthly Mortgage Loan payments received by Seller (or Subservicer) after the Servicing Transfer Date with respect to Mortgage Loans then in foreclosure or bankruptcy; provided, however, necessary and appropriate legal application of such monthly Mortgage Loan payments shall include, but not be limited to, endorsement of a Mortgage Loan monthly payment to the Designated Servicer with the particulars of the payment such as the account number, dollar amount, date received and any special mortgage application instructions.

(i) Reconciliation. Not less than five (5) days prior to the Servicing Transfer Date, Seller shall reconcile the principal balances of each Mortgage Loan and payments made by each mortgagor thereunder and shall make any necessary monetary adjustments reasonably required by the Designated Servicer. Any such monetary adjustments will be transferred between Seller and the Designated Servicer, as appropriate.

(j) IRS Forms. Seller shall timely file all IRS forms which are required to be filed in relation to the servicing and ownership of the Mortgage Loans. Seller shall provide copies of such forms to the Designated Servicer upon request and shall reimburse the Designated Servicer for any costs or penalties incurred by the Designated Servicer due to Seller's failure to comply with this paragraph.

(k) Other Necessary Actions. Seller shall prepare, execute and deliver to the Designated Servicer any and all documents and other instruments, and do or cause to be done all other acts or things necessary or appropriate to effect the transfer of servicing to the Designated Servicer.

In the event Seller fails to perform any of its obligations described in paragraphs (a) through (k) above within the time periods specified therein, Purchaser may take, or cause to be taken, at Seller's expense, any of the actions described therein.

#### **Section 7. Intent of Parties; Security Interest.**

(a) From and after the issuance of the related Participation Certificate, the legal title of Seller to each Mortgage Loan is retained by Seller in trust and for the benefit of Purchaser to the extent of Purchaser's beneficial ownership interest thereon and the Purchaser shall be the holder, subject to the terms of this Agreement, as equitable title to the Mortgage Loan in the proportion evidenced by the Participation Certificate, for the sole purpose of facilitating the servicing of such Mortgage Loan, and, subject to the terms hereunder, all funds received on or in connection with such Mortgage Loan shall be deposited in the Custodial Account and held by Seller in trust

and for the benefit of Purchaser and its successors and assigns and shall be disbursed only in accordance with this Agreement.

(b) The sale of a participation interest in each Mortgage Loan shall be reflected on Seller's balance sheet and other financial statements and accounting books and records as a sale of such Mortgage Loans by Seller. Seller shall be responsible for maintaining, and shall maintain, a complete set of books and records for each Mortgage Loan which shall be segregated from Seller's own books and records and clearly marked to reflect Purchaser's ownership of each Mortgage Loan.

(c) **THE TRANSACTIONS CONTEMPLATED HEREIN ARE PURCHASES AND SALES AND NO AMOUNT PAID BY PURCHASER TO HEREUNDER TO PURCHASE A PARTICIPATION INTEREST IN THE MORTGAGE POOL SHALL IN ANY WAY BE CONSTRUED AS A LOAN OR AN EXTENSION OF CREDIT BY PURCHASER TO SELLER, AND THE MORTGAGE POOL OWNERSHIP INTEREST BEING PURCHASED SHALL NOT BE A PART OF THE ESTATE OF SELLER IN THE EVENT OF BANKRUPTCY, REORGANIZATION, ARRANGEMENT, INSOLVENCY OR LIQUIDATION PROCEEDING, OR OTHER PROCEEDING UNDER ANY FEDERAL OR STATE BANKRUPTCY OR SIMILAR LAW, OR THE OCCURRENCE OF ANOTHER SIMILAR EVENT, OF, OR WITH RESPECT TO, SELLER. THE PARTIES TO THIS AGREEMENT HEREBY ACKNOWLEDGE THAT THE "CREDIT RISK" OF THE MORTGAGE LOANS INCLUDED IN THE MORTGAGE POOLS IN WHICH PURCHASER IS PURCHASING A PARTICIPATION INTEREST HEREUNDER SHALL BE BORNE BY PURCHASER, AND THAT SELLER HAS NOT MADE ANY REPRESENTATIONS TO PURCHASER CONCERNING THE COLLECTIBILITY OF THE PAYMENTS DUE UNDER SUCH MORTGAGE LOANS NOR HAS SELLER MADE ANY REPRESENTATIONS TO PURCHASER CONCERNING THE EXPECTED RETURN ON PURCHASER'S INVESTMENT IN SUCH MORTGAGE LOANS.**

