

**EXECUTION VERSION**

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**FACILITY PURCHASE AGREEMENT**

Dated as of September 3, 2010

among

**UNITED STATES DEPARTMENT OF THE TREASURY,**

as Applicant,

**CITIBANK, N.A.,**

as Administrative Agent,

and

The **ISSUING BANKS** Party Hereto

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## FACILITY PURCHASE AGREEMENT

FACILITY PURCHASE AGREEMENT (“**Agreement**”) dated as of September 3, 2010 among UNITED STATES DEPARTMENT OF THE TREASURY (“**Applicant**”), each ISSUING BANK from time to time party hereto (collectively, the “**Issuing Banks**” and individually, an “**Issuing Bank**”) and CITIBANK, N.A., as Administrative Agent.

### RECITALS:

Applicant and the Federal Housing Administration (“**FHA**”) have established the “FHA Refinance of Borrowers in Negative Equity Positions” (as the same may be amended from time to time, the “**Program**”), pursuant to which Applicant has agreed to certain undertakings with respect to mortgage servicers, owners or investors (each, a “**Mortgage Interest Holder**”) participating in the Program.

In order to support such undertakings, Applicant desires to purchase and obtain the Letter of Credit (as defined below) from the Issuing Banks.

On the terms and conditions set forth in this Agreement, the Issuing Banks are willing to provide the Letter of Credit to Applicant.

Therefore, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the parties hereto covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS AND ACCOUNTING TERMS

Section 1.01. *Defined Terms.* As used in this Agreement, the following terms shall have the meanings set forth below:

“**Additional Issuing Bank**” has the meaning specified in Section 10.06(b).

“**Administrative Agent**” means Citibank in its capacity as administrative agent under the Facility Documents, or any successor administrative agent.

“**Administrative Questionnaire**” means an administrative questionnaire in form and substance reasonably satisfactory to the Administrative Agent.

“**Advance Purchase Account**” means a segregated demand deposit account of Administrative Agent for the account of the Issuing Banks and maintained with Citibank, N.A., and any replacement, additional or successor account. The Advance Purchase Account existing on the date hereof is identified on Schedule 4.01.

**“Advance Purchase Account Balance”** means, at any time, the aggregate balance amount of Eligible Funds on deposit in the Advance Purchase Account at such time.

**“Advance Purchase Account Shortfall”** has the meaning specified in Section 2.01(c)(i)

**“Advance Purchase Account Shortfall Amount”** has the meaning specified in Section 2.01(c)(i).

**“Adverse Proceedings”** means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of Applicant at law or in equity, or before or by any Governmental Authority or any arbitrator).

**“Affected Issuing Bank”** has the meaning specified in the definition of **“Unwind Event.”**

**“Affiliate”** means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

**“Aggregate Commitments”** means the Commitments of all the Issuing Banks.

**“Applicable Commitments Portion”** has the meaning specified in Section 8.03.

**“Applicable Percentage”** means with respect to an Issuing Bank at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Issuing Bank’s Commitment at such time. If the obligations of the Issuing Banks to make Available Amount Increases have been terminated or expired, then the Applicable Percentage of each Issuing Bank shall be determined based on the Applicable Percentage of such Issuing Bank most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of (i) Citibank is 100% and (ii) each Additional Issuing Bank, at the time it becomes a party hereto, the Applicable Percentage set forth in the Assignment and Assumption pursuant to which such Issuing Bank becomes a party hereto, in each case as the same may be adjusted from time to time in accordance with the terms hereof.

**“Applicant”** has the meaning specified in the introductory paragraph hereto.

**“Assigned Portion”** has the meaning specified in Section 10.06(b).

**“Assigning/Reducing Bank”** has the meaning specified in Section 10.06(h).

**“Assignment and Assumption”** means, as applicable, an assignment and assumption entered into by an existing Issuing Bank and an Additional Issuing Bank (with the consent of any party whose consent is required by Section 10.06(b)) accepted by the Administrative Agent and in substantially the form of Exhibit B or any other form approved by the Administrative Agent.

**“Authorized Person”** means any officer or employee of Applicant (i) holding or lawfully exercising the authorities of the position of Assistant Secretary for Financial Stability or (ii) designated by an officer described in clause (i) in writing to the Administrative Agent from time to time as authorized to perform the functions of an “Authorized Person” under the Facility Documents. Any document delivered hereunder that is signed by an Authorized Person shall be conclusively presumed to have been authorized by all necessary action on the part of Applicant and such Authorized Person shall be conclusively presumed to have acted on behalf of Applicant.

**“Available Amount”** means, with respect to the Letter of Credit at any time, the stated amount of the Letter of Credit available to be drawn at such time.

**“Available Amount Increase”** means the increase in the Available Amount of the Letter of Credit.

**“Available Amount Reduction Event”** has the meaning specified in Section 2.01(b)(iii).

**“Availability Period”** means the period from and including the Purchase Date to the earlier of (a) the last day of the Increase Period and (b) the date of termination of the Aggregate Commitments pursuant to Sections 2.02, 8.02 or 8.03.

**“Bankruptcy Code”** means Title 11 of the United States Code as in effect from time to time.

**“Base Rate”** means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus 1/2 of 1%, and (b) the rate of interest in effect for such day as publicly announced from time to time by Citibank as its “base rate.” The “base rate” is a rate set by Citibank based upon various factors including Citibank’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans and other extensions of credit, which may be priced at, above, or below such announced rate. Any change in such rate announced by the Citibank shall take effect at the opening of business on the day specified in the public announcement of such change.

**“Beneficiary”** means the Claims Processor.

**“Beneficial Owner”** means the beneficial owner, for U.S. federal income tax purposes, of the payment to which any U.S. federal withholding tax relates.

**“Business Day”** means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close in New York City.

“**Cash**” means money, currency or a credit balance in any demand or deposit account maintained in the Advance Purchase Account.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or applicability of any Laws, rule, regulation or treaty (or any provision thereof) (including the Basel Accords issued by the Basel Committee on Banking Supervision), (b) any change in any Laws, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or other comparable agency (including the Basel Committee on Banking Supervision) or (c) compliance by any Issuing Bank with any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

“**Citibank**” means Citibank, N.A. and its successors.

“**Claims Processor**” means a Person, designated in writing by mutual agreement of Citibank and Applicant prior to the Issuance Date, to act as claims processor and paying agent for the Program under the Program Documentation, and any successor or successors in such capacity.

“**Claims Processor Agreement**” means an agreement between the Administrative Agent, as agent for the Issuing Banks, and the Claims Processor governing the roles and responsibilities of the Claims Processor under the Program.

“**Claims Processor and Trustee Costs**” means the fees of the Claims Processor and the Trustee under the Claims Processor Agreement and Trust Agreement, respectively, including any costs and expenses thereof, other than Contractual Reimbursement Claims, payable by the Administrative Agent or the Issuing Banks to the Trustee or the Claims Processor under either of the foregoing.

“**Code**” means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

“**Commitment**” means, as to each Issuing Bank, its obligation to issue its Applicable Percentage of the Letter of Credit or increase its Applicable Percentage of the Available Amount of the Letter of Credit up to an amount not exceeding, in the aggregate, the amount set forth opposite such Issuing Bank’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which any Additional Issuing Bank becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“**Contractual Reimbursement Claims**” has the meaning specified in Section 10.04(a).

“**Cost Claim Certificate**” has the meaning specified in Section 2.03(c).

“**Default**” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.



**“Defaulting Issuing Bank”** means any Issuing Bank that (a) defaults in its obligations under Section 2.01 to (i) issue or increase its portion of the Available Amount of the Letter of Credit (including, for the avoidance of doubt, any substitution therefor pursuant to Section 2.01(b)) for all or any portion of its Commitment or (ii) honor any Demand; (b) has notified Applicant or the Administrative Agent in writing, or has made a public statement, that it does not intend to comply with its obligations under this Agreement; or (c) is an Insolvent Defaulting Issuing Bank.

**“Demand”** means a demand substantially in the form attached as Schedule 1 to Exhibit A hereto.

**“Dollar”** and **“\$”** mean lawful money of the United States.

**“Drawn Amount”** means, in respect of any drawing under the Letter of Credit, the amount of such drawing.

**“EESA”** means the U.S. Emergency Economic Stabilization Act of 2008, 12 U.S.C §§ 5201 et seq., as amended.

**“Eligible Funds”** means Cash denominated in Dollars and held in the Advance Purchase Account or Specified Investments purchased with such Cash.

**“Eligible Replacement”** means any Financial Institution.

**“Event of Default”** has the meaning specified in Section 8.01.

**“Excess Rate Amount”** has the meaning specified in Section 2.03(d).

**“Excluded Taxes”** means, with respect to the Administrative Agent, an Issuing Bank or any other recipient or Beneficial Owner of any payment to be made by or on account of any obligation of Applicant hereunder, (a) Other Connection Taxes, (b) any United States federal withholding Tax imposed by a law in effect at the time the recipient of the payment becomes a party hereto with respect to any such payment, except, in the case of an assignment, to the extent that the assignor was entitled, immediately prior to the assignment, to receive additional amounts with respect to such withholding Tax pursuant to Section 3.01 and (c) any withholding tax to the extent imposed as a result of a failure by the recipient or Beneficial Owner of the payment (or any entity from or through which the Beneficial Owner directly or indirectly receives the payment) to satisfy the conditions for avoiding withholding under FATCA.

**“Expense Allowance”** means the product of (i) [REDACTED] and (ii) the Aggregate Commitments as of the Issuance Date.

**“FATCA”** means Sections 1471 through 1474 of the Code, as in effect on the date hereof, and any applicable Treasury regulation promulgated thereunder or published administrative guidance implementing such Sections.

**“Facility Documents”** means this Agreement, the Letter of Credit, the Fee Letter and any other document agreement or instrument entered into or in favor of the Administrative Agent or an Issuing Bank and relating to the Letter of Credit.

**“Federal Funds Rate”** means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Citibank on such day on such transactions as determined by the Administrative Agent.

**“Fee Letter”** means that certain Processing and Trustee Fee Letter, dated as of September 3, 2010, between Applicant and Citibank.

**“FHA”** has the meaning set forth in the recitals hereto.

**“Financial Institution”** means a “financial institution” as defined in Section 3(5) of EESA, 12 U.S.C. § 5205(5) and as so determined by Applicant in its reasonable discretion at the time such Person is proposed to become a party to this Agreement.

**“Freedom of Information Act”** means the Freedom of Information Act of 1966, as amended.

**“Governmental Authority”** means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, regulatory body, central bank, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign state or government.

**“Honor Date”** has the meaning specified in Section 2.01(c)(i).

**“Increased Cost Claim”** means, with respect to an Issuing Bank, the amount that has or would be incurred or suffered by such Issuing Bank or such Issuing Bank’s holding company, if any, as a result of (x) any Change in Law that shall (i) impose, modify, increase or deem applicable any capital requirement affecting such Issuing Bank or such holding company (or any implementing regulations with respect to any Change in Law, as interpreted by such Issuing Bank or such holding company, as the case may be, in its reasonable discretion) or (ii) impose any U.S. federal Tax on an Issuing Bank or such holding company determined without regard to income (but only to the extent that such Tax is imposed on such Issuing Bank or such holding company as a result of issuing or maintaining its Applicable Percentage of the Letter of Credit (or of maintaining its obligation to issue or increase its Applicable Percentage of the Letter of Credit)), or (y)

the imposition of any Other Taxes, which, in either case, such Issuing Bank reasonably determines has or would have the effect of either (a) increasing the cost to such Issuing Bank or such holding company of issuing or maintaining its Applicable Percentage of the Letter of Credit (or of maintaining its obligation to issue or increase its Applicable Percentage of the Letter of Credit) or (b) reducing the amount of any sum received or receivable by such Issuing Bank under any Facility Document.

“**Increased Cost Issuing Bank**” has the meaning specified in Section 2.03(c).

“**Increase Event**” has the meaning specified in Section 2.01(a)(i)

“**Increase Period**” means the period from the Issuance Date until the last day of the 30<sup>th</sup> calendar month after the Issuance Date, including the calendar month in which such Issuance Date occurs (or if such day is not a Business Day, the next succeeding Business Day).

“**Increase Request**” has the meaning set forth in Section 2.01(a)(i).

“**Individual Advance Purchase Account**” has the meaning set forth in Section 9.05(b).

“**Individual Available Amount**” means, for any Issuing Bank at any time, such Issuing Bank’s Applicable Percentage multiplied by the Available Amount, each determined at such time.

“**Insolvent Defaulting Issuing Bank**” means any Issuing Bank that (a) has been adjudicated as, or determined by any Governmental Authority having regulatory authority over such Issuing Bank or its assets to be, insolvent, (b) becomes, or whose parent holding company becomes, the subject of an insolvency, bankruptcy, dissolution, liquidation or reorganization proceeding, or (c) becomes, or whose parent holding company becomes, the subject of an appointment of a receiver, intervenor or conservator under the Bankruptcy Code, the Resolution Authority under Dodd-Frank Wall Street Reform and Consumer Protection Act or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; *provided, however*, that an Issuing Bank shall not be an Insolvent Defaulting Issuing Bank solely by virtue of the acquisition by a Governmental Authority or an instrumentality thereof of any ownership interest in such Issuing Bank or a parent company thereof, unless, in the case of each of the foregoing, Applicant shall determine in its sole and absolute discretion that such Issuing Bank does not intend or is unable (including for lack of all necessary approvals and authority) to continue to perform its obligations under and in accordance with the Facility Documents.

“**ISP**” means the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“**Issuance Date**” means the first date on which all the conditions precedent set forth in Section 5.02 are satisfied or waived.

**“Issuing Bank”** means each of Citibank, in its capacity as initial issuer of the Letter of Credit hereunder, and each Additional Issuing Bank.

**“Issuing Bank Addition Date”** has the meaning specified in Section 10.06(b).

**“Knowledge”** means, when used in reference to Applicant, the knowledge (without duty of inquiry) of employees of Applicant holding the following titles: (1) Assistant Secretary for Financial Stability, (2) Chief Investment Officer of the Office of Financial Stability, (3) Chief Counsel of the Office of Financial Stability, or any other employee agreed by Applicant and Administrative Agent from time to time.

**“Laws”** means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

**“L/C Fee”** has the meaning specified in Section 2.03(b).

**“L/C Fee Rate”** has the meaning specified in Schedule 2.03.

**“L/C Obligations”** means, with respect to the Letter of Credit as at any date of determination, the amount available to be drawn under the Letter of Credit *plus* the aggregate of all Unreimbursed Amounts with respect to the Letter of Credit, including all Reimbursement Obligations. For all purposes of this Agreement, if on any date of determination the Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, the Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

**“Letter of Credit”** has the meaning specified in Section 2.01(a) and shall include, for the avoidance of doubt, any substitution therefor issued pursuant to Section 2.01(b).

**“Material Adverse Effect”** means any set of circumstances or events which (a) has any material adverse effect upon the validity or enforceability of any Facility Document or the rights and remedies of the Administrative Agent or the Issuing Banks thereunder or (b) materially impairs the ability of Applicant to perform the Obligations.

**“Mortgage Interest Holder”** has the meaning specified in the Recitals.

**“Non-Public Information”** has the meaning specified in Section 10.08.

**“Obligations”** means all advances to, and debts, liabilities, obligations, covenants and duties of, Applicant arising under any Facility Document or otherwise with respect to the Letter of Credit, whether direct or indirect (including those acquired

by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

**“Other Connection Taxes”** means Taxes imposed as a result of a present or former connection between (a) a recipient of any payment to be made by or on account of any obligation of Applicant hereunder and (b) the jurisdiction imposing such Tax (other than connections arising from such recipient having executed, delivered, or become a party to, performed its obligations or received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced any Facility Document, or having sold or assigned an interest in any Facility Document).

**“Other Taxes”** means all stamp, court or documentary Taxes and any other excise, property, intangible, recording, filing, value added or similar transactional Taxes (but, for the avoidance of doubt, not any net income Tax or franchise Tax) arising from any payment made hereunder or under any other Facility Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Facility Document.

**“Outstanding Amount”** means, with respect to any L/C Obligations on any date, the amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any Available Amount Increases occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date.

**“Overdue Rate”** has the meaning specified in Schedule 2.03.

**“Overnight Rate”** means, for any day, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by Citibank in accordance with banking industry rules on interbank compensation.

**“Participant”** has the meaning specified in Section 10.06(e).

**“Participant Register”** has the meaning specified in Section 10.06(e).

**“Person”** means any natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint stock company, trust, bank, trust company, land trust, business trust, joint venture, association, company or Governmental Authority or other entity.

**“Processing and Trustee Fee”** has the meaning given to such term in the Fee Letter.

**“Program”** has the meaning set forth in the recitals hereto.

**“Program Documentation”** means the Claims Processor Agreement, the Trust Agreement, and all other agreements governing the roles and responsibilities of the various parties to the Program, including FHA.

**“Program Exposure”** means, at any time, the maximum aggregate amount of obligations (matured or contingent) of Applicant under the Program intended to be supported by the Letter of Credit at such time.

**“Program Fee”** has the meaning specified in Section 8.03.

**“Public Releases”** has the meaning set forth in Section 10.09.

**“Purchase Date”** means the first date, if any, prior to the Purchase End Date on which all of the conditions precedent set forth in Section 5.01 are satisfied or waived.

**“Purchase End Date”** means October 3, 2010 or such later date requested by Applicant in writing, but in no event after the later of (i) November 3, 2010 and (ii) the date the Claims Processor executes the Claims Processor Agreement.

**“Purchase Period”** has the meaning specified in Section 2.01(a)(i).

**“Reduction Notice”** has the meaning specified in Section 2.08.

**“Register”** has the meaning specified in Section 10.06(d).

**“Reimbursed Taxes”** means Taxes other than Excluded Taxes and Other Taxes.

**“Reimbursee”** has the meaning specified in Section 10.04(b).

**“Reimbursement Obligation”** means the obligation of Applicant to reimburse the Issuing Banks for any drawing made under the Letter of Credit.

**“Related Parties”** means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

**“Remaining Available Amount”** means, for any Issuing Bank at any time, the amount (if any) by which (i) such Issuing Bank’s Individual Available Amount exceeds (ii) the aggregate Drawn Amounts theretofore paid or required to be paid by such Issuing Bank under the Letter of Credit.

**“Replaced Issuer Substitution Event”** has the meaning specified in Section 2.01(b)(iii).

**“Required Advance Purchase Amount”** means, on any date, an amount equal to the greater of (a) \$50,000,000 (or such greater amount agreed to by the Administrative Agent and Applicant from time to time as necessary to reflect anticipated drawings under the Program) and (b) the average aggregate monthly Drawn Amounts under the Letter of Credit for the two months then most recently ended.

**“Required Issuing Banks”** means, as of any date of determination, Issuing Banks (other than Defaulting Issuing Banks) having more than 50% of the Aggregate

Commitments or, if the obligations of the Issuing Banks to make Available Amount Increases have been terminated pursuant to Sections 8.02 or 8.03, Issuing Banks (other than Defaulting Issuing Banks) holding in the aggregate more than 50% of the Total Outstandings.

“**Scheduled Termination Date**” means the day that is the fifth Business Day prior to the 10<sup>th</sup> anniversary of the Issuance Date.