(d) In order to secure the prompt payment in full of each Repurchase Price as and when due hereunder, and the prompt payment and performance by the Seller of each of its other obligations under this Agreement, the Seller hereby pledges, assigns and delivers to Purchaser, and grants to Purchaser a security interest in, all of the Seller's right, title and interest in (i) each Mortgage Loan, including, without limitation, the indebtedness, promissory note or notes, collateral security, the end investor commitment and all other documents and instruments evidencing, securing or otherwise related to each such Mortgage Loan, together with all of the rights, privileges and remedies applicable thereto, (ii) its right to service such Mortgage Loans hereunder (including, without limitation, pursuant to Section 8), (iii) all proceeds thereof, and (iv) all payment streams received in connection with any of the foregoing (collectively, the "Collateral").

(e) If the Seller shall fail to pay the Repurchase Price as and when due hereunder or in the event that any proceeding under Title 11 of the United States Code, either voluntary or involuntary, is commenced by or against Seller, then, in any such case, Purchaser shall have the right from time to time and at any time, in Purchaser's sole and absolute discretion, to:

(1) exercise any and all of the rights and remedies of a secured party under the UCC in effect in any applicable jurisdiction, including, without limitation, the right to sell or otherwise dispose of any or all of the Collateral by public or private proceedings at such time and place, by such methods, in such manner and on such terms as the Purchaser shall elect subject to applicable law, without recourse to judicial proceedings, and without right of demand, appraisal or redemption, all of which are expressly waived by the Seller;

(2) exercise any and all of its other rights and remedies under this Agreement; and

(3) take such other actions or proceedings at law or in equity as the Purchaser deems necessary or advisable to collect or enforce or to protect its interest in the Collateral.

The Purchaser may exercise such options individually, sequentially or in concert, all such remedies being cumulative, the exercise of one not being deemed a waiver of any of the others. No delay or omission by the

Purchaser in exercising any right hereunder shall operate as a waiver of such right or of any right under this Agreement.

(f) The Seller shall be liable for, and shall pay on demand, all reasonable expenses of retaking, holding, preparing for sale, sale, or the like, and all reasonable attorneys' fees and other expenses incurred by the Purchaser in connection with the collection of the obligations secured hereunder and the enforcement of the Purchaser's rights under this Agreement, the payment of all of which expenses and fees shall constitute additional obligations secured by this Agreement. The Seller will execute and deliver, or cause to be executed and delivered, such instruments, documents, assignments, waivers, certificates and affidavits and supply or cause to be supplied such further information and take such action as the Purchaser shall reasonably require in connection with such sale.

(g) The Seller acknowledges and agrees that the Mortgage Loans constituting the Collateral may decline speedily in value and are of a type customarily sold on a recognized market, and, accordingly, the Seller is not entitled to prior notice of any sale of such Collateral by the Purchaser, except any notice that is required under applicable law and cannot be waived. Purchaser shall have the right to liquidate and sell any of the Collateral pledged hereunder, subject to the conditions and limitations contained herein. The Purchaser will not be obligated to make any sale of such Collateral if it shall determine not to do so, regardless of the fact that notice of the sale may have been given. The Purchaser may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the sale was so adjourned.

(h) The Seller recognizes that the Purchaser may be unable to effect a public sale of any or all of the Collateral for reasons which may include certain prohibitions contained in the Securities Act of 1933, as amended (the "1933 Act"), and applicable state securities law, but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such assets for their own account for investment and not with a view to the redistribution or resale thereof. The Seller acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the Purchaser than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Purchaser shall be under no obligation to delay a sale of any of the Collateral for the period of time necessary to permit the Seller to register such assets for public sale under the 1933 Act, or under applicable state securities laws, even if the Seller were to agree to do so.

#### **Section 8. Conditions Precedent.**

(a) It shall be a condition precedent to the parties entering into the first Transaction (unless such requirement is otherwise waived in writing by Purchaser), and at the election of Purchaser any subsequent Transaction, under this Agreement that Seller furnish to Purchaser the following:

(i) the Officer's Certificate;

(ii) a certified copy of the resolutions of Seller's Board of Directors (which resolutions may be standing resolutions), substantially in the form attached to the Officer's Certificate, authorizing the transactions contemplated hereby and the execution of this Agreement, the Clearing Agreement and the other documents related hereto and recognizing that, among other factors, such as the tax, accounting and legal consequences of the transactions contemplated under this Agreement that: (1) from a business viewpoint, the sale of a participation interest in the Mortgage Loans by the Seller to the Purchaser and the assignment of the related Takeout Commitment is in the best interests of the Seller, (2) Seller has valid business reasons for selling a participation interest in the Mortgage Loans rather than obtaining a loan secured using such Mortgage Loans, and (3) the terms of the sale transaction set forth in this Agreement are more favorable to the Seller than those that would have been obtained in connection with a secured financing by the Seller;

(iii) a certificate of incumbency of authorized representatives, substantially in the form attached to the Officer's Certificate, which sets forth the names, titles and true signatures of all of

those individuals authorized to execute any document or instrument contemplated by this Agreement, the Clearing Agreement and the other documents related hereto; and

(iv) an opinion of counsel to Seller, substantially in the form attached hereto as Exhibit E.

(b) Seller shall, at its own expense, maintain at all times during the existence of this Agreement or any Transaction hereunder (i) banker's blanket bond insurance covering fidelity, robbery, employee theft, forgery by the maker of a note, counterfeit, lost securities and computer fraud and (ii) fire insurance. All such insurance shall be with standard coverage and subject to such deductibles as are customary within the mortgage lending industry and such insurance will be in such amounts and with insurance companies reasonably acceptable to Purchaser; in all events such insurance coverages shall be in such amounts and with such insurance carriers as will satisfy the requirements under any and all of the relevant Private Issuer Guide provisions and Private Issuer Programs under which Transactions may from time to time be entered into.

#### **Section 9. Representations and Warranties.**

(a) Seller hereby represents and warrants to Purchaser as of the date hereof and as of the date of each issuance and delivery of a Participation Certificate that:

(i) Seller is duly organized, validly existing and in good standing under the laws of the state of its organization or of the United States of America and has all licenses necessary to carry on its business as now being conducted and is licensed, qualified and in good standing in the state where the Mortgaged Property is located if the laws of such state require licensing or qualification in order to conduct business of the type conducted by Seller. Seller has all requisite power and authority (including, if applicable, corporate power) to execute and deliver this Agreement and the other Transaction Documents and to perform in accordance herewith and therewith; the execution, delivery and performance of this Agreement and the other Transaction Documents (including all instruments of transfer to be delivered pursuant to this Agreement and the other Transaction Documents) by Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized; this Agreement and the other Transaction Documents constitute the valid, binding and enforceable obligation of Seller; and all requisite action (including, if applicable, corporate action) has been taken by Seller to make this Agreement and the other Transaction Documents valid and binding upon Seller in accordance with its terms;

(ii) No approval of the transactions contemplated by this Agreement and the other Transaction Documents from any Governmental Authority is required, or if required, such approval has been obtained. There are no actions or proceedings pending or threatened against or affecting Seller or the properties or assets of Seller which would prohibit Seller from executing and delivering this Agreement and the other Transaction Documents or would adversely affect its ability to perform hereunder. The transfers, assignments and conveyances provided for herein are not subject to the bulk transfer or any similar statutory provisions in effect in any applicable jurisdiction;

(iii) The consummation of the transactions contemplated by this Agreement and the other Transaction Documents are in the ordinary course of business of Seller and will not result in the breach of any term or provision of the charter or by-laws of Seller or result in the breach of any term or provision of, or conflict with or constitute a default under or result in the acceleration of any obligation under, any agreement, indenture or loan or credit agreement or other instrument to which Seller or its property is subject, or result in the violation of any law, rule, regulation, order, judgment or decree to which Seller or its property is subject;