“**Secretary**” has the meaning specified in Section 6.01(i)(ii).

“**Specified Investments**” has the meaning set forth on Schedule 1.01(a).

“**TARP**” means the Troubled Asset Relief Program established under EESA, 12 U.S.C. § 5211.

“**TARP recipient**” means a “TARP recipient” as defined in Section 111(a)(3) of EESA, 12 U.S.C. § 5221(a)(3), and UST’s regulations promulgated thereunder, 31 C.F.R. § 30.1.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Total Outstandings**” means, on any date, the aggregate Outstanding Amount on such date.

“**Troubled Assets**” means “troubled assets” as defined in Section 3(9) of EESA, 12 U.S.C. § 5205(9) and as so determined by Applicant in its reasonable discretion.

“**Trust Account**” has the meaning specified in Section 8.03.

“**Trust Agreement**” means the agreement annexed hereto as Exhibit C between the Administrative Agent, on behalf of each applicable Issuing Bank from time to time, and the Trustee regarding the establishment of the Trust Account and the role of the Trustee with respect to the Trust Account.

“**Trust Remedy**” has the meaning specified in Section 8.03.

“**Trustee**” has the meaning specified in Section 8.03.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unreimbursed Amount**” has the meaning specified in Section 2.01(c)(ii).

“**Unused Commitment Fee**” has the meaning specified in Section 2.03(a).

“**Unused Commitment Fee Rate**” has the meaning specified in Schedule 2.03.

**“Unwind Event”** means the occurrence of one or more of the following events: (a) the failure of Applicant and an Issuing Bank to negotiate a resolution pursuant to Section 2.03(c) or 2.03(d); or (b) any action that is announced or taken, or (in the reasonable judgment of an Issuing Bank (an **“Affected Issuing Bank”**)) is reasonably likely to be taken, by any Governmental Authority, regulatory authority or executive, legislative or judicial body, whether effective immediately or as of a specified future date, that, in such Affected Issuing Bank’s reasonable judgment, is reasonably likely (i) to subject such Affected Issuing Bank or any of its Affiliates to the requirements, prohibitions or any other limitations imposed under Sections 111 or 113 or any other provision of EESA that would be applicable to a TARP recipient or a Financial Institution from which Troubled Assets have been purchased by Applicant under the authority of EESA or (ii) otherwise to subject such Affected Issuing Bank or any of its Affiliates to any adverse circumstance, event or action by virtue of having entered into or participated in the transactions contemplated hereby.

**“Unwinding Issuing Bank”** has the meaning specified in Section 2.03(d).

Section 1.02. *Other Interpretive Provisions.* With reference to this Agreement and each other Facility Document, unless otherwise specified herein or in such other Facility Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Facility Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Facility Document, shall be construed to refer to such Facility Document in its entirety and not to any particular provision thereof, (iv) all references in a Facility Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Facility Document in which such references appear, (v) any reference to any Laws shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such Laws and any reference to any Laws or regulation shall, unless otherwise specified, refer to such Laws or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”



(c) Section headings herein and in the other Facility Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Facility Document.

Section 1.03. *Payments.* Unless otherwise specified, all payments hereunder shall be made in U.S. Dollars.

Section 1.04. *Times of Day.* Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

## ARTICLE 2

### THE COMMITMENTS AND AVAILABLE AMOUNT INCREASES

Section 2.01. *Letter of Credit.*

(a) *The Letter of Credit Commitment.*

(i) Subject to the terms and conditions set forth herein, the Issuing Banks severally agree (1) on any Business Day from and including the Purchase Date to and including the Purchase End Date (the “**Purchase Period**”), to issue a letter of credit substantially in the form of Exhibit A hereto (the “**Letter of Credit**”) for the account of Applicant, (2) on any Business Day during the Increase Period, to increase the Available Amount of the Letter of Credit (an “**Increase Event**”) and (3) to honor Demands subject to and in accordance with the terms hereof and the Letter of Credit; *provided* that (A) after giving effect to any Increase Event with respect to the Letter of Credit, (i) each Issuing Bank’s Individual Available Amount shall not exceed such Issuing Bank’s Commitment and (ii) the Available Amount shall not exceed the Aggregate Commitments and (B) after giving effect to any Drawn Amounts, the Remaining Available Amount of such Issuing Bank shall not be less than \$0. Each request for an Increase Event by Applicant (an “**Increase Request**”) shall be deemed to be a representation by Applicant that the Increase Event so requested complies with the conditions set forth in the proviso to the preceding sentence. Notwithstanding anything to the contrary herein, the Commitments are non-renewable and, accordingly, Applicant may not issue an Increase Request in respect of a portion of the Letter of Credit that has expired, been reduced or been drawn upon (whether or not the Drawn Amount thereof has been reimbursed).

(ii) Without limitation of any other term or condition herein, no Issuing Bank shall be under any obligation to issue the Letter of Credit (or any substitution therefor) or, upon any request for an increase thereof, increase the Available Amount thereof if any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing the Letter of Credit (or any substitution therefor), or any Law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from,

the issuance of letters of credit generally or the Letter of Credit (or any substitution therefor) in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit (or any substitution therefor) any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Purchase Date and which such Issuing Bank in good faith deems material to it.

(iii) Each Issuing Bank shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article 9 hereof with respect to any acts taken or omissions suffered by such Issuing Bank in connection with the Letter of Credit as fully as if the term “Administrative Agent” as used in such Article 9 included such Issuing Bank with respect to such acts or omissions, and (B) as additionally provided herein with respect to such Issuing Bank.

(b) *Procedures for Issuance of, and Substitution for, the Letter of Credit.*

(i) The Letter of Credit shall be issued upon the request of Applicant delivered to the Administrative Agent by written notice signed by an Authorized Person. Such notice must be received by the Administrative Agent not later than 11:00 a.m. at least two Business Days prior to the proposed issuance date; such notice shall specify in form and detail reasonably satisfactory to the Issuing Banks: (A) the proposed issuance date of the Letter of Credit (which shall be a Business Day); (B) the Available Amount thereof, which shall not exceed the Aggregate Commitments; (C) the expiry date thereof, which shall be not later than the Scheduled Termination Date; (D) the drawing conditions thereof and any other conditions governing payment thereunder; (E) the Applicable Percentage of each Issuing Bank thereunder; and (F) such other matters as the Administrative Agent may reasonably request as reasonably necessary to effect such issuance. Unless the Issuing Banks have received written notice from the Administrative Agent or Applicant, at least one Business Day prior to the requested date of issuance of the Letter of Credit, that one or more applicable conditions contained in Article 5 hereof shall not then be satisfied, then, subject to the terms and conditions hereof, the Issuing Banks shall, on the requested date, issue the Letter of Credit for the account of Applicant.

(ii) Subject to Section 5.03, the Letter of Credit may be amended at any time during the Increase Period to increase the Available Amount thereunder upon the request of Applicant delivered to the Administrative Agent (who shall promptly deliver a copy thereof to each Issuing Bank) by written notice signed by an Authorized Person. Such Notice must be received by the Administrative Agent not later than 11:00 a.m. at least two Business Days prior to the proposed date of the Increase Event and shall specify (i) the proposed date of the Increase Event and (ii) the Available Amount after giving effect thereto. Unless the Issuing Banks shall have received written notice from the Administrative Agent or Applicant, at least one Business Day prior to the requested date for the Increase Event, that one or more applicable conditions contained in Section 5.03 shall not then be satisfied, then the Letter of Credit shall be amended to reflect the increased Available Amount thereof.

(iii) (A) In the event of any (1) reduction of the Available Amount (an “**Available Amount Reduction Event**”), (2) assignment by an Issuing Bank

pursuant to Section 10.06(b) or (3) exercise by Applicant or an Issuing Bank of the Trust Remedy pursuant to Section 2.03 or Section 8.03 (each occurrence of an event described in clauses (2) or (3), a “**Replaced Issuer Substitution Event**” and, together with any Available Amount Reduction Event, a “**Substitution Event**”), a substitute letter of credit shall be issued by the Issuing Banks to replace the Letter of Credit to reflect such Substitution Event, in which case such substitute letter of credit shall be the “Letter of Credit” for all purposes of this Agreement; *provided* that the Administrative Agent may in its sole discretion reflect such Substitution Event through an amendment of the Letter of Credit as opposed to requiring a substitute letter of credit to be issued pursuant to this Section 2.01(b)(iii). Each such substitute letter of credit issued pursuant to this paragraph (iii) shall be issued promptly following (1) in the case of an Available Amount Reduction Event, the request of Applicant delivered to the Administrative Agent (who shall promptly deliver a copy thereof to each Issuing Bank) by written notice or (2) in the case of a Replaced Issuer Substitution Event, the request of Applicant or the applicable Issuing Bank (which, in the case of an assignment, shall be the Issuing Bank making such assignment), as applicable, by written notice to the Administrative Agent (who shall promptly deliver a copy thereof to each Issuing Bank) and unless Applicant is the party delivering such notice, Applicant. Each notice relating to an Available Amount Reduction Event must be received by the parties entitled thereto not later than 11:00 a.m. at least two Business Days prior to the relevant event and shall specify (i) the proposed date of such decrease and (ii) the Available Amount after giving effect thereto. Each Notice relating to a Replaced Issuer Substitution Event must be received by the parties entitled thereto not later than 11:00 a.m. one Business Day after the event giving rise thereto and shall specify (x) the Applicable Percentage of each Issuing Bank after giving effect to such Replaced Issuer Substitution Event, (y) the Available Amount after giving effect to such Replaced Issuer Substitution Event and (z) such other matters as the Administrative Agent may reasonably request as reasonably necessary to issue such substitute letter of credit.

(c) *Drawings and Reimbursements.* (i) Upon receipt from the Beneficiary of a Demand under the Letter of Credit, the Administrative Agent shall give prompt notice thereof to Applicant and each Issuing Bank, and without further notice or demand each Issuing Bank shall be obligated to deliver sufficient funds to the Administrative Agent to pay the Beneficiary such Issuing Bank’s *pro rata* share (based on the Applicable Percentage of such Issuing Bank) of the amount specified in such Demand. On the date due for any payment by the Issuing Banks in connection with a Demand (an “**Honor Date**”), Applicant shall reimburse the Administrative Agent in the Drawn Amount thereof as follows: *first*, the Administrative Agent shall on the Honor Date debit the Advance Purchase Account in an amount equal to the lesser of (x) the Drawn Amount and (y) the Advance Purchase Account Balance on the Honor Date and remit such amount, in immediately available funds, to the Issuing Banks *pro rata* based on the Applicable Percentage of each Issuing Bank and *second*, if the Advance Purchase Account Balance on the Honor Date is less than the Drawn Amount (an “**Advance Purchase Account Shortfall**” and such difference, the “**Advance Purchase Account Shortfall Amount**”), Applicant shall pay to the Administrative Agent (for distribution to

the Issuing Banks *pro rata* based on the Applicable Percentage of each Issuing Bank), in immediately available funds, an amount equal to the Advance Purchase Account Shortfall Amount on: (a) the Honor Date, if notice of the Advance Purchase Account Shortfall was received by Applicant prior to 1:00 p.m. on the Honor Date or (b) on the Business Day following the Honor Date, if notice of such Advance Purchase Account Shortfall was received by Applicant after 1:00 p.m. on the Honor Date. Any notice given by an Issuing Bank or the Administrative Agent pursuant to this Section 2.01(c)(i) may be given by telephone if promptly confirmed in writing. Each Issuing Bank acknowledges and agrees that its obligation to fund each Demand is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any of the matters described in Section 2.01(d) or any amendment, renewal or extension of the Letter of Credit and that the provision of funds to the Administrative Agent to make each such payment under the Letter of Credit shall be made without any offset, abatement, withholding or reduction whatsoever.

(ii) With respect to any unreimbursed amount remaining outstanding with respect to an Issuing Bank after (i) the application of funds in the Advance Purchase Account and (ii) payment by Applicant, each as set forth in the immediately preceding subsection (such amount, the “**Unreimbursed Amounts**”), Applicant’s Reimbursement Obligation shall be due and payable immediately without further demand (together with interest) and shall bear interest at the Overdue Rate from and including the Honor Date to but excluding the date of reimbursement.

(d) *Obligations Absolute.* Subject to Section 2.01(e) below, the obligation of Applicant to reimburse the Issuing Banks for each drawing under the Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of the Letter of Credit, this Agreement or any other Facility Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Applicant may have at any time against the Beneficiary or any transferee of the Letter of Credit (or any Person for whom the Beneficiary or any such transferee may be acting), an Issuing Bank, the Administrative Agent or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by the Letter of Credit or any agreement or instrument relating thereto or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under the Letter of Credit;

(iv) any payment by an Issuing Bank or the Administrative Agent on behalf of the Issuing Banks under the Letter of Credit against presentation of a

draft or certificate that does not strictly comply with the terms of such Letter of Credit (so long as such payment does not constitute gross negligence or willful misconduct of such Issuing Bank or the Administrative Agent as determined by a final and nonappealable judgment of a court of competent jurisdiction); or any payment made by an Issuing Bank or the Administrative Agent on behalf of the Issuing Banks under the Letter of Credit to any Person purporting to be representative of or successor to the Beneficiary or any transferee of the Letter of Credit; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Applicant.

Applicant shall promptly examine a copy of the Letter of Credit (or any substitution therefor) and, in the event of any claim of noncompliance with Applicant's instructions or other irregularity, Applicant will promptly notify the Administrative Agent and each Issuing Bank. Applicant shall be conclusively deemed to have waived any such claim against the Administrative Agent and the Issuing Banks and their correspondents unless such notice is given as aforesaid within 5 Business Days.

(e) *Role of Administrative Agent and Issuing Banks.* Applicant agrees that, in paying any drawing under the Letter of Credit, neither the Administrative Agent nor any Issuing Bank shall have any responsibility to obtain any document (other than a Demand and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Administrative Agent, an Issuing Bank, any of their respective Related Parties nor any correspondent, participant or assignee of an Issuing Bank shall be liable to Applicant for (i) any action taken or omitted in connection herewith at the request or with the approval of Applicant, (ii) any action taken or omitted in the absence of gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction, or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to the Letter of Credit. Applicant hereby assumes all risks of the acts or omissions of the Beneficiary or any transferee with respect to its use of the Letter of Credit; *provided* that this assumption is not intended to, and shall not, preclude Applicant's pursuing such rights and remedies as it may have against the Beneficiary or any transferee at law or under any other agreement. None of the Administrative Agent, an Issuing Bank, any of their respective Related Parties nor any correspondent, participant or assignee of an Issuing Bank shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.01(d); *provided* that anything in such clauses to the contrary notwithstanding, Applicant may have a claim against the Administrative Agent or an Issuing Bank, and the Administrative Agent or such Issuing Bank may be liable to Applicant, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Applicant which Applicant proves were caused by such Issuing Bank's or the Administrative Agent's, as applicable, willful misconduct or gross negligence or such Issuing Bank's willful failure to pay under the Letter of Credit after the presentation to the Administrative Agent by the Beneficiary of a Demand strictly complying with the terms and conditions of this Agreement and the Letter of Credit. In

furtherance and not in limitation of the foregoing, the Administrative Agent, on behalf of each Issuing Bank, or an Issuing Bank itself, may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and neither the Administrative Agent nor any Issuing Bank shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign its rights or obligations under the Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(f) *Applicability of ISP.* Unless otherwise expressly agreed by the Issuing Banks and Applicant, when the Letter of Credit is issued, the rules of the ISP shall apply to the Letter of Credit.

Section 2.02. *Optional Termination or Reduction of Commitments.* Applicant may, upon written notice to the Administrative Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; *provided* that (i) any such notice shall be received by the Administrative Agent and each Issuing Bank not later than 11:00 a.m., at least five Business Days prior to the proposed date of termination or reduction, (ii) any such partial reduction shall be in increments of \$25,000,000 (or, if the Aggregate Commitments at such time are less, the balance thereof), and (iii) Applicant shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto, the Available Amount at such time would exceed the Aggregate Commitments. The Administrative Agent will promptly notify the Issuing Banks of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Issuing Bank according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

Section 2.03. *Fees.*

(a) *Unused Commitment Fees.* Applicant shall pay to the Administrative Agent for the account of each Issuing Bank (other than a Defaulting Issuing Bank) a fee (the “**Unused Commitment Fee**”) in an amount equal to (i) the Unused Commitment Fee Rate for such Issuing Bank *multiplied* by (ii) such Issuing Bank’s Applicable Percentage for each day during such period *multiplied* by (iii) the daily amount during such period by which (x) the Aggregate Commitments exceed (y) the Available Amount. The Unused Commitment Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article 5 hereof is not met (or waived), and shall be calculated, and due and payable, quarterly in arrears on the first Business Day after the end of each calendar quarter, commencing with the first such date to occur after the Purchase Date, and on the last day of the Availability Period. Notwithstanding the foregoing, before paying any Issuing Bank its Unused Commitment Fee, the Administrative Agent shall first deduct any portion of such fee identified by the Administrative Agent in writing to the Issuing Banks as applicable to pay such Issuing Bank’s Applicable Percentage of Claims Processor and Trustee Costs, and shall pay each such Unused Commitment Fee net of such deduction.

(b) *L/C Fees.* Applicant shall pay to the Administrative Agent for the account of each Issuing Bank (other than a Defaulting Issuing Bank) a fee (the “**L/C Fee**”) equal to (i) the L/C Fee Rate for such Issuing Bank *multiplied* by (ii) such Issuing Bank’s Remaining Available Amount for each day during such period. The L/C Fee shall be due and payable quarterly in arrears on the first Business Day after the end of each calendar quarter, commencing with the first such date to occur after the issuance of the Letter of Credit, on the applicable Scheduled Termination Date and thereafter on demand. Notwithstanding the foregoing, before paying any Issuing Bank its L/C Fee, the Administrative Agent shall first deduct any portion of such fee identified by the Administrative Agent in writing to the Issuing Banks as applicable to pay such Issuing Bank’s Applicable Percentage of Claims Processor and Trustee Costs, and shall pay each such L/C Fee net of such deduction.