(iv) This Agreement, the Clearing Agreement and every document to be executed by Seller pursuant to this Agreement is and will be valid, binding and subsisting obligations of Seller, enforceable in accordance with their respective terms. No consents or approvals are required to be obtained by Seller or, if applicable, its parent company for the execution, delivery and performance of this Agreement or the other Transaction Documents by Seller that haven't already been obtained thereby;

(v) Each Mortgage Loan, as of the Purchase Date but prior to such purchase, is 100% owned and held by Seller, free and clear of all liens, encumbrances and claims of any kind, and neither such Mortgage Loan nor any interest therein previously has been sold, assigned, transferred, encumbered or otherwise disposed of by Seller;

(vi) Seller has not sold, assigned, transferred, pledged or hypothecated any interest in any Participation Certificate to any Person other than Purchaser, and upon delivery of a Participation Certificate to Purchaser, Purchaser will be the sole owner thereof, free and clear of any lien, claim or encumbrance;

(vii) To the extent required under applicable law, Seller has taken (and/or will take, and or will continue to take) whatever additional actions may be necessary and proper to obtain, perfect, protect and maintain a valid and enforceable lien on and security interest in the collateral securing each Mortgage Loan;

(viii) All information relating to Seller that Seller has delivered, or caused to be delivered, or is required to deliver to Purchaser including, but not limited to, all documents related to this Agreement, the Clearing Agreement, Seller's financial statements or other documents required hereunder, does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein or herein, in light of the circumstances under which they were made, not misleading;

(ix) Seller (and each Subservicer) is approved by the related Takeout Buyer or Private Issuer, as the case may be, as an approved seller/servicer (the "Approvals"), in each case in good standing, with no event having occurred or Seller (or any Subservicer) having any reason whatsoever to believe or suspect will occur prior to the purchase of the Mortgage Loans in respect of a Whole Loan Trade Transaction or issuance of the relevant Private Issue Security in respect of a Private Issue Security Transaction, including without limitation a change in insurance coverage which would either make Seller (or any Subservicer) unable to comply with the eligibility requirements for maintaining all such Approvals or require notification to the relevant Takeout Buyer or Private Issuer, as the case may be. Should Seller (or any Subservicer), for any reason, cease to possess all such Approvals, or should notification to the relevant Takeout Buyer or Private Issuer, as applicable, be required, Seller shall so notify Purchaser immediately in writing. Notwithstanding the preceding sentence, Seller shall take all commercially reasonable action to maintain all of its (and each Subservicer's) Approvals at all times during the term of this Agreement and each Outstanding Transaction. Seller (and any Subservicer) has adequate financial standing, servicing facilities, procedures and experienced personnel necessary for the sound servicing of mortgage loans of the same types as may from time to time constitute Mortgage Loans and in accordance with Accepted Servicing Practices;

(x) This Agreement, the Clearing Agreement or any other document contemplated hereby or thereby and each Transaction has not been entered into fraudulently by Seller or Custodian, or with the intent to hinder, delay or defraud any creditor or Purchaser and does not constitute a fraudulent, preferential, or voidable conveyance;

(xi) Any related Takeout Commitment constitutes a valid, binding and enforceable mandatory delivery commitment by a Takeout Buyer to purchase on the Settlement Date and at a given Takeout Amount based on the unpaid principal amount of the Mortgage Loans (in the case of a Whole Loan Trade Transaction) or the Private Issue Security described therein (in the case of a Private Issue Security Transaction), plus accrued interest thereon at a rate equal to the Reference Rate from (and including) the Purchase Date up to (but excluding) the Settlement Date;

(xii) Seller is not insolvent and will not be rendered insolvent immediately prior to or after the purchase of a Participation Certificate and has adequate capital to conduct its business as presently conducted and as contemplated by this Agreement;



(xiii) Seller is not entering into the transactions contemplated hereby with the intent of hindering, delaying or defrauding creditors;

(xiv) If Seller is a member of MERS, Seller is in good standing and will comply in all material respects with the rules and procedures of MERS in connection with the servicing of the applicable Mortgage Loans that are registered with MERS for as long as such Mortgage Loans remain registered therewith;