(c) *Adjustment to Fee Rates.* The Administrative Agent may adjust the Unused Commitment Fee Rate and/or the L/C Fee Rate at any time and from time to time in order to pay (or reimburse the Administrative Agent for its payment of) Claims Processor and Trustee Costs, with such Claims Processor and Trustee Costs allocated to increase the aggregate annualized amount of the Unused Commitment Fees and the L/C Fees pro rata to such aggregate annualized amount of the respective fees payable pursuant to clauses (a) and (b) above immediately before giving effect to such increase. Any Issuing Bank (other than a Defaulting Issuing Bank) may adjust its L/C Fee Rate at any time and from time to time in order to reimburse such Issuing Bank on an after-Tax basis for any Increased Cost Claim. Any such adjustment (including as modified by agreement of the parties following the negotiations referred to in the immediately succeeding sentence) by the Administrative Agent or the applicable Issuing Bank, as the case may be, shall be effective upon delivery by the Administrative Agent or such Issuing Bank, as the case may be, to Applicant (and, in the case of any such proposed adjustment for the Claims Processor and Trustee Costs, each Issuing Bank), of a certificate (the “**Cost Claim Certificate**”) setting forth (i) a statement, reasonably satisfactory to Applicant, of the basis for such adjustment, (ii) reasonably detailed calculations of such adjustment and (iii) in the case of an Increased Cost Claim, (A) a list or description of the factor or factors giving rise to the related increased cost and (B) documentation reasonably satisfactory to Applicant evidencing that such increased cost is allocable to the applicable Issuing Bank’s obligations to issue or maintain its Applicable Percentage of the Letter of Credit, as the case may be. Notwithstanding the foregoing, neither the Administrative Agent nor any Issuing Bank shall be entitled to adjust the L/C Rate under this Section 2.03(c) to the extent Applicant disputes any portion of an Increased Cost Claim pursuant to this Section 2.03(c). If Applicant disputes all or any portion of an Increased Cost Claim, Applicant shall notify the applicable Issuing Bank in writing within thirty (30) Business Days of receipt of the Cost Claim Certificate and Applicant and such Issuing Bank shall undertake in good faith to negotiate a resolution for compensating such Issuing Bank for such Increased Cost Claim. To the extent any dispute regarding an Increased Cost Claim is resolved in the Issuing Bank’s favor, the L/C Rate shall be adjusted retroactively to the date the Cost Claim Certificate is first submitted to Applicant. If after thirty (30) days of good faith negotiation, Applicant and such Issuing Bank are unable to reach a resolution, such Issuing Bank (an “**Increased Cost Issuing Bank**”) shall either (i) withdraw the portion of its Increased Cost Claim which is the subject of the dispute or (ii) exercise the Trust Remedy. Any such election

by such Increased Cost Issuing Bank shall be made by written notice to Applicant, with a copy to the Administrative Agent, and shall be effected as promptly as practicable thereafter through the mutual cooperation of such Increased Cost Issuing Bank and Applicant. Notwithstanding the foregoing, in the event that such Increased Cost Issuing Bank elects to exercise the Trust Remedy pursuant to this Section 2.03(c), Applicant may, within two (2) Business Days of its receipt of the notice delivered pursuant to the immediately preceding sentence, elect to exercise its right to replace such Increased Cost Issuing Bank in accordance with Section 10.06(h) by delivering written notice to such effect to such Increased Cost Issuing Bank and the Administrative Agent.

(d) *Negotiation Trigger.* If after giving effect to any increase in the Unused Commitment Fee Rate and the L/C Fee Rate of any Issuing Bank pursuant to clause (c) above, (i) such Issuing Bank's L/C Fee Rate (excluding any portion thereof applicable to Claims Processor and Trustee Costs) is increased in the aggregate to more than [REDACTED] or (ii) the aggregate annual amount of Unused Commitment Fees and L/C Fees would exceed [REDACTED] (such excess, the "**Excess Rate Amount**"), then Applicant and each affected Issuing Bank (which, in the case of clause (ii) above, shall include all Issuing Banks) shall undertake in good faith to negotiate a resolution for compensating such Issuing Bank for the Excess Rate Amount. If after thirty (30) days of good faith negotiation, Applicant and such Issuing Bank are unable to reach such a resolution or Applicant is unable to obtain an appropriation sufficient to pay the Excess Rate Amount, such Issuing Bank (together with any Increased Cost Issuing Bank, an "**Unwinding Issuing Bank**") or Applicant may, in its sole discretion, exercise the Trust Remedy with respect to such Unwinding Issuing Bank. Any such election by such Unwinding Issuing Bank or Applicant shall be made by written notice to the other Person, with a copy to the Administrative Agent, and shall be effected as promptly as practicable thereafter through the mutual cooperation of such Unwinding Issuing Bank and Applicant. Notwithstanding the foregoing, in the event that such Unwinding Issuing Bank elects to exercise the Trust Remedy pursuant to this Section 2.03(d), Applicant may, within two (2) Business Days of its receipt of the notice delivered pursuant to the immediately preceding sentence, elect to exercise its right to replace such Unwinding Issuing Bank in accordance with Section 10.06(h) by delivering written notice to such effect to such Unwinding Issuing Bank and the Administrative Agent.

(e) *Similar Treatment.* In disputing or accepting Increased Cost Claims under clause (c) above, agreeing to accept Increased Cost Claims under clause (d) above, and in exercising any remedies with respect thereto, Applicant shall endeavor in good faith to treat similarly situated Issuing Banks similarly and to approve, dispute or agree to such Increased Cost Claims in a manner among such Issuing Banks that is consistent on the merits of the particular Increased Cost Claim presented.

(f) *Nonrefundable.* All fees payable by Applicant under this Section 2.03 shall be fully earned when paid and are nonrefundable, absent manifest error.

(g) *Application of Excess Amounts in the Advance Purchase Account.* The Administrative Agent shall apply any excess of the Advance Purchase Account Balance over the Required Advance Purchase Amount toward fees payable by Applicant under this Section 2.03.



Section 2.04. *Computation of Interest and Fees.* All computations of interest when the Base Rate is determined by Citibank's "base rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Obligation for the day on which the Obligation is incurred, and shall not accrue on an Obligation, or any portion thereof, for the day on which the Obligation or such portion is paid. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

Section 2.05. *Evidence of Obligations.* The Increase Events with respect to the Letter of Credit shall be evidenced by one or more accounts or records maintained by the related Issuing Bank and the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and the Issuing Banks shall be conclusive absent manifest error of the Available Amount of the relevant Letter of Credit, the Remaining Available Amount of each Issuing Bank and all Drawn Amounts and reimbursements with respect thereto. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Applicant hereunder to pay any amount owing with respect to the Obligations.

Section 2.06. *Payments Generally.* Except as provided by law, all payments to be made by Applicant shall be made without condition or deduction for any counterclaim, defense or recoupment and, pursuant to Section 3.01, grossed-up for any Reimbursed Taxes. Except as otherwise expressly provided herein, all payments by Applicant hereunder shall be made to the Administrative Agent, for the account of the respective Issuing Bank to which such payment is owed in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Issuing Bank its Applicable Percentage (or other applicable share as provided herein) of such payment, in like funds as received by wire transfer. All payments received by the Administrative Agent after 2:00 p.m., shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Applicant shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be. Any amounts not paid when due shall accrue interest at the Overdue Rate from the date thereof until the date on which it is paid.

Section 2.07. *Sharing of Payments by Issuing Banks.* If an Issuing Bank shall, by exercising any right of set off or counterclaim or otherwise, obtain payment in respect of Unreimbursed Amounts (or otherwise) resulting in such Issuing Bank receiving payment of a proportion of such payment greater than its *pro rata* share thereof as provided herein, then such Issuing Bank shall cause such payments to be shared by the Issuing Banks ratably in accordance with the aggregate amounts owing them.

Section 2.08. *Reduction of Available Amount.* Applicant may request a reduction in the Available Amount by delivering written notice (a "**Reduction Notice**") to the Administrative Agent and the Beneficiary not later than 11:00 a.m. at least five Business

Days (or such later date and time as the Administrative Agent may agree in a particular instance in their sole discretion) prior to the proposed date of reduction. Each Reduction Notice shall (i) specify (A) the proposed date of the reduction (which shall be a Business Day), (B) the amount of the proposed reduction in the Available Amount (which shall be in an amount of not less than \$25,000,000 (or, if the aggregate Available Amounts at such time is less, the balance thereof)) and (C) such other matters as the Administrative Agent may reasonably require, and (ii) be accompanied by a written confirmation from an Authorized Person and Beneficiary that the Program Exposure at such time does not exceed the Available Amounts as so reduced plus the amount held in the Trust Account, if any.

### **ARTICLE 3** TAXES

#### Section 3.01. *Taxes.*

(a) *Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.* (i) Any and all payments by or on account of any obligation of Applicant hereunder or under any other Facility Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require Applicant or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by Applicant or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (f) below.

(ii) If Applicant or the Administrative Agent shall be required by applicable Laws to withhold or deduct any Taxes from any payment, then (A) Applicant or the Administrative Agent, as the case may be, shall withhold or make such deductions as are determined by Applicant or the Administrative Agent, as the case may be, to be required based upon the information and documentation it has received pursuant to subsection (f) below, (B) Applicant or the Administrative Agent, as the case may be, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable Laws, and (C) to the extent that the withholding or deduction is made on account of Reimbursed Taxes, the sum payable by Applicant shall be increased as necessary to ensure that after any required withholding or the making of all required deductions (including withholdings and deductions applicable to additional sums payable under this Section) the Administrative Agent or such Issuing Bank, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made. A certificate as to the amount of such withholding or deduction that is a Reimbursed Tax delivered by the Administrative Agent to Applicant shall be conclusive absent manifest error.

(b) *Tax Reimbursement.* Without limiting the provisions of subsection (a) above, Applicant shall, and does hereby agree to, reimburse the Administrative Agent and each Issuing Bank, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Reimbursed Taxes (including Reimbursed Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by Applicant or the Administrative Agent or paid by the Administrative Agent or such Issuing Bank, as the case may be, and any penalties, interest and reasonable expenses and costs arising therefrom or with respect thereto, whether or not such Reimbursed Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Any reimbursements in respect of expenses and costs made pursuant to this Section 3.01(b) shall be made on an after-Tax basis, such that the Administrative Agent and each Issuing Bank receives and retains an amount equal to the sum it would have received and retained had it not paid or incurred or been subject to such Reimbursed Taxes or expenses and costs. A certificate as to the amount of any such withholding, deduction, payment or liability delivered to Applicant by an Issuing Bank (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of an Issuing Bank, shall be conclusive absent manifest error.

(c) *Indemnification of Applicant and Administrative Agent.* Without limiting the provisions of subsection (a) or (b) above, each Issuing Bank shall, and does hereby agree to reimburse Applicant or the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for (A) the full amount of any Excluded Taxes attributable to such Issuing Bank that is payable or paid by Applicant or the Administrative Agent, and reasonable expenses arising therefrom or with respect thereto, whether or not such Excluded Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority and (B) any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for Applicant or the Administrative Agent) incurred by or asserted against Applicant or the Administrative Agent by any Governmental Authority as a result of the failure by such Issuing Bank to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Issuing Bank to Applicant or the Administrative Agent pursuant to subsection 3.01(f) below. A certificate as to the amount of such payment or liability delivered to any Issuing Bank by the Administrative Agent shall be conclusive absent manifest error. Each Issuing Bank hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Issuing Bank under any Facility Document against any amount due to the Administrative Agent or Applicant under this subsection (c).

(d) *Evidence of Payments.* Upon request by Applicant or the Administrative Agent, as the case may be, after any payment of Taxes by Applicant or the Administrative Agent, as the case may be, to a Governmental Authority as provided in this Section 3.01, Applicant or the Administrative Agent, as the case may be, shall deliver to Applicant or the Administrative Agent, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by applicable Laws to report such payment or other evidence of such payment reasonably satisfactory to Applicant or the Administrative Agent, as the case may be.

(e) *Treatment of Certain Refunds.* Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of an Issuing Bank, or have any obligation to pay to an Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of such Issuing Bank. If the Administrative Agent or an Issuing Bank determines, in its reasonable but sole discretion, that it has received a refund of any Reimbursed Taxes as to which it has been reimbursed by Applicant or with respect to which Applicant has paid additional amounts pursuant to this Section, it shall pay to Applicant an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Applicant under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes and any currency conversion costs) incurred by the Administrative Agent or such Issuing Bank and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that Applicant, upon the request of the Administrative Agent or such Issuing Bank agrees to repay the amount paid over to Applicant pursuant to this subsection 3.01(e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Issuing Bank in the event the Administrative Agent or such Issuing Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection 3.01(e), in no event will the Administrative Agent or an Issuing Bank be required to pay any amount to Applicant pursuant to this subsection 3.01(e) the payment of which would place the Administrative Agent or such Issuing Bank in a less favorable net after-Tax position than the Administrative Agent or such Issuing Bank would have been in had the reimbursement payment or additional amounts giving rise to such refund never been paid. This subsection shall not be construed to require the Administrative Agent or an Issuing Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Applicant or any other Person by reason of the transactions contemplated by this Agreement.

(f) *Status of Issuing Banks.* Each Issuing Bank (and each Additional Issuing Bank, if any) shall deliver to the Administrative Agent and/or Applicant, at the time or times reasonably requested by the Administrative Agent or Applicant, as the case may be, such properly completed and executed documentation prescribed by applicable Laws or as reasonably requested by the Administrative Agent or Applicant, as the case may be, to the extent such documentation would permit such payments to be made without withholding (including, for the avoidance of doubt, under FATCA). Each Issuing Bank (and each Additional Issuing Bank, if any) agrees that if any such document previously delivered to the Administrative Agent and/or Applicant expires or becomes obsolete or inaccurate in any respect, it shall update such document or promptly notify the Administrative Agent and/or Applicant, as the case may be, in writing of its legal inability to do so.

(g) *Delay in Requests.* Failure or delay on the part of an Issuing Bank to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Issuing Bank's right to demand such compensation.

Section 3.02. *Survival.* Each party's obligations under Article 3 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by,

or the replacement of, an Issuing Bank, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

**ARTICLE 4**  
ADVANCE PURCHASE ACCOUNT

Section 4.01. *Advance Purchase Account Obligations.* Applicant shall make advance purchase payments in Cash for the account of the Administrative Agent, into the Advance Purchase Account in accordance with Section 7.01(d). All such Eligible Funds shall be held in the Advance Purchase Account in accordance with the terms of this Agreement.

Section 4.02. *Specified Investments.*

(a) The Administrative Agent will invest all Cash held in the Advance Purchase Account in Specified Investments.

(b) If any Cash is required for the making of any reimbursement, transfer or other disbursement (including for the purposes of paying fees pursuant to Section 2.03(g)) or withdrawal in accordance with this Agreement, the Administrative Agent shall cause Specified Investments to be sold or otherwise liquidated into Cash, and held in the Advance Purchase Account (which may be non-interest bearing), as and to the extent necessary in order to make such reimbursements, transfers, disbursements (including for the purposes of paying fees pursuant to Section 2.03(g)) or withdrawals.

Section 4.03. *Return of Overadvanced Amounts in Advance Purchase Account.* After the Letter of Credit is fully drawn or expires or is returned to the Administrative Agent for final cancellation, all Unreimbursed Amounts with respect to drawings of the Letter of Credit have been fully satisfied pursuant to the provisions of this Agreement and the other Facility Documents and no other Obligations, whether contingent or otherwise, are then outstanding, any amounts remaining in the Advance Purchase Account shall constitute an overadvance of funds to such account, and the Administrative Agent shall promptly return such amounts to Applicant at an account specified by Applicant. Neither the Administrative Agent nor any Issuing Bank shall be liable for any losses or penalties relating to investment of amounts in the Advance Purchase Account.

**ARTICLE 5**  
CONDITIONS PRECEDENT

Section 5.01. *Conditions to the Purchase Date.* The effectiveness of this Agreement is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent shall have received the following, each of which shall be originals or telecopies or other electronic format (*e.g.*, PDF) (followed

promptly by originals) unless otherwise specified, each in form and substance reasonably satisfactory to the Administrative Agent:

(i) executed counterparts, properly executed by each of the parties thereto (including by, an Authorized Signatory, in the case of Applicant), of this Agreement, each other Facility Document (other than the Letter of Credit) and the Trust Agreement; and

(ii) an opinion of counsel from Schiff Hardin LLP, counsel to Applicant, in form satisfactory to the Administrative Agent.

(b) The Processing and Trustee Fee shall have been paid to the Administrative Agent.

Section 5.02. *Conditions to Issuance Date.* The obligation of each Issuing Bank to issue the Letter of Credit is subject to satisfaction of the following conditions precedent on any Business Day (the “**Issuance Date**”) during the Purchase Period:

(a) The Administrative Agent shall have received originals or telecopies or other electronic format (followed promptly by originals) of executed counterparts of the Claims Processor Agreement.

(b) The Administrative Agent shall have received payment or reimbursement of all reasonable costs, fees and expenses due and payable to the Claims Processor and the Trustee in accordance with Section 10.04(a) hereof.

(c) The Administrative Agent and the Issuing Banks shall have received a request from Applicant relating to the issuance of the Letter of Credit in accordance with the requirements hereof.

(d) The proposed Available Amount of the Letter of Credit shall not exceed the Aggregate Commitments at such time.

(e) The Advance Purchase Account Balance shall not be less than the Required Advance Purchase Amount.

(f) The representations and warranties of Applicant contained in Article 6 and in each other Facility Document shall be true and correct in all material respects, on, immediately prior to, and as of the proposed Issuance Date (after giving effect to the proposed issuance), except that to the extent such representations and warranties specifically refer to an earlier date, they shall be true and correct as of such earlier date.

(g) No Default shall exist, or would result from such proposed issuance.

(h) The Administrative Agent shall have received a certificate signed by an Authorized Person certifying that the conditions specified in Sections 5.02(d), (e), (f) and (g) have been satisfied.

Section 5.03. *Conditions to All Available Amount Increases.* The obligations of the Issuing Banks to comply with any Increase Request is subject to the following conditions precedent:

(a) The Administrative Agent and the Issuing Banks shall have received an Increase Request in accordance with the requirements hereof.

(b) After giving effect to the proposed Available Amount Increase in such Increase Request, the Available Amount of the Letter of Credit shall not exceed the Aggregate Commitments at such time.

(c) The Advance Purchase Account Balance shall not be less than the Required Advance Purchase Amount.

(d) The representations and warranties of Applicant contained in Article 6 and in each other Facility Document shall be true and correct in all material respects immediately prior to, on, and as of the date of the Available Amount Increase (after giving effect thereto), except that to the extent such representations and warranties specifically refer to an earlier date, they shall be true and correct as of such earlier date.

(e) No Default shall exist, or would result from such proposed Increase Event.

Each Increase Request submitted by Applicant shall be deemed to be a representation and warranty that the conditions specified in Section 5.03(b), (c), (d), and (e) have been satisfied on and as of the date of the applicable Available Amount Increase.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES**

Applicant represents and warrants to the Administrative Agent and the Issuing Banks that:

Section 6.01. *Representations And Warranties of Applicant.*

(a) *Requisite Power and Authority.* Applicant has all requisite power and authority to enter into the Facility Documents and to carry out the transactions contemplated thereby.

(b) *Due Authorization.* The execution, delivery and performance of the Facility Documents (including the purchase of the facility contemplated hereunder with funds appropriated under TARP) have been duly authorized by all necessary action on the part of Applicant and any other Governmental Authority.

(c) *No Conflict.* The execution, delivery and performance by Applicant of the Facility Documents to which Applicant is a party and the consummation of the transactions contemplated by the Facility Documents do not and will not violate any

provision of any Laws applicable to Applicant or any order, judgment or decree of any court or other agency of government binding on Applicant.

(d) *Governmental Consents.* The execution, delivery and performance by Applicant of the Facility Documents and the consummation of the transactions contemplated by the Facility Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, other than those already obtained and in effect.

(e) *Binding Obligation.* Each Facility Document has been duly executed and delivered by Applicant and is the legally valid and binding obligation of Applicant, enforceable against Applicant in accordance with its terms.

(f) *Adverse Proceedings.* There are no Adverse Proceedings pending or, to Applicant's Knowledge, threatened in writing against or affecting Applicant that relate to any Facility Document or the transactions contemplated hereby or thereby which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

(g) *No Defaults.* No Default or Event of Default has occurred and is continuing.

(h) *Disclosure.* To Applicant's Knowledge, none of the documents, certificates or written statements furnished to the Administrative Agent or the Issuing Banks by or on behalf of Applicant for use in connection with the Facility Documents or the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein, taken as a whole, not misleading in light of the circumstances in which the same were made.

(i) *EESA.*

(i) Applicant has the authority, and is exercising such authority, under Sections 101 and 109(a)(2) of the EESA to purchase the facility contemplated hereunder and to arrange for the issuance of the Letter of Credit hereunder.

(ii) (A) The Program is authorized under Sections 101 and 109(a)(2) of EESA, and (B) because the purchase of the facility contemplated hereunder and the issuance of the Letter of Credit are within the scope of Section 109(a)(1) which provides for the use by the Secretary of the Treasury (the "**Secretary**") of credit enhancements to facilitate loan modifications to prevent avoidable foreclosures, the Secretary, pursuant to Section 109(a)(2), is not required to, and will not, apply executive compensation requirements under Section 111 or the requirement to receive warrants or debt instruments under Section 113 to the Administrative Agent, the Issuing Banks or any of their respective Affiliates as a result of their participation in the facility contemplated hereunder or the Letter of Credit.



(iii) Pursuant to 31 CFR Part 30 and because the Administrative Agent or the Issuing Banks will be receiving funds, if at all, from Applicant in connection with the facility contemplated hereunder and the Letter of Credit pursuant to Section 109 of EESA, none of the Administrative Agent, the Issuing Banks or any of their respective Affiliates (nor the Trustee, the Claims Processor or any of their respective Affiliates) will be treated as a “TARP recipient” subject to the restrictions of Section 111 of EESA or any rules, regulations or other regulatory pronouncements promulgated or issued thereunder as a result of their participation in the facility contemplated hereunder or the Letter of Credit and related arrangements.

(j) *Apportionment by Office of Management and Budget.* The transactions contemplated in the Facility Documents, including the issuance of the Letter of Credit hereunder, comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act (including the reduction in authorized TARP funding effected thereby) and the purchase of the facility contemplated hereunder and the issuance of the Letter of Credit in the amounts allowed hereunder have been fully apportioned by the Office of Management and Budget.

Section 6.02. *Representations and Warranties of the Administrative Agent and the Issuing Banks.*

The Administrative Agent and each Issuing Bank represents and warrants, as to itself only, to Applicant that:

(a) *Requisite Power and Authority.* It has all requisite power and authority to enter into the Facility Documents and to carry out the transactions contemplated thereby.

(b) *Due Authorization.* The execution, delivery and performance of the Facility Documents have been duly authorized by all necessary action on its part.

(c) *No Conflict.* The execution, delivery and performance of the Facility Documents to which it is a party and the consummation of the transactions contemplated by the Facility Documents do not and will not violate any provision of any Laws applicable to it or any order, judgment or decree of any court or other agency of government binding on it.

(d) *Governmental Consents.* Its execution, delivery and performance of the Facility Documents and the consummation of the transactions contemplated by the Facility Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, other than those already obtained and in effect.

(e) *Binding Obligation.* Each Facility Document has been duly executed and delivered by it and is a legally valid and binding obligation, enforceable against it in accordance with its terms.

(f) *Financial Institution.* Such Issuing Bank or the Administrative Agent, as applicable, is a “financial institution” as defined in Section 3(5) of EESA, 12 U.S.C. § 5205(5).

## **ARTICLE 7**

### COVENANTS

Applicant covenants and agrees that so long as any Commitment is in effect until payment in full of all Obligations and expiration of the Letter of Credit, Applicant shall perform all covenants in this Article 7.

#### Section 7.01. *Affirmative Covenants.*

(a) *Certificates; Other Information.* Unless otherwise provided below, Applicant will deliver to the Administrative Agent (who shall promptly deliver a copy thereof to each Issuing Bank):

(i) Notice of Default. Prompt written notice (but, in any event, within ten (10) days after Applicant first obtains Knowledge thereof) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to Applicant with respect thereto; which notice shall be accompanied by a certificate of an Authorized Person specifying the nature and period of existence of such condition or event, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Applicant has taken, is taking and proposes to take with respect thereto;

(ii) Notice of Litigation. Prompt written notice (but, in any event, within ten (10) days after Applicant first obtains Knowledge thereof) of (A) the institution of, or threat of, any Adverse Proceeding, or (B) any development in any Adverse Proceeding that, in the case of either clause (A) or (B) if adversely determined, could be reasonably expected to have a Material Adverse Effect, together with such other information as may be reasonably available to Applicant to enable the Issuing Banks and their counsel to evaluate such matters;

(iii) Notice of Material Events. Prompt written notice (but, in any event, within ten (10) days after Applicant first obtains Knowledge thereof) of any development with respect to the Program which could be reasonably expected to have a Material Adverse Effect.

(b) *Further Assurances.* At any time or from time to time upon the reasonable request of the Administrative Agent, Applicant will promptly execute and deliver such further documents, deliver such other information and do such other acts as the Administrative Agent may reasonably request as is reasonably necessary to effect the purposes of the Facility Documents. Applicant agrees and consents to the Administrative Agent (i) retaining the Trustee and entering into, with the Trustee, a Trust Agreement in form and substance satisfactory to the Administrative Agent and (ii) retaining the Claims

Processor and entering into, with the Claims Processor, a Claims Processor Agreement in form and substance reasonably satisfactory to the Administrative Agent. The Administrative Agent shall, prior to the execution of the Trust Agreement and the Claims Processor Agreement (or any amendment or termination of the foregoing), consult with and obtain Applicant's written consent thereto (such consent not to be unreasonably withheld or delayed), it being understood that Applicant's execution of this Agreement shall serve as written consent to the Administrative Agent's entry into the Trust Agreement substantially in the form attached hereto as Exhibit C. The parties hereto further agree that because the Administrative Agent is retaining the Trustee and the Claims Processor (and Applicant shall not be a party to either the Trust Agreement nor the Claims Processor Agreement), neither the Trustee nor the Claims Processor shall be subject to the requirements, prohibitions or any other limitations imposed under any provision of EESA that would be applicable to a TARP recipient or a Financial Institution from which Troubled Assets have been purchased by Applicant under the authority of EESA.

(c) *Purpose.* The Letter of Credit may be used solely to support the obligations and commitments of Applicant under the Program and the Beneficiary may request drawings under the Letter of Credit solely for the purpose of distributing funds drawn under the Letter of Credit to Mortgage Interest Holders in accordance with the terms of the Program.

(d) *Advance Purchase Price Amounts.* If on (i) the first Business Day of any calendar week, the Advance Purchase Account Balance is less than 95% of the Required Advance Purchase Amount as of such date or (ii) any Business Day, the Administrative Agent or an Issuing Bank notifies Applicant that the Advance Purchase Account Balance is less than 50% of the Required Advance Purchase Amount as of such date, then Applicant shall within two (2) Business Days of such notice, transfer to the Administrative Agent such additional Cash such that, in either case, the Advance Purchase Account Balance equals or exceeds the Required Advance Purchase Amount net of the amount contained in a Demand received by the Administrative Agent under the Letter of Credit for which payment has not yet been made; *provided that*, the Administrative Agent may, in its sole and absolute discretion, permit Applicant to deposit a lesser amount of Cash in the Advance Purchase Account than would otherwise be required pursuant to this Section 7.01(d) in an attempt to reduce the amount to be returned pursuant to Section 4.03.

(e) *Amendments to Facility Documents.* Applicant shall, at the request of the Administrative Agent or an Additional Issuing Bank, enter into such amendments to the Facility Documents as are reasonably necessary to reflect an assignment by an Issuing Bank of its rights and obligations pursuant to Section 10.06(b).

**ARTICLE 8**  
EVENTS OF DEFAULT AND REMEDIES

Section 8.01. *Events of Default.* Any of the following shall constitute an Event of Default:

- (a) *Failure to Make Payments When Due.* Failure by Applicant to pay (i) when due Obligations consisting of Unreimbursed Amounts or (ii) any interest, fees or other amounts due hereunder of receipt by Applicant of written notice from Administrative Agent that the same are overdue; or
- (b) *Breach of Certain Covenants.* Failure of Applicant to perform or comply with any term or condition contained in Section 7.01(a) or Section 7.01(d) and such failure to perform or comply shall not have been remedied or waived within fifteen (15) days after the receipt by Applicant of written notice from the Administrative Agent or an Issuing Bank of such failure to perform or comply; or
- (c) *Breach of Representations, etc.* Any representation, warranty, certification or other statement made or deemed made by Applicant in any Facility Document or in any statement or certificate at any time given by Applicant in writing pursuant hereto or thereto or in connection herewith or therewith shall be false as of the date made or deemed made and the same could reasonably be expected to have a Material Adverse Effect; or
- (d) *Other Defaults Under Facility Documents.* Applicant shall default in the performance of or compliance with any term contained herein or any of the other Facility Documents, other than any such term referred to in any other Section of this Section 8.01, and such default shall not have been remedied or waived within thirty (30) days after the receipt by Applicant of notice from the Administrative Agent or an Issuing Bank of such default; or
- (e) *Facility Documents.* At any time after the execution and delivery thereof, (i) this Agreement ceases to be in full force and effect or shall be declared null and void, for any reason other than the failure of the Administrative Agent or any Issuing Bank to take any action within its control, or (ii) Applicant shall contest the validity or enforceability of any Facility Document in any material respect in writing or deny in writing that it has any further liability, including with respect to future extensions of credit by the Issuing Banks under any Facility Document; or
- (f) *Actions with respect to Advance Purchase Account.* The assertion of any levy, seizure or attachment of the Advance Purchase Account or funds on deposit therein or the taking of any action by a Governmental Authority to obtain control (which shall not have been vacated, discharged or stayed or bonded pending appeal within sixty (60) days from the entry thereof) of the Advance Purchase Account or funds on deposit therein.
- (g) *Unwind Event.* The occurrence of an Unwind Event set forth in clause (b) of the definition thereof.

Section 8.02. *Remedies Upon Event of Default.* If any Event of Default occurs and is continuing, the Administrative Agent may or, at the request of the Required Issuing Banks, shall exercise the Trust Remedy; *provided* that with respect to (a) an Unwind Event set forth in clause (b) of the definition thereof, if the Affected Issuing Bank determines that the Trust Remedy is not, or would not, be effective or (b) any other Event of Default, the Administrative Agent may or, at the request of the Required Issuing Banks, shall have the right to (i) require Applicant to deposit Eligible Funds into the Advance Purchase Account in an amount equal to 100% of the Available Amount at such time or (ii) require Applicant to use its commercially reasonable efforts to cause the Beneficiary to release the Issuing Banks from all their obligations under the Letter of Credit and (iii) exercise on behalf of itself and the Issuing Banks all rights and remedies available to it and the Issuing Banks under the Facility Documents.

Section 8.03. *Trust Remedy.* (a) The remedy set forth in this Section 8.03 (the “**Trust Remedy**”) shall be available as follows: (i) upon the occurrence of an Unwind Event (a) set forth in clause (a) of the definition thereof, either Applicant or the applicable Issuing Bank may exercise the Trust Remedy or (b) set forth in clause (b) of the definition thereof, the Affected Issuing Bank may exercise the Trust Remedy; (ii) upon the occurrence of any other Event of Default, the Administrative Agent may exercise the Trust Remedy; and (iii) upon the occurrence of any event that results in an Issuing Bank becoming a Defaulting Issuing Bank, Applicant may exercise the Trust Remedy. Any party exercising the Trust Remedy pursuant to this Section 8.03 shall deem the Beneficiary to have delivered a Demand, solely against each Issuing Bank as to which such Trust Remedy is being issued (each, a “**Trust Remedy Bank**”), in an amount equal to the Remaining Available Amount of such Trust Remedy Bank (increased, if the Commitment of such Trust Remedy Bank is greater than its Individual Available Amount at such time, by the amount of such excess at such time (but without increase of the Individual Available Amount of any other Issuing Bank)) (the “**Trust Remedy Amount**”), against and subject to full and immediate reimbursement thereof from (1) the Applicable Percentage for such Trust Remedy Bank of amounts in the Advance Purchase Account and (2) to the extent of any shortfall thereof, Applicant, with the proceeds of such drawing being deposited into a trust account (the “**Trust Account**”) established for the benefit of Applicant and maintained with a trustee to be determined (the “**Trustee**”) pursuant to the Trust Agreement; *provided* that notwithstanding the foregoing, Applicant may, in connection with exercising its Trust Remedy with respect to all or a portion of any Trust Remedy Banks, exercise all or a portion of its Trust Remedy by paying the full Trust Remedy Amount directly into the Trust Account rather than through a drawing on one or more of the Trust Remedy Banks and canceling the Remaining Available Amount of such Trust Remedy Bank upon notice to the Beneficiary. Upon payment of such Trust Remedy Amount into the Trust Account, (i) such Trust Remedy Bank’s Applicable Percentage of the Letter of Credit shall be canceled and its Applicable Percentage of the Aggregate Commitments (such ratable portion of the Aggregate Commitments, the “**Applicable Commitments Portion**”) shall be terminated, (ii) the Beneficiary shall have no further claim against the Trust Remedy Bank under the Letter of Credit or otherwise but shall present all further claims for payment to the Trustee and have recourse solely against amounts in the Trust Account, (iii) such Trust Account shall be deemed to bear a portion of the Available Amount equal to the Applicable Commitments Portion, solely for purposes of determining the amount that may be drawn by the Beneficiary under the

Trust Account, (iv) the Trustee shall be authorized to pay the fee due to it (the “**Program Fee**”) under the Trust Agreement and any other Claims Processor and Trustee Costs from funds in the Trust Account in amounts and at times specified in the Trust Agreement or the Claims Processor Agreement, as applicable, (v) such Trust Remedy Bank shall simultaneously be released from all obligations hereunder and the other Facility Documents and (vi) such Trust Remedy Bank shall be deemed to have released Applicant (and its officers and employees) from all claims, causes of action, losses, damages, liabilities, costs and expenses arising out of or related to the Facility Documents (other than any claims for reimbursement under Section 10.04(b)).

Section 8.04. *Remedies Cumulative.* Notwithstanding anything to the contrary herein, the rights and remedies of the Administrative Agent or the Issuing Banks specifically in contained in Section 8.02 and Section 8.03 are cumulative and not exclusive of any other rights and remedies available to such parties under applicable Laws or otherwise.

Section 8.05. *Application of Funds.* (a) The amount in the Advance Purchase Account shall be applied to satisfy drawings under the Letter of Credit as they occur. If any funds remains on deposit in the Advance Purchase Account after the Letter of Credit has either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth below.

(b) After the exercise of remedies provided for in Section 8.02 and Section 8.03, any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting Claims Processor and Trustee Costs;

*Second*, to payment of the Reimbursement Obligations, interest (if any) thereon and all fees and other Obligations (including Unused Commitment Fees and L/C Fees and adjustments to the same pursuant to Section 2.03(c)) payable to the Issuing Banks ratably among them in proportion to the respective amounts described in this clause *Second* payable to them; and

*Last*, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to be disbursed in accordance with Section 4.03.

## **ARTICLE 9**

### ADMINISTRATIVE AGENT

Section 9.01. *Appointment and Authority.* Each of the Issuing Banks hereby irrevocably appoints Citibank to act on its behalf as the Administrative Agent hereunder and under the other Facility Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto, including without limitation by opening and

maintaining the Advance Payment Account and investing all amounts therein in Specified Investments and making payments therefrom from time to time. The provisions of this Article are solely for the benefit of the Administrative Agent and the Issuing Banks, and Applicant shall not have rights as a third party beneficiary of any of such provisions.

Section 9.02. *Exculpatory Provisions.* The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Facility Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Facility Documents that the Administrative Agent is required to exercise as directed in writing by the Required Issuing Banks (or such other number or percentage of the Issuing Banks as shall be expressly provided for herein or in the other Facility Documents); *provided* that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Facility Document or applicable Laws; and

(c) shall not, except as expressly set forth herein and in the other Facility Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Applicant that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Issuing Banks (or such other number or percentage of the Issuing Banks as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 10.01, 8.02 and 8.03) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a final and nonappealable judgment of a court of competent jurisdiction. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by Applicant or an Issuing Bank.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Facility Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Facility Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article 5 or elsewhere herein, other

than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 9.03. *Reliance by Administrative Agent.* The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it in good faith to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it in good faith to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the issuance of the Letter of Credit or an Increase Event that by its terms must be fulfilled to the satisfaction of the Issuing Banks, the Administrative Agent may presume that such condition is satisfactory to each Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Issuing Bank prior to the issuance of the Letter of Credit or such Available Amount Increase, as applicable. The Administrative Agent may consult with legal counsel (who may be counsel for Applicant), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.04. *Delegation of Duties.* The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Facility Document by or through any one or more sub agents appointed by the Administrative Agent and approved by Applicant (which approval shall not be unreasonably withheld or delayed). The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the facility provided for herein as well as activities as Administrative Agent.

Section 9.05. *Resignation of Administrative Agent.* (a) The Administrative Agent may at any time give notice of its resignation to the Issuing Banks and Applicant. Upon receipt of any such notice of resignation, the Required Issuing Banks shall have the right to appoint a successor, which shall be a Financial Institution, subject to the consent of Applicant (such consent by Applicant not to be unreasonably withheld, conditioned or delayed, it being understood that Applicant will be deemed to have provided such consent in the event that it shall have failed to respond to a consent request made in writing and delivered in accordance with Section 10.02 within 20 days of delivery). If no such successor shall have been so appointed by the Required Issuing Banks and shall have accepted such appointment within 20 days after the retiring Administrative Agent gives notice of its resignation (or, in the case of an Unwind Event set forth in clause (b) of the definition thereof with respect to which the Administrative Agent or any of its Affiliates is the Affected Issuing Bank, three (3) Business Days after such notice), then the retiring Administrative Agent may on behalf of the Issuing Banks, appoint a successor Administrative Agent meeting the qualifications set forth above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall



succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Facility Documents (if not already discharged therefrom as provided above in this Section). After the retiring Administrative Agent's resignation hereunder and under the other Facility Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

(b) During any period after the Administrative Agent's resignation in which a successor has not been appointed and accepted such appointment as Administrative Agent, such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Facility Documents and the Program Documentation (except that in the case of any amount in the Advance Purchase Account held by the Administrative Agent on behalf of the Issuing Banks under any of the Facility Documents, the retiring Administrative Agent shall continue to hold such amount until the earlier of (x) a successor Administrative Agent is appointed and (y) such amount is transferred to the Individual Advance Purchase Accounts of the Issuing Banks in accordance with clause (b) below), (b) each Issuing Bank shall (i) act as "Administrative Agent" solely with respect to its Applicable Percentage of the Letter of Credit and (ii) establish as soon as practicable a segregated demand deposit account in its name (each, an "**Individual Advance Purchase Account**") and, upon the establishment of the Individual Advance Purchase Accounts, (A) the resigning Administrative Agent shall transfer all amounts in the Advance Purchase Account to the Individual Advance Purchase Account of each Issuing Bank ratably (based on the respective Applicable Percentages of such Issuing Banks, after giving effect to any necessary adjustment to reflect the departure of any Issuing Bank from the Letter of Credit as provided herein), (B) all Individual Advance Purchase Accounts shall be deemed to constitute the "Advance Purchase Account" hereunder and each Issuing Bank shall be entitled to the benefits of the Facility Documents with respect to the amounts credited to the Individual Advance Purchase Accounts to the same extent as if it were the Administrative Agent hereunder and thereunder, including Article 4 hereof and (C) the defined terms "Advance Purchase Account Balance", "Advance Purchase Account Shortfall", "Advance Purchase Account Shortfall Amount" and related definitions shall be deemed to take into account all Individual Advance Purchase Accounts and the amounts contained therein. Upon the appointment of a successor Administrative Agent, any actions taken pursuant to this Section shall be reversed as appropriate such that the Advance Purchase Account maintained by the Administrative Agent is the sole Advance Purchase Account hereunder, and the Issuing Banks shall no longer act in the capacity of "Administrative Agent" with respect to itself under this Agreement and the other Facility Documents.