(xv) If Seller is a member of MERS, Seller has complied with all rules and procedures of MERS in connection with registering Purchaser as the beneficial owner of such applicable Mortgage Loan on the MERS System;

(xvi) Seller has valid business reasons for the sale and assignment of the participation interests to Purchaser rather than Seller obtaining a secured loan with the Mortgage Loans as collateral;

(xvii) The transactions contemplated by this Agreement are in the ordinary course of business of Seller;

(xviii) The transfer of participation interests by Seller to Purchaser was not made in consideration of any pre-existing debt or obligation;

(xix) Seller is not, and never has been, an insider or affiliate (as such terms are defined in Regulation C of the Securities Act of 1933, as amended, of Purchaser; and

(xx) Seller is an entity that would in an insolvency proceeding be subject to the Bankruptcy Code, as amended.

(b) Seller hereby represents and warrants to Purchaser with respect to each Mortgage Loan and the related Mortgage Pool as of the relevant Purchase Date as follows:

(i) Each Mortgage Loan is an Eligible Mortgage Loan pursuant to and in accordance with the terms of the relevant Takeout Commitment and Takeout Buyer Guide or Private Issuer Guide, as the case may be;

(ii) The Mortgage Loan Schedule contains a complete listing and schedule of the Mortgage Loans, and the information contained on such Mortgage Loan Schedule is accurate and complete in all material respects;

(iii) As to both the Mortgage Pool and each Mortgage Loan, Seller is familiar with all of the representations and warranties required to be made pursuant to the relevant Takeout Commitment and Takeout Buyer Guide or Private Issuer Guide, as the case may be, with respect thereto, and all of the representations and warranties made or deemed made respecting same contained in (or incorporated by reference therein) the relevant Takeout Commitment, Takeout Buyer Guide provisions and Takeout Buyer Program or Private Issuer Guide provisions and Private Issuer Program (collectively, the "Standard Mortgage Loan Representations") are (and shall be as of all relevant Purchase Dates) true and correct in all material respects; and except as may be expressly and previously disclosed to Purchaser, Seller has not negotiated with any Takeout Buyer or Private Issuer, as applicable, any exceptions or modifications to such Standard Mortgage Loan Representations.

(iv) In the case of a Private Issue Security Transaction, the Takeout Price is at least equal to the Private Issue Security Face Amount for the Private Issue Security proposed to be issued;

(v) Each Takeout Commitment has been validly assigned and delivered to Purchaser by Seller and constitutes a legal, valid and binding obligation of Seller and the Takeout Buyer, respectively, enforceable against Seller and the Takeout Buyer, respectively, in accordance with its terms, and each

Takeout Commitment is freely assignable to Purchaser by Seller upon notice to the Takeout Buyer and without the prior consent of the Takeout Buyer or any other Person or, if under such Takeout Commitment the prior written consent of the Takeout Buyer is required, Seller has obtained the prior written consent of Takeout Buyer or the Seller and the Takeout Buyer have executed and delivered to each other an amendment to the Takeout Commitment permitting the assignment of such Takeout Commitment without the consent of the Takeout Buyer, a copy of which has been provided by Seller to Purchaser upon entering into the related Transaction;

(vi) Each Mortgage Loan has been made or acquired and serviced by Seller pursuant to and in compliance with all applicable federal and state laws, rules and regulations, as from time to time in effect, and in accordance with the relevant Takeout Buyer Guide or Private Issuer Guide, as the case may be;

(vii) The documents and instruments evidencing, securing or otherwise relating to the Mortgage Loans have been duly and validly executed and delivered by the mortgagor(s) as well as, to the extent applicable, by the co-maker(s), guarantor(s) and/or endorser(s) under each such Mortgage Loan;

(viii) None of the Mortgage Loans are counterfeit, fraudulent, forged, fictitious, or nonexistent or have been pledged or assigned to any third party;

(ix) None of the Mortgage Loans were originated or serviced pursuant to or under material misrepresentations or fraud by Seller or any of its servants, agents or employees;

(x) None of the Mortgaged Properties securing any of the Mortgage Loans is the subject of any pending or threatened foreclosure action or other similar action;

(xi) No Mortgage Loan is a "commercial mortgage loan" within the meaning of Section 101(47)(B), Title 11 of the United States Code; and

(xii) The Mortgage Loans are sufficient quantity and outstanding principal balance to enable Purchaser to comply with the sale or swap as contemplated under the related Takeout Commitment.