Section 9.06. *Non-reliance on Administrative Agent.* Each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Issuing Bank or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Issuing Bank also acknowledges that it

will, independently and without reliance upon the Administrative Agent or any other Issuing Bank or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Facility Document or any related agreement or any document furnished hereunder or thereunder.

## **ARTICLE 10**

### MISCELLANEOUS

Section 10.01. *Amendments, Etc.* No amendment or waiver of any provision of this Agreement or any other Facility Document, and no consent to any departure by Applicant therefrom, shall be effective unless in writing signed by the Required Issuing Banks and Applicant, and received by the Administrative Agent and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that no such amendment, waiver or consent shall:

- (a) extend or increase the Commitment of an Issuing Bank or the dollar amount constituting its *pro rata* share of the Available Amount without the written consent of such Issuing Bank;
- (b) postpone any date fixed by this Agreement or any other Facility Document for any payment of interest, fees or other amounts due to the Issuing Banks (or any of them other than a Defaulting Issuing Bank) or the Scheduled Termination Date without the written consent of each Issuing Bank (other than a Defaulting Issuing Bank) directly affected thereby;
- (c) reduce the principal of, or the rate of interest specified herein on, any Reimbursement Obligation, or any fees or other amounts payable hereunder or under any other Facility Document without the written consent of each Issuing Bank directly affected thereby; *provided* that only the consent of the Required Issuing Banks shall be necessary to amend the definition of “**Overdue Rate**”;
- (d) change Section 2.07 or Section 8.05 in a manner that would alter the *pro rata* sharing of payments required thereby without the written consent of each Issuing Bank;
- (e) change any provision of this Section or the definition of “**Required Issuing Banks**” or any other provision hereof specifying the number or percentage of Issuing Banks required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Issuing Bank; or
- (f) decrease the Required Advance Purchase Amount without the written consent of each Issuing Bank;

and *provided further* that (i) no amendment, waiver or consent shall, unless in writing and signed by each Issuing Bank, affect the rights or duties of such Issuing Bank hereunder or any other Facility Document relating to its *pro rata* share of the Letter of Credit; and (ii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Issuing Banks required above, affect the rights or duties of the Administrative Agent hereunder or any other Facility Document. For the avoidance of doubt, any amendment to the Letter of Credit in connection with an Increase Event shall be made in accordance with Section 2.01(b)(ii) and shall not require the consent of the Required Lenders.

Section 10.02. *Notices; Effectiveness; Electronic Communication.*

(i) *Notices Generally.* Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or in any applicable Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) *Electronic Communications.* Notices and other communications to the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent. The Administrative Agent or Applicant may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "**return receipt requested**" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail

address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *Reliance by Administrative Agent and Issuing Banks.* The Administrative Agent and each Issuing Bank shall be entitled to rely and act upon any notices purportedly given by or on behalf of Applicant even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03. *No Waiver; Cumulative Remedies; Enforcement.* No failure by the Administrative Agent or an Issuing Bank to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by applicable Laws.

Notwithstanding anything to the contrary contained herein or in any other Facility Document, the authority to enforce rights and remedies hereunder and under the other Facility Documents against the Issuing Banks or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 and Section 8.03 for the benefit of all the Issuing Banks; *provided* that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Facility Documents or (b) an Issuing Banks from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank) hereunder and under the other Facility Documents and *provided further* that if at any time there is no Person acting as Administrative Agent hereunder and under the other Facility Documents, then (i) the Required Issuing Banks shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clause (b) of the preceding proviso and subject to Section 2.07, an Issuing Bank may, with the consent of the Required Issuing Banks, enforce any rights and remedies available to it and as authorized by the Required Issuing Banks.

Section 10.04. *Expenses; Damage Waiver.*

(a) *Costs and Expenses; Out of Pocket Expenses.* Applicant shall pay all reasonable out of pocket costs, fees and expenses incurred on or prior to the Issuance Date by the Administrative Agent and its Affiliates in connection with the syndication of the facility provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement, the other Facility Documents, the Program Documentation or any amendments, modifications or waivers of the provisions hereof or

thereof; *provided* that (i) Applicant shall be deemed to have reimbursed the Administrative Agent and its Affiliates for a portion of such out of pocket costs, fees and expenses through a portion of the Processing and Trustee Fee paid on the Purchase Date up to the Expense Allowance and (ii) for the avoidance of doubt, the costs, fees and expenses of the Claims Processor and Trustee, shall not be subject to the Expense Allowance. On the Issuance Date, the Administrative Agent shall provide Applicant with copies of invoices or other reasonable documentation evidencing the out of pocket expenses to be paid out of the Expense Allowance. To the extent the out of pocket expenses required to be reimbursed under this Section 10.04(a) are less than the Expense Allowance, the Administrative Agent shall promptly (but in no event more than five (5) Business Days) following the Issuance Date return the balance thereof to Applicant. In addition, Applicant shall reimburse the Administrative Agent for all out of pocket costs and expenses incurred by the Administrative Agent under the Trust Agreement and the Claims Processor Agreement with respect to the reimbursement of the Trustee or the Claims Processor, respectively, for liabilities, losses, damages, penalties, claims, actions, costs, expenses, fees, taxes and disbursements suffered or incurred by the Trustee or the Claims Processor in connection with such agreements or the transactions contemplated thereby (such out of pocket costs and expenses, the “**Contractual Reimbursement Claims**”); *provided* that the amounts reimbursed by Applicant for Contractual Reimbursement Claims in connection with (i) the Trust Agreement and the transactions contemplated thereby shall not exceed [REDACTED] in the aggregate and (ii) the Claims Processor Agreement and the transactions contemplated thereby shall not exceed [REDACTED] in the aggregate.

(b) *Reimbursement by Applicant.* Applicant shall reimburse the Administrative Agent (and any sub-agent thereof), each Issuing Bank and each Related Party of any of the foregoing Persons (each such Person being called a “**Reimbursee**”) for all out of pocket fees and expenses reasonably incurred by Reimbursee (including the reasonable fees, charges and disbursements of any counsel for any Reimbursee), in respect of, or on connection with, any claim, action, proceeding or investigation brought by any Person (other than Applicant), arising out of (i) the execution or delivery of this Agreement or the other Facility Documents or the Program Documentation, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Facility Documents (including in respect of any matters addressed in Section 3.01, but without duplication) or (ii) the Letter of Credit or other Facility Document or the use or proposed use of the proceeds therefrom (including any refusal by an Issuing Bank to honor a demand for payment under the Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of the Letter of Credit), whether based on contract, tort or any other theory, and regardless of whether any Reimbursee is a party thereto; *provided* that such reimbursement of any such fees and expenses shall not, as to any Reimbursee, be available to the extent that such claims, actions, proceedings or investigations (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Reimbursee or (y) arise from claims of any of the Issuing Banks or Administrative Agent against one or more Issuing Banks or Administrative Agent that have not resulted from any

misrepresentation, default or the breach of Applicant or any actual or alleged performance or non-performance by Applicant or any of its employees; *provided* further that the aggregate amounts reimbursed by Applicant after the Purchase Date under this Section 10.04(b) (but excluding any Contractual Reimbursement Claims, which shall be treated in accordance with clause (a) above) shall not exceed [REDACTED] in the aggregate.

(c) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable Laws, each party hereto agrees not to assert, and hereby waives, any claim against any other party hereto or any Reimbursee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Facility Document, the Program Documentation or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Letter of Credit or the use of the proceeds thereof. No party hereto nor any Reimbursee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by any such party hereto or Reimbursee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Facility Documents or the Program Documentation or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of any such party hereto or Reimbursee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(d) *Payments.* All amounts due under this Section shall be payable not later than five Business Days after demand therefor.

(e) *Survival.* The agreements in this Section shall survive the resignation of the Administrative Agent and an Issuing Bank, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

Section 10.05. *Payments Set Aside.* To the extent that any payment by or on behalf of Applicant is made to the Administrative Agent or an Issuing Bank and such payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Issuing Bank in its discretion) to be repaid to a trustee, receiver or any other party, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Issuing Bank severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Issuing Banks under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.06. *Successors and Assigns.*

(a) *Successors and Assigns Generally.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Applicant may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Issuing Bank. No Issuing Bank may assign any of its rights or obligations hereunder except (i) to an Eligible Replacement in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (e) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (g) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (e) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Issuing Banks) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Issuing Banks.* An Issuing Bank may at any time following the Purchase Date assign to one or more Eligible Replacements (an “**Additional Issuing Bank**”) all or a portion of its rights and obligations hereunder (including all or a portion of its Commitment and the obligations of such Issuing Bank with respect to the Letter of Credit) (such portion, the “**Assigned Portion**”); *provided* that any such assignment shall be subject to the following conditions:

(i) *Minimum Amounts.*

(A) in the case of an assignment (1) of the entire remaining amount of the assigning Issuing Bank’s Commitment or the obligations of such Issuing Bank with respect to the Letter of Credit or (2) to an Issuing Bank or an Affiliate of an Issuing Bank, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment or the obligations of such Issuing Bank with respect to the Letter of Credit, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent (an “**Issuing Bank Addition Date**”), shall not be less than \$1,000,000,000 unless the Administrative Agent otherwise consents (such consent not to be unreasonably withheld or delayed).

(ii) *Proportionate Amounts.* Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Issuing Bank’s rights and obligations hereunder with respect to the Commitment and the obligations of such Issuing Bank with respect to the Letter of Credit.

(iii) *Required Consents.* The consent of Applicant (such consent not to be unreasonably withheld or delayed) shall be required for any assignment to

an Eligible Replacement unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to an Issuing Bank.

(iv) *Assignment and Assumption.* The parties to each assignment shall execute and deliver to the Administrative Agent and Applicant an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; *provided* that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not an Issuing Bank, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) *No Additional Payments.* At the time of the proposed assignment, no portion of any payment to the assigned Issuing Bank would be subject to additional payments by Applicant as described in Section 3.01(a)(ii), but only if the assigning Issuing Bank was not entitled to receive such additional payments as of the date of the proposed assignment.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the Issuing Bank Addition Date, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of an Issuing Bank hereunder, and the assigning Issuing Bank thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations hereunder (and, in the case of an Assignment and Assumption covering all of the assigning Issuing Bank's rights and obligations hereunder, such Issuing Bank shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01 and Section 2.03(c) with respect to facts and circumstances occurring prior to the Issuing Bank Addition Date. Any assignment or transfer by an Issuing Bank of its rights or obligations hereunder that does not comply with this subsection (b) shall be null and void.

(c) Without duplication of subsection (b) of the Section, upon the assignment of an Assigned Portion by an assigning Issuing Bank, (i) the Applicable Percentage and Commitment of such Issuing Bank shall each, automatically and without the execution or filing of any document or any further act on the part of any of the parties to this Agreement (other than as provided for herein), be reduced in the respective amounts thereof so assigned and (ii) the Additional Issuing Bank shall have a Commitment equal to the Assigned Portion and shall issue (together with the other Issuing Banks) a substitute Letter of Credit pursuant to Section 2.01(b)(iii) reflecting its Applicable Percentage of the Available Amount after giving effect to the portion of the Available Amount assigned by the assigning Issuing Bank; *provided* that if requested by the Additional Issuing Bank or the Administrative Agent, Applicant and such other parties shall enter into such amendments to the Facility Documents as are necessary to reflect the succession of the Additional Issuing Bank as an Issuing Bank with respect to the Assigned Portion for all purposes hereunder.



(d) *Register.* The Administrative Agent, acting solely for this purpose as an agent of Applicant, shall maintain at the Administrative Agent's office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Issuing Banks, and the Commitments of each Issuing Bank pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Applicant, the Administrative Agent and the Issuing Banks may treat each Person whose name is recorded in the Register pursuant to the terms hereof as an Issuing Bank hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Applicant and an Issuing Bank, at any reasonable time and from time to time upon reasonable prior notice.

(e) *Participations.* An Issuing Bank may at any time, with the written consent of Applicant and the Administrative Agent (such consent not to be unreasonably withheld or delayed), sell participations of all or a portion of such Issuing Bank's rights and obligations hereunder (including all or a portion of its Commitment) to any Eligible Replacement (each, a "**Participant**"); *provided* that (i) such Issuing Bank's obligations hereunder shall remain unchanged, (ii) such Issuing Bank shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Applicant and the Administrative Agent shall continue to deal solely and directly with such Issuing Bank in connection with such Issuing Bank's rights and obligations hereunder. Any agreement or instrument pursuant to which an Issuing Bank sells such a participation shall provide that such Issuing Bank shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Issuing Bank will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (f) of this Section, Applicant agrees that each Participant shall be entitled to the benefits of Sections 3.01 and Section 2.03(c) to the same extent as if it were an Issuing Bank and had acquired its interest by assignment pursuant to subsection (b) of this Section; *provided* that such Participant agrees to be subject to Section 2.07 as though it were an Issuing Bank. To the extent permitted by applicable Laws, each Participant also shall be subject to Sections 10.07 and 10.08 as though it were an Issuing Bank. Each Issuing Bank that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Applicant, maintain a register on which it enters the name and address of each Participant and each Participant's interests in the Issuing Bank's rights and obligations with respect to any Drawn Amount hereunder (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(f) *Limitations upon Participant Rights.* A Participant shall not be entitled to receive any greater payment under Section 3.01 or Section 2.03(c) than the applicable Issuing Bank would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Applicant's prior written consent. A Participant shall not be entitled to the benefits of

Section 3.01 to the extent such Participant fails to comply with Section 3.01(f) as though it were an Issuing Bank.

(g) *Certain Pledges.* An Issuing Bank may at any time pledge or assign a security interest in all or any portion of its rights hereunder to secure obligations of such Issuing Bank, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Issuing Bank from any of its obligations hereunder or substitute any such pledgee or assignee for such Issuing Bank as a party hereto.

(h) *Replacement of Issuing Bank in Certain Circumstances.* In the event that (A) any Issuing Bank becomes a Defaulting Issuing Bank, (B) any Issuing Bank is found to have knowingly submitted to Applicant under the Facility Documents documents known by such Issuing Bank to contain material misstatements of fact in an attempt to increase or induce payments by Applicant not contemplated by the terms of the Facility Documents or (C) an Unwind Event of the type set forth in clause (a) of the definition thereof occurs with respect to an Issuing Bank (the Issuing Bank referred to in any of clauses (A), (B) or (C), the “**Assigning/Reducing Bank**”), then Applicant may, on five (5) Business Days’ prior written notice to the Administrative Agent and the Assigning/Reducing Bank, either:

(i) Reduce or terminate the Commitment of such Assigning/Reducing Bank, without pro rata reduction of any other Issuing Bank, and require a reduction of the Available Amount allocable to such Commitment; *provided* that (x) after giving effect to the foregoing, no other Issuing Bank shall have increased its Commitment or the amount produced by multiplying its resulting Applicable Percentage by the Available Amount as so reduced and (y) the Aggregate Commitments and Available Amount could have been reduced under Sections 2.02 and 2.08, respectively, in the relevant amounts at such time; or

(ii) Cause such Assigning/Reducing Bank to assign, without recourse, pursuant to Section 10.06(b) all of its rights and obligations under this Agreement and the Letter of Credit to one or more Eligible Replacements; *provided*, that neither the Administrative Agent nor any Issuing Bank shall have an obligation to Applicant to find an Eligible Replacement willing to accept such assignment. Any Assigning/Reducing Bank shall execute and deliver an Assignment and Assumption with respect to all (or, if agreed by Applicant and such Assigning/Reducing Bank, a ratable portion) of such Assigning/Reducing Bank’s Commitment and Applicable Percentage in respect of the Letter of Credit. Pursuant to such Assignment and Assumption, (A) the assignee Lender shall acquire all (or, if agreed as provided above, the applicable portion) of such Assigning/Reducing Bank’s Commitment and Applicable Percentage in respect of the Letter of Credit, (B) all obligations of Applicant owing to the Assigning/Reducing Bank as of the date of the Assignment and Assumption shall be paid to the Assigning/Reducing Bank upon the effectiveness of such Assignment and Assumption, (C) the assignee Issuing Bank shall become an

Issuing Bank hereunder and (D) the Assigning/Reducing Bank shall cease to constitute an Issuing Bank hereunder.

; *provided* that, if the foregoing remedy is sought in connection with an Unwind Event of the type set forth in clause (a) of the definition thereof and the Assigning/Reducing Bank has previously delivered a written notice to Applicant stating that it has elected to exercise the Trust Remedy pursuant to Section 2.03(c) or Section 2.03(d), then such Assigning/Reducing Bank shall have the right to exercise the Trust Remedy if Applicant does not fully exercise its rights under this Section 10.06(h) within five (5) Business Days of receiving such notice from the Assigning/Reducing Bank.

Section 10.07. *Access and Information.*

(a) Until the Scheduled Termination Date with respect to the Letter of Credit, each Issuing Bank shall permit, and shall cause each of its subsidiaries to permit (A) Applicant and its agents, consultants, contractors and advisors, (B) the Special Inspector General of the TARP, and (C) the Comptroller General of the United States access to its personnel and any books, papers, records or other data, in each case, to the extent relevant to ascertaining compliance with this Agreement; provided that prior to disclosing any information pursuant to clause (B) or (C), the Special Inspector General of the TARP and the Comptroller General of the United States shall have agreed, with respect to documents obtained hereunder in furtherance of its function, to follow applicable Laws and regulation (and the applicable customary policies and procedures) regarding the dissemination of confidential materials, including redacting confidential information from the public version of its reports and soliciting input from the Issuing Banks as to information that should be afforded confidentiality, as appropriate.

(b) Nothing in this Section 10.07 shall be construed to limit the authority that the Special Inspector General of the TARP, the Comptroller General of the United States or any other applicable regulatory authority has under applicable Laws.

Section 10.08. *Treatment of Certain Information; Confidentiality.* Except as otherwise provided in this Section 10.08, each party shall use reasonable best efforts to hold, and shall use reasonable best efforts to cause their agents, consultants, contractors and advisors to hold, all non-public records, books, contracts, instruments, computer data and other data and information (collectively, “**Non-Public Information**”) concerning the facility contemplated hereunder obtained by it pursuant to the requirements hereof, in confidence, it being understood and agreed that, in any event, each party may make (a) disclosure of the Non-Public Information to Affiliates of such Person and to their directors, officers, employees, agents and advisors (and to other persons authorized by it to organize, present or disseminate the Non-Public Information in connection with disclosures otherwise made in accordance with this Section 10.08), (b) if applicable, disclosure of the Non-Public Information reasonably required by any bona fide or potential assignee, transferee, Participant or sub-participant in connection with a contemplated assignment, transfer or participation (x) by the Administrative Agent of any agency position or an Issuing Bank of its letter of credit issuer position or (y) if applicable, by any direct or indirect contractual counterparties (or the professional advisors thereto) (*provided* that each such Person identified in (a) and (b) are advised of

and agree to be bound by the provisions of this Section 10.08), (c) disclosure of the Non-Public Information to any rating agency when required by it, *provided* that prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the other party received by it, (d) disclosure of the Non-Public Information which (A) becomes publicly available other than as a result of a breach of this Section 10.08, (B) becomes available to it on a non-confidential basis from a source other than the other party or (C) otherwise becomes lawfully available to it; *provided* that no other confidentiality obligation of such party has been breached (e) disclosure of the Non-Public Information required or requested by any governmental agency or representative thereof or pursuant to legal or judicial process and (f) disclosure of the Non-Public Information with the consent of the other party; *provided* that unless specifically prohibited by applicable Laws or court order, each party shall make reasonable efforts to notify the other party of any request by any governmental agency or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such party by such governmental agency) for disclosure of any Non-Public Information prior to disclosure of such Non-Public Information and *provided*, further, that Applicant shall retain the right to publically disclose the Facility Documents and related agreements thereto. Notwithstanding any other provision of this Section 10.08, the parties (and each employee, representative, or other agent of the parties) may disclose to any Governmental Authority the tax treatment and any facts that may be relevant to the tax structure of the transactions contemplated by this Agreement and the other Facility Documents; *provided* that no party (and no employee, representative, or other agent thereof) shall disclose any other information that is not relevant to an understanding of the tax treatment and tax structure of the transaction (including the identity of any party and any information that could lead another to determine the identity of any party), or any other information to the extent that such disclosure could reasonably result in a violation of any applicable securities Laws.

Section 10.09. *Public Releases.* Neither Applicant nor any Issuing Bank shall issue any advertising, signage, promotional material or press releases (“**Public Releases**”) in connection with the facility contemplated hereunder mentioning the other party, without prior consultation with the non-disclosing parties; *provided*, however, no party shall be permitted to use any other party’s logo without each such non-disclosing party’s prior written consent. Nothing in this Section 10.09 shall prevent any party from disclosing any Non-Public Information or Public Releases to the extent required by applicable Laws or regulations or by any subpoena or similar legal process.

Section 10.10. *Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Facility Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a

signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.11. *Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Facility Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Issuing Bank, regardless of any investigation made by the Administrative Agent or an Issuing Bank or on their behalf and notwithstanding that the Administrative Agent or an Issuing Bank may have had notice or knowledge of any Default at the time of any Available Amount Increase, and shall continue in full force and effect as long as any Obligation hereunder shall remain unpaid or unsatisfied or the Letter of Credit shall remain outstanding.

Section 10.12. *Severability.* If any provision of this Agreement or the other Facility Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Facility Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.13. *Governing Law; Jurisdiction; etc.*

(a) *GOVERNING LAW.* THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, FEDERAL LAW OF THE UNITED STATES IF AND TO THE EXTENT SUCH LAW IS APPLICABLE, AND OTHERWISE IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED WITHIN SUCH STATE.

(b) *SUBMISSION TO JURISDICTION AND VENUE.* EACH PARTY HERETO UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION AND VENUE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AND THE UNITED STATES COURT OF FEDERAL CLAIMS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER FACILITY DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 10.14. *WAIVER OF JURY TRIAL.* EACH PARTY HERETO HEREBY UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY CIVIL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY

OTHER FACILITY DOCUMENT OR THE TRANSACTIONS CONTEMPLATED  
HEREBY OR THEREBY.

Section 10.15. *No Advisory or Fiduciary Responsibility.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Facility Document), Applicant acknowledges and agrees that: (i) (A) the services regarding this Agreement provided by the Administrative Agent are arm's-length commercial transactions between Applicant, on the one hand, and the Administrative Agent, on the other hand, and that Applicant has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (B) Applicant is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Facility Documents; (ii) the Administrative Agent is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Applicant, or any other Person and the Administrative Agent has no obligation to Applicant with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Facility Documents and (iii) the Administrative Agent and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Applicant, and the Administrative Agent has no obligation to disclose any of such interests to Applicant. To the fullest extent permitted by applicable Laws, Applicant hereby waives and releases any claims that it may have against the Administrative Agent with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

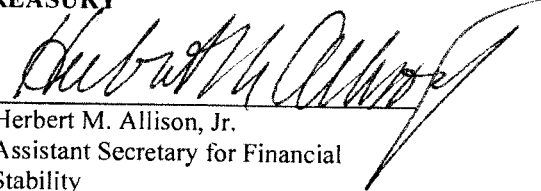
Section 10.16. *Electronic Execution of Assignments and Certain Other Documents.* The words "**execution**," "**signed**," "**signature**," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Laws, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

Section 10.17. *No Third Party Beneficiaries.* This Agreement is intended to be solely for the benefit of the parties hereto and the indemnified persons and is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto and the indemnified persons to the extent expressly set forth herein, except that the Trustee and the Claims Processor may rely on the representations set forth in Section 6.01(i) with respect to themselves as though such Person were a party to this Agreement.

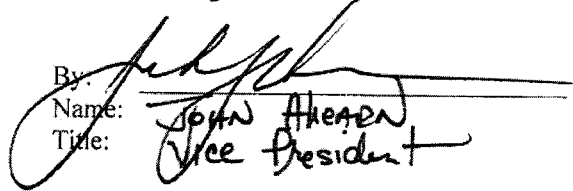
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**UNITED STATES DEPARTMENT OF  
THE TREASURY**

By:

  
Name: Herbert M. Allison, Jr.  
Title: Assistant Secretary for Financial  
Stability

CITIBANK, N.A., as Administrative Agent  
and Issuing Bank

By:   
Name: John Ahegan  
Title: Vice President



**Schedule 1.01(a)**

**“Specified Investments”** shall mean (i) United States Treasury securities with maturities of not more than ninety (90) calendar days; (ii) money market mutual funds that (a) are registered with the United States Securities and Exchange Commission and regulated under Rule 2a-7 promulgated under the Investment Company Act of 1940, as amended and (b) invested exclusively in direct obligations of the United States of America or obligations the prompt payment of the principal of and interest on which is unconditionally guaranteed by the United States of America; and (iii) repurchase agreements with terms ranging from overnight to one week fully collateralized by United States Treasury securities with counterparties having a short-term credit rating of “P-1” from Moody’s Investors Services (and its successors in interest) and “A-1+” from Standard & Poor’s Ratings Group (and its successors in interest).

**COMMITMENTS  
AND APPLICABLE PERCENTAGES**

<b>Issuing Bank</b>	<b>Commitment</b>	<b>Applicable Percentage</b>
Citibank, N.A.	\$8,000,000,000	100.000000000%
<b>Total</b>	<b>\$8,000,000,000</b>	<b>100.000000000%</b>

**Schedule 2.03**

**FEES**

As used in this Agreement, the following terms shall have the meanings set forth below:

“**L/C Fee Rate**” with respect to each Issuing Bank means, initially, a rate per annum equal to [REDACTED]

“**Unused Commitment Fee Rate**” with respect to each Issuing Bank means, initially, a per annum rate equal to [REDACTED]

“**Overdue Rate**” means a rate equal to the Base Rate plus [REDACTED] per annum.

**ADVANCE PURCHASE ACCOUNT**

**Citibank, N.A.**

**ABA:** [REDACTED]

**Account Name:** Advance Purchase Account held on behalf of Citibank, N.A. as Administrative Agent under that certain Facility Purchase Agreement dated as of September 3, 2010.

**Account No.:** [REDACTED]

**CERTAIN ADDRESSES FOR NOTICES**

APPLICANT:

Chief Counsel, Office of Financial Stability  
Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, D.C. 20020  
Phone: [REDACTED]  
Email: [REDACTED]

ADMINISTRATIVE AGENT AND ISSUING BANK:

Citibank, N.A.  
388 Greenwich Street, 25th Floor  
New York, NY 10013  
Attn: [REDACTED]  
Fax No.: [REDACTED]

w/ a copy to:  
Citicorp North America, Inc., as LC servicer  
3800 Citibank Center  
Tampa, FL 33610  
Attn: [REDACTED]  
Fax No.: [REDACTED]

**Exhibit A**

**Form of Letter of Credit**

**Exhibit A  
to Facility Purchase Agreement**

**Form of Letter of Credit**

**STANDBY LETTER OF CREDIT**

No. [ \_\_\_\_\_ ] ([Citibank, N.A.]

[No. [ \_\_\_\_\_ ] ([separate identification number for each Issuing Bank])]

To: [Beneficiary - *insert name of Claims Processor*]

By order of The United States Department of the Treasury (“**Applicant**”), the banks whose names are set out in Schedule 1 hereto (the “**Issuing Banks**”, and each an “**Issuing Bank**”) hereby establish this irrevocable Standby Letter of Credit (this “**Letter of Credit**”), in your favor as beneficiary (“**Beneficiary**”) for drawings up to \$[ \_\_\_\_\_ ] in the aggregate (the “**Available Amount**” and each Issuing Bank’s Applicable Percentage (as defined below) thereof, its “**Individual Available Amount**”, in each case as such amounts may be increased from time to time in accordance with the next paragraph), effective immediately and expiring on [*insert date that is 5 business days prior to the 10<sup>th</sup> anniversary of the Issuance Date*] (the “**Expiry Date**”) at the Office (as defined below).

This Letter of Credit is issued pursuant to the Facility Purchase Agreement dated as of September 3, 2010 (as amended, restated or otherwise modified from time to time, the “**Facility Purchase Agreement**”; each capitalized term used but not defined herein shall have the meaning assigned to such term in the Facility Purchase Agreement) among Applicant, Citibank, N.A., as administrative agent (in such capacity, together with its successors, the “**Administrative Agent**”), and the Issuing Banks, with respect to the “Program” referred to therein.

The Issuing Banks may amend this Letter of Credit without your consent to (i) increase the Available Amount hereof in accordance with Section 2.01(b)(ii) of the Facility Purchase Agreement, in which event the Individual Available Amount of each Issuing Bank shall be increased in proportion to its Applicable Percentage (as defined below) of the aggregate amount by which the Available Amount was so increased, (ii) reduce the Available Amount hereof in accordance with Section 2.08 of the Facility Purchase Agreement, in which event the Individual Available Amount of each Issuing Bank shall be reduced in proportion to its Applicable Percentage of the aggregate amount by which the Available Amount was so reduced, (iii) reduce the Available Amount hereof in accordance with Section 10.06(h) of the Facility Purchase Agreement, in which event the Applicable Percentages of the Issuing Banks set forth in Schedule 1 hereto shall be adjusted accordingly or (iv) adjust the Applicable Percentages of the Issuing Banks (including, reflecting an Eligible Replacement as an Issuing Bank hereunder) upon an assignment of all or a portion of an Issuing Bank’s Available Amount to an Eligible

Replacement in accordance with Section 10.06(b) or Section 10.06(h) of the Facility Purchase Agreement. Except for (i) amendments referred to in the preceding sentence, (ii) reductions of the Available Amount following the exercise by Applicant or one or more of the Issuing Banks of the Trust Remedy referred to in the Facility Purchase Agreement and (iii) in the event the Administrative Agent resigns and is not replaced (in which case you are compelled henceforth to make presentations under this Letter of Credit pro rata to each Issuing Bank at the address set forth opposite such Issuing Bank's name under the column "Address for Presentation" in Schedule 1 hereto), this Letter of Credit may not be amended, modified or replaced without your written consent.

Each Issuing Bank hereby undertakes to promptly honor your drawings under this Letter of Credit upon receipt by the Administrative Agent, at the office of its servicer, Citicorp North America, Inc., 3800 Citibank Center, Tampa, Florida 33610 (the "Office"), or such other address as notified to you in writing, of a demand substantially in the form of Exhibit A hereto (each a "Demand" and the aggregate amount requested therein, the "Drawn Amount"), submitted on or before the Expiry Date, in an amount equal to such Issuing Bank's Applicable Percentage of the Drawn Amount; *provided* that (i) if the Administrative Agent resigns and is not replaced, each Issuing Bank undertakes to promptly honor your drawings upon receipt by it of any such Demand at the office address set forth opposite such Issuing Bank's name under the column "Address for Presentation" in Schedule 1 hereto and (ii) no Issuing Bank shall be obligated to honor a Demand to the extent that its Applicable Percentage of the Drawn Amount, together with all other Drawn Amounts honored by such Issuing Bank prior the date of such Demand, exceed such Issuing Bank's Individual Available Amount. For purposes of this Letter of Credit, an Issuing Bank's "Applicable Percentage" shall be that percentage set forth opposite such Issuing Bank's name under the column "Applicable Percentage" in Schedule 1 hereto, as such percentage may be modified from time to time in accordance with the terms hereof.

Presentation of a Demand shall be made on any day which is a business day for the Administrative Agent at or prior to 5:00 p.m. (New York time) at the Office. Presentation must be made by hand or courier service to the Office, or by SWIFT message to the Administrative Agent's SWIFT address as follows: [\_\_\_\_\_]. Alternatively, presentation may be made by fax transmission to (813) 604-[\_\_\_\_], or such other number as advised to you by the Administrative Agent in writing. In the event presentation is made by fax transmission, the Administrative Agent requests that you provide contemporaneous notification by phone, to (813) 604-[\_\_\_\_], and send the original of such Demand to the Office; *provided* that receipt of such telephonic notification or originals shall not be a condition to the Issuing Banks making payment hereunder. Notwithstanding the foregoing, in the event the Administrative Agent resigns and is not replaced, presentation of a Demand shall be made to each Issuing Bank at the address set forth opposite such Issuing Bank's name under the columns "Address for Presentation" in Schedule 1 hereto.

Beneficiary's making of the certifications contained in each Demand shall be a condition to each Issuing Bank's obligation to honor such Demand with respect to its Applicable Percentage of the applicable Drawn Amount. In addition, you acknowledge and agree that Applicant and each Issuing Bank are entitled to exercise the Trust Remedy referred to in the Facility Purchase Agreement, and in connection with any such exercise,



you will accept a substitute letter of credit for this Letter of Credit from the Issuing Bank(s) (if any) as to which the Trust Remedy was not exercised with an "Available Amount" equal to the sum of the Individual Available Amounts of such remaining Issuing Banks(s) immediately prior to such exercise of the Trust Remedy. Such substitute letter of credit shall also contain the following additional limitation:

"The Trust Remedy has been exercised with respect to one or more of the Issuing Banks that were party to the Facility Purchase Agreement. It shall be a condition to each Issuing Bank's obligation to honor any Demand under this Letter of Credit that Beneficiary shall certify that it is making a contemporaneous demand on the Trustee in the amount required under the Facility Purchase Agreement and the Program Documentation."

The obligations of the Issuing Banks under this Letter of Credit are several and not joint; accordingly, no Issuing Bank shall be liable for the failure of any other Issuing Bank to perform its obligations hereunder. The failure of any Issuing Bank to honor its obligations hereunder shall not excuse the several obligations of the other Issuing Banks hereunder.

Partial drawings are permitted hereunder.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices, International Chamber of Commerce, Publication No. 590 ("**ISP98**"), and as to matters not governed by the ISP98, shall be governed by and construed in accordance with the laws of the State of New York and applicable U.S. Federal Law.

Very truly yours,

[Signature Blocks of Issuing  
Banks]

SCHEDULE 1

Issuing Bank	Applicable Percentage	Address for Presentation <sup>1</sup>
[Citibank, N.A.]	[ ]%	
[Additional Issuing Bank]	[ ]%	
[Additional Issuing Bank]	[ ]% <sup>2</sup>	

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<sup>1</sup> Include office address; SWIFT address; fax number and telephone number – to be used only in the event that there is no longer an Administrative Agent under this Letter of Credit.

<sup>2</sup> Sum of all Applicable Percentages shall equal 100% at all times.

FORM OF DEMAND

[Letterhead of Claims Processor]

To:

Citibank, N.A.  
c/o Citicorp North America, Inc., as LC servicer  
3800 Citibank Center  
Tampa, FL 33610  
Attn: US Standby Unit  
Fax No.: 813-604-7187

Ladies and Gentlemen:

Reference is made to (i) that certain Facility Purchase Agreement, dated as of September 3, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the “**Facility Purchase Agreement**”), among United States Department of the Treasury, Citibank, N.A., as administrative agent, and the Issuing Banks from time to time party thereto (the “**Issuing Banks**”) and (ii) that certain Letter of Credit, dated as of [\_\_\_\_], 20[\_\_\_] (the “**Letter of Credit**”), issued by each of the Issuing Banks in favor of [\_\_\_\_\_] (“**Beneficiary**”) under the following reference numbers:

[\_\_]

[\_\_]

Each capitalized term used but not defined herein shall have the meaning assigned to such term in the Letter of Credit.

Beneficiary hereby demands that the Issuing Banks remit to Beneficiary’s account specified in Schedule I hereto an aggregate amount equal to \$[\_\_\_\_\_] <sup>3</sup> (the “**Drawn Amount**”), with each Issuing Bank being responsible for its Applicable Percentage of such Drawn Amount.

Beneficiary hereby certifies to the Administrative Agent and each Issuing Bank as follows:

(i) The Drawn Amount represents funds due and payable to Beneficiary in its capacity as the Claims Processor in connection with the Program; [and]

\_\_\_\_\_

<sup>3</sup> Insert Drawn Amount.

(ii) Each loss claim submitted to the Federal Housing Administration (the “FHA”), the payment of which gives rise to the Drawn Amount (each, a “Claim” and, collectively, the “Claims”), has been approved for payment by the FHA in accordance with the Program Documentation (as defined in the Facility Purchase Agreement); [and]

(iii) The aggregate amount payable by Beneficiary with respect to the Claims pursuant to the Claims Processor Agreement (as defined in the Facility Purchase Agreement) is \$[\_\_\_\_\_], comprising the aggregate amount of this Demand and the amount being contemporaneously demanded under the Trust Agreement (the “Aggregate Demand Amount”)<sup>4</sup>; and][.]

[(iv) Contemporaneously with the making of this demand, Beneficiary is presenting a demand to the Trustee with respect to the Claims to pay, from amounts in the Trust Account (as defined in the Facility Purchase Agreement), [\_\_]<sup>5</sup>% of the Aggregate Demand Amount.]<sup>6</sup>

[CLAIMS PROCESSOR]

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
<sup>4</sup> Include bracketed text only if the “Trust Remedy” has previously been exercised under the Facility Purchase Agreement.

<sup>5</sup> Insert percentage amount deposited into the Trust Account previously bears to the Available Amount (or, if the Trust Account was funded during the Increase Period, the Aggregate Commitments).

<sup>6</sup> Include bracketed clause only if the “Trust Remedy” has previously been exercised under the Facility Purchase Agreement.