(c) If Seller is an insured depository institution, Seller also represents and warrants:

(i) This Agreement and the Clearing Agreement conform to all applicable statutory or regulatory requirements. This Agreement and the Clearing Agreement and all transactions contemplated hereunder and thereunder are (A) executed contemporaneously with the agreement reached by Purchaser and Seller, having been executed on behalf of Seller by a vice president or more senior officer; (B) approved by, and duly and validly authorized by either specific corporate or banking association resolutions of Seller's Board of Directors (which approval and due authorization shall be reflected in the minutes of said board) or by the unanimous consent of an executive committee duly and validly empowered by Seller's Board of Directors; a copy of such resolution or unanimous consent, certified by the corporate secretary of Seller or attested to by a vice president or more senior officer of Seller has been provided to Purchaser; and (C) continuously, from the time of its execution, an official record of Seller;

(ii) Seller will maintain a copy of this Agreement and the Clearing Agreement in its official books and records and shall make same available for Purchaser's inspection and copying during normal business hours on one advance Business Day notice; and

(iii) The aggregate amount of the Outstanding Transactions as of any date between Purchaser and Seller shall not exceed any restrictions or limitations imposed by the Board of Directors of Seller.

(d) In the event any of Seller's representations or warranties set forth in Sections 9(a), (b) and (c) are breached or determined by either party not to be accurate (each a "Breach"), if such Breach can be cured by

action of Seller, Seller may attempt to cure such Breach including, but not limited to, by replacing the Mortgage Loans which are subject to and adversely affected by such Breach (the "Deficient Mortgage Loans") with one or more Qualified Substitute Mortgage Loans to the extent permitted under the applicable Takeout Buyer Guide or Private Issuer Guide, as the case may be, and making any appropriate adjustments for any differences in the outstanding loan principal balances between the Deficient Mortgage Loans and the Qualified Substitute Mortgage Loans. If such Breach is not cured within five (5) Business Days of the occurrence of such Breach, Purchaser may declare Seller in default of this Agreement, and Purchaser, at its sole election, shall be entitled, by notice to Seller, to immediately require Seller: (i) if such Breach relates to any of the representations and warranties made pursuant to this Agreement, to repurchase the Deficient Mortgage Loans at the Repurchase Price; (ii) if such Breach relates to any of the representations and warranties made by Seller under this Agreement and the aggregate principal balance of the Deficient Mortgage Loans, when deducted from the Purchase Price, would result in a remaining Mortgage Pool principal balance insufficient to satisfy the Takeout Commitment taken as a whole, to repurchase the Deficient Mortgage Loans at the Repurchase Price and, if further elected by Purchaser, to replace such Deficient Mortgage Loans with one or more Qualified Substitute Mortgage Loans to the extent permitted under the applicable Takeout Buyer Guide or Private Issuer Guide, as the case may be, and make any appropriate adjustments for any differences in the outstanding loan principal balances between the Deficient Mortgage Loans and the Qualified Substitute Mortgage Loans or, if such substitution is not made, then to take and accept reassignment to Seller of all of the related Takeout Commitments; or (iii) to pay such money damages incurred by Purchaser as a result of a Breach of the obligations set forth in Section 5(a) of this Agreement, which damages and expenses shall not include consequential damages or expenses. If any obligor under a Mortgage Loan defaults in making his or her first scheduled monthly payment due subsequent to the Purchase Date, the rebuttable presumption shall be that such Mortgage Loan did not comply with the representations and warranties made by Seller herein (an "Early Payment Default Loan"); provided, however, if within thirty (30) days following the repurchase of the Purchaser's ownership interest in such Mortgage Loan, the Seller provides written information to the Purchaser that demonstrates to the Purchaser's reasonable satisfaction that such first payment default by the obligor did not result from a failure to comply with the representations and warranties made by Seller herein, then the Purchaser shall promptly purchase from the Seller, in accordance with Section 2 hereof, the Purchaser's percentage of such Mortgage Loan previously owned by the Purchaser.

At the time of a repurchase of a Deficient Mortgage Loan, Purchaser and Seller shall arrange for the reassignment of the Deficient Mortgage Loan to Seller and the delivery to Seller of any documents held by Purchaser relating to the Deficient Mortgage Loan. In the event of a repurchase, Seller shall, simultaneously with such reassignment, give written notice to Purchaser that such repurchase has taken place and amend the Mortgage Loan Schedule to reflect the withdrawal of the Deficient Mortgage Loan from this Agreement.

In addition to such repurchase obligations, Seller shall indemnify Purchaser and hold it harmless against any losses, damages, penalties, fines, forfeitures, including, without limitation, legal fees and related costs, judgment, and other costs and expenses resulting from any claim, demand, defense or assertion based on or grounded upon, or resulting from, a breach of Seller's representations and warranties contained in this Agreement or enforcement of this provision hereunder. It is understood and agreed that the obligations of Seller set forth in this Section 9 to cure (by replacement or otherwise) or repurchase a Deficient Mortgage Loan or an Early Payment Default Loan and to indemnify Purchaser as provided in this Section 9 constitute the sole remedies of Purchaser respecting a breach of the representations and warranties made by Seller hereunder.

Any cause of action against Seller relating to or arising out of the breach of any of the representations and warranties made in this Section 9 shall accrue as to any Mortgage Loan upon (i) discovery of such breach by Purchaser or notice thereof by Seller to Purchaser, (ii) failure by Seller to cure such breach or repurchase such Mortgage Loan as specified above, and (iii) demand upon Seller by Purchaser for compliance with this Agreement.

#### **Section 10. Covenants of Seller.**

(a) Seller hereby covenants and agrees with Purchaser to deliver to Purchaser or notify Purchaser, as applicable:

(i) Within ninety (90) days after the end of each fiscal year of Seller, consolidated balance sheets of Seller and its consolidated subsidiaries and the related consolidated statements of income

showing the financial condition of Seller and its consolidated subsidiaries as of the close of such fiscal year and the results of operations during such year, and a consolidated statement of cash flows, as of the close of such fiscal year, setting forth, in each case, in comparative form the corresponding figures for the preceding year, all the foregoing consolidated financial statements to be reported on by, and to carry the report (in form and substance consistent with GAAP) of an independent public accountant of national standing acceptable to Purchaser;

(ii) Within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of Seller, unaudited consolidated balance sheets and consolidated statements of income, prepared in accordance with GAAP, showing the financial condition and results of operations of Seller and its consolidated subsidiaries on a consolidated basis as of the end of each such quarter and for the then elapsed portion of the fiscal year, setting forth, in each case, in comparative form and corresponding figures for the corresponding periods of the preceding fiscal year, certified by a financial officer of Seller (acceptable to Purchaser) as presenting fairly the financial position and results of operations of Seller and its consolidated subsidiaries and as having been prepared in accordance with generally accepted accounting principles consistently applied, in each case, subject to normal year-end audit adjustments;

(iii) On a timely basis, as required by the Good Delivery standards, pool information relating to each Private Issue Security referred to in the related Takeout Commitment that has been assigned to Purchaser;

(iv) In a reasonable period of time after receipt thereof, a copy of each other report submitted to Seller by its independent public accountants in connection with any annual, interim or special audit of Seller;

(v) In a reasonable period of time after becoming aware thereof, notice of (A) the commencement of, or any determination in, any legal, judicial or regulatory proceedings, (B) any dispute between Seller or its parent company and any governmental or regulatory body, (C) any event or condition, which, in any case of (A) or (B) if adversely determined, would have a material adverse effect on (1) the validity or enforceability of this Agreement, the Clearing Agreement or the other Transaction Documents, (2) the financial condition or business operations of Seller, or (3) the ability of Seller to fulfill its obligations under this Agreement, the Clearing Agreement or the other Transaction Documents, or (D) any material adverse change in the business, operations, prospects or financial condition of Seller, including, without limitation, the insolvency of Seller or, if applicable, its parent company;