SCHEDULE I to Demand

[Claims Processor to include wire information]

**Exhibit B**

**Form of Assignment and Assumption of Commitment**

## EXHIBIT B

### ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]<sup>1</sup> Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]<sup>2</sup> Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]<sup>3</sup> hereunder are several and not joint.]<sup>4</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Facility Purchase Agreement identified below (as it may be amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the “Facility Purchase Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Facility Purchase Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as an Issuing Bank][their respective capacities as Issuing Banks] under the Facility Purchase Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] under the Facility Purchase Agreement and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as Issuing Bank)][the respective Assignors (in their respective capacities as Issuing Banks)] against any Person, whether known or unknown, arising under or in connection with the Facility Purchase Agreement, any other documents or instruments delivered pursuant thereto or the transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

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<sup>1</sup> For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

<sup>2</sup> For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

<sup>3</sup> Select as appropriate.

<sup>4</sup> Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: \_\_\_\_\_

\_\_\_\_\_

2. Assignee[s]: \_\_\_\_\_

\_\_\_\_\_

[for each Assignee, indicate Affiliate of [*identify Issuing Bank*]]

3. Applicant: \_\_\_\_\_

4. Administrative Agent: Citibank, N.A., as the administrative agent under the Facility Purchase Agreement.

5. Facility Purchase Agreement: Facility Purchase Agreement, dated as of September 3, 2010, among United States Department of the Treasury, the Issuing Banks party thereto and Citibank, N.A., as Administrative Agent.

6. Assigned Interest:

<u>Assignor[s]</u> <sup>5</sup>	<u>Assignee[s]</u> <sup>6</sup>	<u>Aggregate Amount of Commitment for all Issuing Banks</u>	<u>Amount of Commitment Assigned</u> <sup>7</sup>	<u>Percentage Assigned of Commitment</u>
		\$	\$	%
		\$	\$	%
		\$	\$	%

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_

<sup>5</sup> List each Assignor, as appropriate.

<sup>6</sup> List each Assignee, as appropriate.

<sup>7</sup> Unless otherwise consented to by the Administrative Agent, the aggregate amount of the Commitment of such Assignor to be assigned should not be less than \$1,000,000,000, unless such amount constitutes the entire remaining amount of such Assignor's commitment or such assignment is made to an Issuing Bank or an Affiliate of an Issuing Bank.



Title:

ASSIGNEE  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title:

[Consented to and]<sup>8</sup> Accepted:

CITIBANK, N.A., as  
Administrative Agent

By: \_\_\_\_\_  
Title:

[Consented to:]

[Consented to:]<sup>9</sup>

UNITED STATES DEPARTMENT OF THE TREASURY

By: \_\_\_\_\_  
Title:

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<sup>8</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Facility Purchase Agreement.

<sup>9</sup> To be added only if the consent of the Applicant is required by the terms of the Facility Purchase Agreement.

**ANNEX 1 TO ASSIGNMENT AND ASSUMPTION**

**FACILITY PURCHASE AGREEMENT**

**STANDARD TERMS AND CONDITIONS FOR**

**ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1. Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Facility Purchase Agreement or any other Facility Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Facility Documents or any collateral thereunder, (iii) the financial condition of the Applicant or any other Person obligated in respect of any Facility Document or (iv) the performance or observance by the Applicant or any other Person of any of their respective obligations under any Facility Document.

1.2. Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become an Issuing Bank under the Facility Purchase Agreement, (ii) it meets all the requirements to be an assignee under the definition of “Eligible Replacement” and Section 10.06, (v) and (vi) of the Facility Purchase Agreement (subject to such consents, if any, as may be required under 10.06(b)(iii) of the Facility Purchase Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Facility Purchase Agreement as an Issuing Bank thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of an Issuing Bank thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Facility Purchase Agreement and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, it has, independently and without reliance upon the Administrative Agent or any Issuing Bank and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any Issuing Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Facility Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Facility Documents are required to be performed by it as an Issuing Bank.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy (or other electronic means) shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

**Exhibit C**

**Trust Agreement**

TRUST AGREEMENT

between

CITIBANK, N.A.,

as Agent

and

U.S. BANK NATIONAL ASSOCIATION  
as Trustee

DATED AS OF SEPTEMBER 3, 2010

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## TRUST AGREEMENT

This TRUST AGREEMENT (as amended, supplemented and modified from time to time, this "*Agreement*") is dated as of September 3, 2010 by and between Citibank, N.A., as Administrative Agent (together with its successors, the "*Agent*") under the Purchase Agreement referred to below, and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States, as trustee hereunder (together with its successors hereunder, the "*Trustee*").

### RECITALS

The United States Department of the Treasury ("*Treasury*") and the Federal Housing Administration have established the "FHA Refinance of Borrowers in Negative Equity Positions" (as the same may be amended from time to time, the "*Program*"), pursuant to which Treasury has agreed to certain undertakings with respect to mortgage servicers, owners or investors participating in the Program.

WHEREAS, the Agent and Treasury have entered into that certain Facility Purchase Agreement (the "*Purchase Agreement*"), dated as of September 3, 2010, pursuant to which the Agent and certain other banks (collectively, the "*Issuing Banks*") that are parties to the Purchase Agreement will provide a Letter of Credit that may be drawn on from time to time by the Claims Processor (as defined below) under the terms and conditions set forth in the Purchase Agreement;

WHEREAS, in the event that an Issuing Bank or the Treasury elects to exercise a Trust Remedy with respect to an Issuing Bank pursuant to Section 8.03 of the Purchase Agreement, such Issuing Bank's ratable portion of the Letter of Credit may be deemed to have been drawn on by an Issuing Bank and Treasury (each, a "*Termination Draw*") and terminated, and the Trustee has agreed to hold the proceeds of each Termination Draw and other amounts that may be delivered by Treasury from time to time in connection with the Program under the terms and conditions set forth herein;

WHEREAS, the parties wish to establish a trust (the "*Trust*") in which the Trustee will hold the proceeds of the Termination Draws and other amounts that may be delivered by Treasury, from which Trust the Claims Processor may request funds held by the Trustee hereunder under the terms and conditions set forth herein;

NOW THEREFORE, expressly incorporating the foregoing Recitals as part of the consideration hereof and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

*Section 1.01. Definitions.* Unless the context shall otherwise require, as used in this Agreement, the following terms have the meanings opposite them:

“*Agent*” shall have the meaning set forth in the first paragraph of this Agreement.

“*Affiliate*” shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

“*Agreement*” shall have the meaning set forth in the first paragraph of this agreement.

“*Applicable Law*” shall have the meaning set forth in Section 11.03 hereof.

“*Authorized Person*” shall mean, (a) with respect to Treasury, any officer or employee of Treasury (i) holding or lawfully exercising the authorities of the position of Assistant Secretary for Financial Stability or (ii) designated by an officer described in clause (i) in writing to the Trustee from time to time as authorized to perform the functions of an “Authorized Person” under this Agreement, and (b) with respect to the Claims Processor, a person listed on Exhibit A (as supplemented from time to time) as an Authorized Person. Any document delivered hereunder that is signed by an Authorized Person shall be conclusively presumed to have been authorized by all necessary action on the part of Treasury or the Claims Processor, as the case may be, and such Authorized Person shall be conclusively presumed to have acted on behalf of Treasury or the Claims Processor, as the case may be.

“*Business Day*” shall mean any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close in New York City or in the city in which the Trustee is performing its functions hereunder.

“*Claim Notice*” shall mean a notice to the Trustee from the Claims Processor, substantially in the form of Exhibit B hereto, pursuant to which the Claims Processor requests the Trustee to deliver to the Claims Processor funds in the Trust Account pursuant to the Program.

“*Claims Processor*” shall mean a Person, designated in writing by mutual agreement of the Agent and Treasury prior to the Issuance Date, to act as claims processor and paying agent for the Program under the Program Documentation, and any successor or successors in such capacity.

“*Collateralized Cash*” shall mean money, currency or a credit balance maintained in the Trust Account which shall be fully collateralized by the types of collateral described as acceptable collateral in 31 CFR Part 202 (and any successor to such regulation).

*“Covered Claims and Expenses”* shall have the meaning set forth in Section 6.02(a) hereof.

*“Issuing Bank”* shall have the meaning set forth in the Recitals hereof.

*“Letter of Credit”* shall have the meaning set forth in the Recitals hereof.

*“Moody’s”* shall mean Moody’s Investors Service, Inc. and its successors in interest.

*“Parties”* shall mean each of the Persons that is a party to this Agreement.

*“Permitted Investments”* shall mean (i) United States Treasury securities with maturities of not more than ninety (90) calendar days; (ii) money market mutual funds that (a) are registered with the United States Securities and Exchange Commission and regulated under Rule 2a-7 promulgated under the Investment Company Act of 1940, as amended and (b) invested exclusively in direct obligations of the United States of America or obligations the prompt payment of the principal of and interest on which is unconditionally guaranteed by the United States of America; (iii) repurchase agreements with terms ranging from overnight to one week fully collateralized by United States Treasury securities with counterparties having a short-term credit rating of “P-1” from Moody’s and “A-1+” from S&P; and (iv) any other investments as may be directed by Treasury (or its designee) in writing, which investments may be in substitution of, or in addition to, any of the foregoing.

*“Person”* shall mean any individual or entity, including a corporation, partnership, association, limited liability company, limited liability partnership, joint-stock company, trust, unincorporated association, or governmental authority.

*“Purchase Agreement”* shall have the meaning set forth in the Recitals hereof.

*“Responsible Officer”* shall mean when used with respect to the Trustee any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, treasurer, assistant treasurer, trust officer or any other officer of the Trustee who (a) customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and (b) shall have direct responsibility for the administration of this Agreement.

*“S&P”* shall mean Standard & Poor’s Ratings Group, a division of Standard & Poor’s Financial Services LLC, and its successors in interest.

*“Termination Draw”* shall have the meaning set forth in the Recitals hereof.

*“Treasury”* shall have the meaning set forth in the Recitals hereof.

*“Trust”* shall have the meaning set forth in the Recitals hereof.



“*Trust Account*” shall mean the account into which all monies, and other assets as the Trustee may hereafter at any time hold or acquire are deposited, including any gains or losses thereon, constituting the corpus of the Trust.

“*Trustee*” shall have the meaning set forth in the first paragraph of this Agreement.

“*Withdrawal Amount*” shall mean, with respect to any Claim Notice, the amount to be withdrawn by the Trustee from the Trust Account and delivered to the Claims Processor as set forth in such Claim Notice.

*Section 1.02. Other Defined Terms.* Any capitalized terms not defined herein shall have the meaning set forth in the Purchase Agreement.

## ARTICLE II

### ESTABLISHMENT AND ADMINISTRATION OF THE TRUST ACCOUNT

*Section 2.01. Establishment of the Trust Account.* The Trustee hereby establishes the Trust Account with the Trustee at its office in New York, New York, the United States of America. The Trust Account shall be a segregated trust account.

*Section 2.02. Rights to Trust Account.* (a) All right, title and interest in and to the Trust Account and the funds in the Trust Account and investments made with funds from the Trust Account, including all income or gain thereon, shall be vested in the Trustee for the benefit of Treasury, to be used as directed by the Claims Processor for the Program, as set forth herein. Amounts deposited in the Trust Account shall be applied by the Trustee only as provided in this Agreement.

(b) Without limiting the foregoing, the Parties agree that for all relevant income tax purposes, all interest or other income earned with respect to amounts in the Trust Account shall be treated as having been earned by Treasury. No tax returns shall be prepared by the Trustee hereunder. This Section 2.02(b) shall survive the termination of this Agreement.

*Section 2.03. Permitted Investments.* (a) All monies in the Trust Account shall be invested in the name of the Trustee in Permitted Investments or as otherwise directed in writing by Treasury (or its designee); it being understood that the Trustee may invest in Permitted Investments in which the Trustee or its Affiliates act as investment adviser or Permitted Investments with respect to which the Trustee or its Affiliates receive fees. To the maximum extent practicable, the Trustee shall invest amounts in the Trust Account in United States Treasury securities that are Permitted Investments and shall continue to invest such funds in such type of Permitted Investments by holding such securities to maturity and using the proceeds at maturity to purchase other United States Treasury securities that are Permitted Investments on the maturity date of the maturing securities, *provided, however*, the Trustee shall invest amounts in the Trust Account in money market mutual funds that are Permitted Investments to the extent necessary to meet expected short-term funding obligations of the Program (to the extent funded by amounts in the Trust Account). The Trustee may execute any investment instruction provided to it in respect of the Permitted

Investments through its Affiliates, and none of the Trustee or any of its Affiliates shall have a duty to monitor the investment rating of any such Permitted Investments. If an investment chosen is not available, the Trustee will cooperate in good faith with Treasury (or its designee) to determine how the funds in the Trust Account shall be invested. If the Trustee does not receive an investment direction, then the funds in the Trust Account shall be invested by the Trustee in Permitted Investments. To the extent that Permitted Investments are not available for all or a part of the amounts in the Trust Account, the Trustee may hold such uninvested funds in the form of Collateralized Cash for not more than five Business Days (subject to extension upon the written consent of Treasury or its designee).

(b) All income and gain realized from any investments in the Trust Account shall be deposited and retained in the Trust Account when received by the Trustee. Losses, if any, realized on amounts in the Trust Account invested pursuant to this Section 2.03 shall first be credited against undistributed investment earnings on amounts in the Trust Account invested pursuant to this Section 2.03, and shall thereafter be deemed to reduce the amount on deposit in the Trust Account. The Trustee shall not be liable for the amount of any loss incurred in respect of any investment of funds held in the Trust Account invested in accordance with the provisions hereof.

*Section 2.04. Account Authorizations.* So long as the Purchase Agreement is in effect, the Agent shall forthwith from time to time upon request deliver to the Trustee such resolutions, mandates, powers of attorney, authorities, documents, specimen signatures and other matters as the Trustee may reasonably require and which are for the time being in effect to enable the Trust Account to be opened, maintained and operated in accordance with this Agreement.

### ARTICLE III

#### DEPOSITS INTO THE TRUST ACCOUNT

*Section 3.01. Trust Account Deposits.* (a) On and after the date hereof and until the termination of this Agreement, all amounts received by the Trustee pursuant to this Agreement shall be credited on the day of receipt into the Trust Account. Amounts received by the Trustee after 11:00 a.m., New York time, on any Business Day may be credited by the Trustee on the next Business Day. Monies credited to the Trust Account after 11:00 a.m., New York time, which are to be invested in Permitted Investments shall remain uninvested until the next Business Day, and, until such Business Day, such uninvested amounts may be deposited to and held in a non-interest bearing demand deposit account established with the Commercial Banking Department of the Trustee or with any bank affiliated with the Trustee, without the pledge of securities to or other collateralization of such deposit accounts.

(b) Except as otherwise specified hereunder, on and after the date hereof, the Agent agrees to pay or to cause to be paid any Trust Remedy amount via wire transfer of immediately available funds directly to the Trustee at the following location for deposit in the Trust Account:

U.S. Bank National Association  
Corporate Trust Services  
St. Paul, MN 55107

ABA [REDACTED]  
Beneficiary: U.S. Bank NA  
Account: [REDACTED]  
FFC: [REDACTED]  
Attention: [REDACTED]  
Telephone: [REDACTED]  
Facsimile: [REDACTED]

(c) The Agent agrees to give the Trustee at least one Business Day's prior written notice of any delivery of amounts pursuant to the Purchase Agreement, it being understood that the Agent will endeavor to give the Trustee greater advance notice to the extent reasonably practicable.

#### ARTICLE IV

##### WITHDRAWALS FROM THE TRUST ACCOUNT

*Section 4.01. Claim Notices.* (a) Without notice to any other Person, the Claims Processor may direct the Trustee to deliver amounts in the Trust Account in order for the Claims Processor to fulfill its duties under the Program by delivering to Trustee via facsimile to the address set forth in Section 11.01 below a Claim Notice. The Trustee shall send to the account specified in each Claim Notice the applicable Withdrawal Amount on the Business Day following the Business Day it receives such Claim Notice; *provided, however,* that if a Claim Notice is received by the Trustee after 11:00 a.m., New York time on any Business Day, the Trustee shall not be required to deliver the related Withdrawal Amount until the next succeeding Business Day. The Trustee shall have no responsibility to determine whether the Claim Notice sets forth an accurate Withdrawal Amount and shall have no responsibility for the application of any Withdrawal Amounts by the Claims Processor or any other Person. The Claims Processor need present no statement or document other than a Claim Notice in order to receive assets from the Trust Account, and its right to direct a withdrawal of amounts from the Trust Account shall only be subject to the express conditions contained in this Agreement.

(b) In the event that the Trustee must sell a Permitted Investment in order to comply with the Claim Notice, the Trustee shall not be liable for any loss or penalty associated with such investment, including any loss caused by liquidating a Permitted Investment prior to its maturity date.

*Section 4.02. Interim Distributions.* During the term of this Agreement, Treasury may direct the Trustee to deliver funds to Treasury in connection with a reduction in the size of the Program. In such event, the Trustee shall deliver to Treasury or its designee any amount specified in writing by an Authorized Person.

*Section 4.03. Change in Control.* In the event that an Authorized Person of Treasury delivers to the Trustee a written notice that the Claims Processor shall no longer have the authority to give direction to the Trustee hereunder, than within one Business Day of receipt of such written notice, the Trustee shall cease to follow the instructions of the Claims Processor received hereunder and instead shall follow the instructions of Treasury or its designee.

## ARTICLE V

### THE TRUSTEE

*Section 5.01. Appointment of Trustee; Powers and Immunities.* (a) The Agent hereby appoints and authorizes the Trustee to act in the capacity of Trustee in accordance with the terms hereof for the benefit of Treasury, with such powers as are expressly delegated to the Trustee by the terms of this Agreement together with such other powers as are reasonably incidental thereto. The Trustee hereby agrees to act in the capacity of Trustee hereunder, in accordance with the terms set forth herein, and to accept all cash delivered to, and any amounts held by the Trustee pursuant to the terms of this Agreement.

(b) The Trustee accepts the trusteeship hereby created and agrees to perform its duties hereunder with respect to the same but only in accordance with the terms of this Agreement. The Parties agree that the Trustee is not a fiduciary of the Agent or any other Person. The Trustee shall not be answerable or accountable except for:

- (i) its own willful misconduct, or gross negligence; or
- (ii) the failure to follow any Applicable Law.

(c) Without limiting the duties and liabilities of the Trustee under this Agreement, in performing its functions and duties under this Agreement, the Trustee shall act solely as Trustee for the benefit of Treasury and does not assume and shall not be deemed to have assumed any obligation toward any third parties (except as expressly contemplated by this Agreement) or any relationship of agency or trusteeship with or for any such third parties. In no event shall any Person claiming by, through or under Treasury, have any rights against the Trustee hereunder, as third party beneficiaries or otherwise, including any right to distribute or allocate any funds in the Trust Account. Notwithstanding the foregoing, Treasury shall be deemed to be a third party beneficiary of this Agreement.

(d) The Trustee shall not assume any duties or bear any responsibilities except those expressly set forth in this Agreement. Except as otherwise expressly provided herein, the Trustee shall only take such action under this Agreement as it shall be directed in writing signed by an Authorized Person pursuant to the terms of this Agreement. The Trustee, in incurring any debt, liability or obligation, or in taking or omitting to take any action for or in connection with the Trust, is and shall be deemed to be acting solely as a trustee, and not in an individual capacity.

(e) None of the provisions of this Agreement shall be construed to require the Trustee, acting in the capacity as Trustee hereunder, to expend or risk its own funds or otherwise to incur any personal financial liability in the performance of any of its duties hereunder.