(vi) In a reasonable period of time after becoming available, copies of all financial statements, reports, notices and proxy statements sent by its parent company, Seller or any of Seller's consolidated subsidiaries in a general mailing to their respective stockholders or members, as applicable, and of all reports and other material (including copies of all registration statements under the Securities Act of 1933, as amended) filed by any of them with any securities exchange or with the Securities and Exchange Commission or any Governmental Authority succeeding to any or all of the functions of said Commission;

(vii) In a reasonable period of time after becoming available, copies of any press releases issued by Seller or, if applicable, its parent company, and copies of any annual and quarterly financial reports and any reports which Seller or, if applicable, its parent company, may be required to file with a regulatory agency having jurisdiction over any of them containing such financial statements and other information concerning Seller's or, if applicable, such parent company's business and affairs as is required to be included in such reports in accordance with the rules and regulations of such regulatory agency, as may be promulgated from time to time;

(viii) Such supplements to the aforementioned documents and such other information regarding the operations, business, affairs and financial condition of Seller and, if applicable, its parent company, and any of Seller's or, if applicable, such parent company's, consolidated subsidiaries as Purchaser may request;

(ix) A copy of (A) the articles of incorporation or articles of organization, as applicable, of Seller and any amendments thereto, certified by the Secretary of State of Seller's state of formation, (B) a copy of Seller's by-laws or operating agreement (or regulations), as applicable, together with any amendments thereto, (C) a copy of the resolutions or other actions adopted by Seller's Board of Directors or managers, as applicable, or other applicable governing body authorizing Seller to enter into this Agreement, the Clearing Agreement and each document to be executed by Seller pursuant to this Agreement authorizing one or more of Seller's officers to execute such documents and recognizing that, among other factors, such as the tax, accounting and legal consequences of the transactions contemplated under this Agreement that: (1) from a business viewpoint, the sale of a participation interest in the Mortgage Loans by the Seller to the Purchaser and the assignment of the related Takeout Commitment is in the best interests of the Seller, (2) Seller has valid business reasons for selling a participation interest in the Mortgage Loans rather than obtaining a loan secured using such Mortgage Loans, and (3) the terms of the sale transaction set forth in this Agreement are more favorable to the Seller than those that would have been obtained in connection with a secured financing by the Seller, and (D) a certificate of incumbency and signature of each officer or manager, as applicable, of Seller executing any document in connection with this Agreement; and

(x) Seller shall immediately notify Purchaser of the following with respect to any Mortgage Loan:

(A) any change in the financial condition of the mortgagor(s), or of any co-maker, guarantor or endorser under the Mortgage Loan, which may have a material adverse affect upon continuation of payments under the Mortgage Loan or the ultimate collectibility thereof;

(B) any material change in the value of collateral securing the Mortgage Loan;

(C) any material change in lien status as affecting the collateral securing the Mortgage Loan;

(D) any request by the mortgagor(s), or any co-maker, guarantor or endorser under the Mortgage Loan, for any change in terms and conditions of the Mortgage Loan, or in the terms of any note or notes evidencing the Mortgage Loan, or in any mortgage or security agreement or instrument securing the Mortgage Loan;

(E) any request by the mortgagor(s), or by any co-maker, guarantor or surety under the Mortgage Loan, for release, substitution or exchange of any collateral securing the Mortgage Loan;

(F) any request by the mortgagor(s), or by any co-maker, guarantor or endorser under the Mortgage Loan for the release of any personal obligation of any such party under the Mortgage Loan;

(G) any failure by the mortgagor(s) to pay principal and/or interest payments under the Mortgage Loan when due (considering applicable grace periods, if any);

(H) any failure to carry hazard and flood insurance to keep the Mortgaged Property fully insured and/or to pay taxes or assessments timely; and

(I) the occurrence of any other event which would constitute an event of default under the Mortgage Loan or under any collateral security for the Mortgage Loan.

(b) Neither Seller nor any affiliate thereof will acquire at any time any Participation Certificate or any other economic interest in or obligation with respect to any Mortgage Loan.