(f) Anything in this Agreement to the contrary notwithstanding, in no event shall the Trustee be liable under or in connection with this Agreement for indirect, special, incidental, punitive or consequential losses or damages of any kind whatsoever, including but not limited to

lost profits, whether or not foreseeable, even if the Trustee has been advised of the possibility thereof and regardless of the form of action in which such damages are sought.

(g) Except for establishing the Trust Account hereunder, the Parties agree that the Trustee shall not have any duties hereunder until it receives funds from the Agent in connection with a Termination Draw under the Purchase Agreement or from Treasury (or its designee) in connection with the Program for the purpose of providing funds to the Claims Processor.

*Section 5.02. Reliance by Trustee.* (a) The Trustee shall be entitled to conclusively rely upon any signature, certificate, notice or other document (including telecopy) reasonably believed by it to be genuine and correct and to have been signed or sent by or on behalf of an Authorized Person or other proper Person or Persons, and shall have no liability for its actions taken thereupon, unless due to the Trustee's willful misconduct or gross negligence. As to any matters not expressly provided for by this Agreement, the Trustee shall not be required or authorized to take any action or exercise any discretion, but shall, subject to this Agreement, be required to act or to refrain from acting upon written instructions signed by an Authorized Person pursuant to the terms of this Agreement.

(b) Subject to its duties under Section 5.01(b) hereof, the Trustee shall have no responsibility to make any investigation into the facts or matters stated in any notice, certificate, instrument, demand, request, direction, instruction, waiver, receipt, consent, agreement or other document or communication furnished to it under this Agreement or in connection with the transactions contemplated herein or therein, including, without limitation, any payment, Claim Notice or other document relating to assets held in the Trust Account.

*Section 5.03. Court Orders or Process.* If any controversy arises between the Parties or with any other Person concerning the subject matter of this Agreement, its terms or conditions, the Trustee may hold all documents, funds and investments relating to such controversy (but not the documents, funds and investments in the Trust Account not affected by such controversy) and may wait for settlement of any such controversy until the earlier of such time as (i) the Trustee is reasonably assured that it will be reimbursed for the reasonable out-of-pocket expenses that it will incur in accordance with the terms hereof with respect to the subject matter of such controversy (provided that the Trustee acknowledges and agrees that, to the extent of the amounts set forth in Section 6.02, the reimbursement provided for in Section 6.02 is deemed to be reasonable assurance of such reimbursement); or (ii) if legal proceedings have been initiated with respect to such controversy and reimbursement is not available to the Trustee, until final appropriate legal proceedings. In such event, the Trustee will not be liable for interest or damage to any Person for holding funds in the Trust Account subject to such controversy or litigation in accordance with the immediately preceding sentence (absent gross negligence or willful misconduct on the part of the Trustee), it being understood that the Trustee shall not have the right to hold such funds until the end of such controversy in the Trust Account and shall comply with any proper instructions to release such funds so long as the condition set forth in clause (i) above is satisfied. The Trustee is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Trust Account, the assets therein or this Agreement, without determination by the Trustee of such court's jurisdiction in the matter. If the Trust Account or any assets therein are at any time attached, garnished, or levied upon under any court order, or in case the payment,

assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then in any such events the Trustee is authorized to rely upon and comply with any such order, writ, judgment or decree which it is binding upon it; and if the Trustee complies with any such order, writ, judgment or decree, it shall not be liable to any of the Parties or to any other Person by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated, except to the extent of the Trustee's gross negligence or willful misconduct. The Trustee shall not be required to expend or risk its own funds in connection with any such controversy or legal proceedings unless directed in writing by Treasury and only to the extent that reimbursement of such amounts is available pursuant to Section 6.02. The Trustee acknowledges that Treasury shall have the right to direct the Claims Processor to defend or intervene in any claim, litigation or court order involving the Trust Account or the assets therein.

*Section 5.04. Concerning the Trustee.* (a) Whether or not therein expressly so provided, every provision of this Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 5.04.

(b) Any request, direction or authorization by the Agent, the Claims Processor or Treasury shall be sufficiently evidenced by a request, direction or authorization in writing, delivered to the Trustee, signed in the name of such Person, by an Authorized Person.

(c) Whenever in the administration of this Agreement the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder or under any other agreement, the Trustee (unless other evidence be herein or therein specifically prescribed), absent actual knowledge to the contrary, may conclusively rely in good faith upon a certificate in writing, delivered to the Trustee and signed by an Authorized Person of Treasury. Notice of such need for such proof or establishment shall be delivered to Treasury, who may advise the Trustee in respect of such matter, and the Trustee shall act in conformity with such advice.

(d) In the event the Trustee is uncertain as to the application of any provision of this Agreement, or such provision is ambiguous as to its application or is, or appears to be, in conflict with any other provision hereof, or in the event that this Agreement permits any determination by the Trustee or is silent or incomplete as to the course of action which the Trustee is required to take with respect to a particular set of facts, then the Trustee may seek instructions from Treasury (or its designee) and shall not be liable (absent gross negligence or willful misconduct) to any Person to the extent that it acts in good faith in accordance with the instructions of Treasury (or its designee). If the Trustee so elects, then it may refrain from taking such action until such directions or instructions are received and shall have no liability to any Person for so refraining.

(e) The Trustee may, in accordance with Section 6.01, employ or retain such counsel, accountants, appraisers or other experts or advisers as it may reasonably require for the purpose of determining and discharging its rights and duties hereunder and shall not be responsible for any act or omission on the part of any of them. The Trustee may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or adviser, whether retained or employed by the

Agent, the Claims Processor, Treasury or by the Trustee, in relation to any matter arising in the administration of the trust hereof.

(f) The parties hereto agree, as set forth in Section 6.01(i)(iii) of the Purchase Agreement, that the Trustee shall not be subject to the requirements, prohibitions or any other limitations imposed under any provision of EESA that would be applicable to a TARP recipient or a financial institution from which Troubled Assets have been purchased by Treasury under the authority of EESA on account of its acting as Trustee hereunder.

*Section 5.05. Resignation of Trustee.* Subject to the appointment and acceptance of a successor Trustee as provided below, the Trustee may resign at any time by giving thirty (30) days' written notice thereof to Treasury, the Claims Processor and, so long as the Purchase Agreement is in force and effect, the Agent; *provided, however,* that no resignation shall be effective until a successor accepts its appointment hereunder. Upon any such resignation, the Agent (or, in the event that the Purchase Agreement is no longer in full force and effect, Treasury or its designee) shall appoint a successor Trustee. Following a resignation of the Trustee, if no successor Trustee shall have been appointed hereunder and shall have accepted such appointment within sixty (60) days after a retiring Trustee's giving of notice of resignation, then the retiring Trustee may, at the expense of funds in the Trust Account, petition any court of competent jurisdiction for the appointment of a successor Trustee. Upon the acceptance of any appointment as Trustee hereunder by a successor Trustee, in form and substance acceptable to the Agent (or, in the event that the Purchase Agreement is no longer in full force and effect, Treasury), (i) such successor Trustee shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the Trustee hereunder, and the retiring Trustee shall be discharged from its duties and obligations hereunder, and (ii) the retiring Trustee shall, upon payment of all of its fees and expenses due pursuant to Section 6.01 and any other amounts due and owing pursuant to Section 6.02, promptly transfer the Trust Account and all other assets in its possession or control pursuant to this Agreement to the possession or control of the successor Trustee and shall execute and deliver such notices, instructions and assignments as may be necessary or desirable to transfer the rights of the Trustee with respect to such accounts to the successor Trustee. After the retiring Trustee's resignation hereunder as Trustee, the provisions of this Article V and of Article VI hereof shall continue in effect in respect of any actions taken or omitted to be taken by such retiring Trustee while it was acting as Trustee.

## ARTICLE VI

### EXPENSES; REIMBURSEMENT

*Section 6.01. Fees and Expenses.* So long as the Purchase Agreement is in full force and effect, the Agent agrees to pay or reimburse the Trustee, in accordance with the terms set forth in the fee agreement agreed between the Trustee and the Agent with respect to this Agreement (as may be amended by the Trustee and the Agent), all expenses of the Trustee (including reasonable out-of-pocket expenses for legal services) in respect of, or incident to, the preparation, execution and delivery of this Agreement, or in connection with the administration, enforcement, amendment of, or waivers or consents relating to this Agreement, or any actions incidental thereto. In the event that the Purchase Agreement is terminated and the Agent does not pay the fees and expenses that

consist of Claims Processor and Trustee Costs owed to the Trustee or amounts owed to the Trustee pursuant to Section 6.02, the Trustee is hereby authorized and directed to deduct such fees and expenses from amounts in the Trust Account.

*Section 6.02. Reimbursement.* (a) Until one or more Termination Draws have occurred, the Agent agrees to reimburse and hold harmless the Trustee and its directors, officers, employees, attorneys, agents, servants and advisors, and its successors and assigns (for purposes of this Section 6.02, each of the foregoing being referred to as a “*Reimbursed Party*”, and collectively, the “*Reimbursed Parties*”), from and against any and all liabilities, loss, damages, penalties, claims (including claims involving strict liability in tort), actions, costs, expenses, fees, taxes (other than taxes on income of the Trustee) and disbursements (including legal fees and out-of-pocket expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted at any time against such Reimbursed Party in any way relating to this Agreement or the performance or enforcement of any of the terms hereof, or in any way relating to or arising out of the administration of the Trust or the action or inaction of such Reimbursed Party under this Agreement (collectively, “*Covered Claims and Expenses*”); *provided, however*, that the foregoing obligation shall not entitle the applicable Reimbursed Party to claim reimbursement for special, consequential or indirect damages. Notwithstanding the foregoing, the Agent shall not be required to reimburse any Reimbursed Party to the extent the event or circumstance giving rise to the reimbursement obligation is due to such Reimbursed Party’s willful misconduct or gross negligence. To the extent that the Agent does not pay the amounts owed under this Section 6.02 to an Reimbursed Party or to the extent that there has been one or more Termination Draws, the Trustee may and is hereby directed to remove any such amounts from the Trust Account and pay it to the applicable Reimbursed Parties. Notwithstanding the foregoing, in the event that there have been no Termination Draws, the liability of the Agent pursuant to this Section 6.02 shall not exceed \$100,000 in the aggregate. The amount of reimbursement to the Reimbursed Parties shall not exceed \$500,000 in the aggregate without the consent of Treasury.

(b) The reimbursement obligations set forth in this Section 6.02 shall be in addition to any other rights the Reimbursed Parties may have under Applicable Law; *provided, however*, that the Trustee cannot seek reimbursement or recovery from the Agent or Treasury for Covered Claims and Expenses in excess of the amounts set forth in Section 6.02 unless the Agent or Treasury, as applicable, had agreed to such additional reimbursement in writing. The reimbursement obligations contained herein shall survive the termination of the Trust, any disposition by the Trustee of its interests in the Trust or any other event and shall survive the resignation of the relevant Reimbursed Party.

## ARTICLE VII

### SATISFACTION AND DISCHARGE OF TRUST

*Section 7.01. Satisfaction and Discharge of Trust.* This Agreement shall cease to be of further effect, and the Trustee, at the cost and expense of the Agent (so long as the Purchase Agreement is in full force and effect and thereafter, Treasury or its designee, shall execute proper instruments acknowledging the satisfaction and discharge of this Agreement and shall transfer all funds, if any, in the Trust Account and investments made with funds in the Trust Account or other



accounts, as applicable, to Treasury (or its designee(s)) at such place and in such manner as is specified in writing by Treasury at its sole expense, upon payment in full of all amounts payable to the Trustee pursuant to Section 6.01 or 6.02 of this Agreement.

## ARTICLE VIII

[INTENTIONALLY OMITTED]

## ARTICLE IX

### PARTICULAR COVENANTS

*Section 9.01. Reporting Requirements.* The Trustee shall, on a monthly basis and at such other times as the Agent, the Claims Processor or Treasury may from time to time reasonably request, make available to the Agent, the Claims Processor or Treasury, as the case may be, account statements showing in reasonable detail balances, deposits and withdrawals for each month and changes during the relevant period in the Trust Account.

*Section 9.02. Payments.* Until the Claims Processor shall otherwise notify the Trustee, all payments to be made to the Claims Processor hereunder shall be made to the account set forth in Exhibit C attached hereto. The Trustee shall update Exhibit C without the consent of the Parties upon receipt by the Trustee of revised account instructions from the Claims Processor. All transfers to any Person shall be made in U.S. Dollars.

## ARTICLE X

### REPRESENTATIONS AND WARRANTIES

*Section 10.01. Representations and Warranties.* (a) The Agent, in its capacity as such, and not in its individual capacity, hereby represents, warrants, and covenants to the Trustee as follows:

(i) it has the power to open the Trust Account and has taken all necessary corporate and other action required to authorize the opening and maintenance thereof upon the terms referred to herein and the execution and delivery of all such documents as are necessary for the purpose thereof; and

(ii) it is not necessary to permit the performance of or to ensure the legality, validity, enforceability or admissibility in evidence of this Agreement or the assignment, charge, security interest and lien on the collateral created by this Agreement, that this Agreement be filed, recorded or enrolled with any governmental authority.

(b) The Trustee, hereby represents, warrants, and covenants to the Agent as follows:

(i) it has the power to hold the Trust Account and to perform its duties hereunder and has taken all necessary corporate and other action required to authorize the opening thereof upon the terms referred to herein and the execution and delivery of all such documents as are necessary for the purpose thereof.

## ARTICLE XI

### MISCELLANEOUS

*Section 11.01. Notices.* Any notice, request or other communication to be given or made under this Agreement shall be in writing. Subject to Section 11.03, any such communication may be delivered by hand, overnight delivery, or established courier service to the party's address specified below or at such other address as such party notifies to the other party from time to time, and will be effective upon receipt.

For the Trustee:

U.S. Bank National Association  
100 Wall Street  
Suite 1600  
New York, NY 10005  
Attention: [REDACTED]  
Email: [REDACTED]  
Telephone: [REDACTED]  
Facsimile: [REDACTED]

For the Agent:

Citibank, N.A.  
388 Greenwich Street, 25th Floor  
New York, NY 10013  
Attention: [REDACTED]  
Facsimile: [REDACTED]

w/ a copy to:

Citicorp North America, Inc., as LC servicer  
3800 Citibank Center  
Tampa, FL 33610  
Attention: [REDACTED]  
Facsimile: [REDACTED]

*Section 11.02. Headings.* The headings of the Sections of this Agreement have been inserted for convenience of reference only, and shall not be deemed to constitute a part of this Agreement.

*Section 11.03. Applicable Law and Jurisdiction.* (a) This Agreement shall be governed by, and shall be construed and interpreted in accordance with, the law of the United States of America to the extent that such law is applicable, and otherwise in accordance with the laws of the State of New York (collectively, "*Applicable Law*").

(b) Each of the Agent and the Trustee irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Agreement may be brought in the courts of the United States of America located in the Southern District of New York. By the execution of this Agreement, each of the Agent and the Trustee irrevocably submits to the non-exclusive jurisdiction of any such court in any such action, suit or proceeding. Final judgment against either of the Agent or the Trustee in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the judgment, or in any other manner provided by law.

(c) EACH OF THE TRUSTEE AND THE AGENT HEREBY WAIVE ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

*Section 11.04. Deemed Waivers.* No delay on the part of any party hereto in exercising any right under this Agreement or failure to exercise the same shall operate as a waiver of such right; nor in any event shall any modification or waiver of the provisions of this Agreement be effective unless consented to in writing by the parties hereto; nor shall any such waiver be applicable except in the specific instance for which given.

*Section 11.05. Successors and Assignees.* This Agreement binds and benefits the respective successors and assignees of the parties hereto. However, the Trustee may not assign or delegate any of its respective rights or obligations under this Agreement without the prior written consent of each of Treasury and, so long as the Purchase Agreement remains in full force and effect, the Agent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, any corporation or association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the trust business or Trustee's corporate trust line of business may be transferred, shall be Trustee under this Agreement without further act by any Person.

*Section 11.06. Amendments; Waivers and Consents.* Any amendment or waiver of, or any consent given under, any provision of this Agreement shall be in writing and, in the case of an amendment, signed by the Trustee and, while the Purchase Agreement is in full force and effect, the Agent, and in each case consented to by Treasury. The Trustee agrees not to amend any provision hereof that would have a material adverse effect on the Claims Processor without the consent of the Claims Processor.

*Section 11.07. Severability.* Any provision of this Agreement, or any portion or portions of such provisions, held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to such provision or the portion or portions thereof so held to be invalid, illegal, or ineffective.

*Section 11.08. Counterparts.* This Agreement may be executed in several counterparts, each of which is an original, but all of which together constitute one and the same agreement.

*Section 11.09. Force Majeure.* In no event shall the Trustee be considered to have defaulted in respect of any of its obligations under this Agreement to the extent that its failure to perform or its delay in the performance of its obligations hereunder arises out of or is caused by, directly or indirectly, forces beyond its control. For the avoidance of doubt, such events include: strikes or work stoppages which are regional in nature and not attributable to either of such trustees, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, in each case, solely to the extent that any such failure or delay is beyond the control of the Trustee and could not have been avoided through reasonable actions or preparations. An event of *force majeure* shall not be deemed to occur if the circumstance was proximately caused by the non-performing party's gross negligence, willful misconduct or failure to comply with any material applicable law. If an event of *force majeure* is claimed, such non-performing party shall immediately give notice thereof, including the particulars causing such non-performance. The non-performing party shall use all reasonable efforts which are consistent with accepted practices in the banking industry to mitigate against the effects of any such event and to resume performance as soon as practicable under the circumstance. The suspension of performance under an event of *force majeure* shall be of no greater scope and of no longer duration than is required by such *force majeure*.

*Section 11.10. U.S.A. Patriot Act.* To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For non-individual persons such as a business entity, a charity, a trust, or other legal entity, the Trustee will ask for documentation to verify its formation and existence as a legal entity. The Trustee may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. Each of the parties hereto agrees to provide any additional information requested by the Trustee in connection with the U.S.A. Patriot Act or any similar legislation or regulation to which Trustee is subject, in a timely manner.

*Section 11.11. Brokerage Confirmations.* The Parties acknowledge that to the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions related to the Permitted Investments, the Parties waive receipt of such confirmations, to the extent permitted by law. The Trustee shall make available a statement of security transactions on monthly reports.

*Section 11.12. Term.* In the event that there are no Termination Draws, then this Agreement shall terminate upon the termination of the Purchase Agreement. If the Trustee takes possession of any amounts for deposit in the Trust Account, this Agreement shall terminate in accordance with Section 7.01 hereof.

*[The remainder of this page is intentionally left blank, signature pages follow]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

CITIBANK, N.A.,  
not in its individual capacity but solely as  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

U.S. BANK NATIONAL ASSOCIATION,  
as Trustee

By: \_\_\_\_\_  
Name: David Massa  
Title: Vice President

EXHIBIT A  
AUTHORIZED PERSONS

CLAIMS PROCESSOR

NAME

TITLE

SIGNATURE

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EXHIBIT B  
FORM OF CLAIM NOTICE

[To be attached]



EXHIBIT C

WIRE INSTRUCTIONS OF CLAIMS PROCESSOR