



SINGLE FAMILY LOAN SALE 2012-3

CONVEYANCE, ASSIGNMENT AND ASSUMPTION AGREEMENT  
BY AND BETWEEN  
SECRETARY OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND

\_\_\_\_\_  
organized under the laws of the State of

\_\_\_\_\_ (“Purchaser”).

Address:

Attention:

Telephone No.: (    )

Facsimile No.: (    )

Tax I.D./ SSN :

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## CONVEYANCE, ASSIGNMENT AND ASSUMPTION AGREEMENT

### SINGLE FAMILY LOAN SALE 2012-3

**THIS CONVEYANCE, ASSIGNMENT AND ASSUMPTION AGREEMENT** (the “Agreement”) is made and entered into as of the 13<sup>th</sup> day of September, 2012 (the “Effective Date”), by and between the U.S. Department of Housing and Urban Development (“HUD”) and Purchaser.

#### RECITALS

**WHEREAS**, pursuant to Sections 601(a) and (d) of Public Law 105-276 (1998), codified at 12 U.S.C. §§ 1710(a) and (g), HUD has on September 12, 2012 offered for sale at the Single Family Loan Sale 2012-3 (“SFLS 2012-3”) all of its right, title and interest in the Mortgage Loans, with servicing released and without FHA Mortgage Insurance; and

**WHEREAS**, certain FHA servicers (each, a “Prior Servicer or Participating Servicer”) have agreed to participate in SFLS 2012-3; and

**WHEREAS**, the Prior Servicer has assigned or will in the future assign to HUD certain defaulted single-family FHA-insured mortgage loans, and HUD has accepted or will in the future accept an assignment of such mortgage loans and has paid or will in the future pay eligible FHA insurance claims with respect thereto; and

**WHEREAS**, Purchaser is a sophisticated investor either experienced in, or in the business of, buying and selling single-family mortgage loans; and

**WHEREAS**, Purchaser submitted one or more bids to purchase the Mortgage Loans acquired or to be acquired from the Prior Servicer; and

**WHEREAS**, pursuant to the terms and conditions set forth in this Agreement, HUD desires to sell, assign and transfer to Purchaser, and Purchaser wishes to purchase and acquire from HUD, all of HUD’s right, title and interest as mortgagee in and to the mortgage loans acquired from the Prior Servicer, which mortgage loans shall, upon each such sale be set forth on Schedule I hereto (the “Mortgage Loans”); and

**WHEREAS**, pursuant to the terms and subject to the conditions set forth in this Agreement, upon each sale of Mortgage Loans to Purchaser, Purchaser shall pay HUD for such Mortgage Loans, all as set forth more fully herein;

**NOW THEREFORE**, in consideration of the foregoing and the covenants and agreements set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, HUD and Purchaser agree as follows:

**ARTICLE I**  
**DEFINITIONS**

**1.01 Defined Terms.**

Whenever used in this Agreement, the following terms have the meanings specified below:

“**Additional Assets**” has the meaning given in Section 2.01(b).

“**Affiliate**” means, with respect to any specified Person, any other Person who or which, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such specified Person.

“**Aggregate Sales Price**” means an amount equal to sum of the individual Sales Prices for the Initial Assets or the Additional Assets or Subsequent Assets, as applicable.

“**Agreement**” means this Conveyance, Assignment and Assumption Agreement and all exhibits and schedules hereto, as amended from time to time.

“**Assignment of Mortgage**” means a Mortgage assignment substantially in the form of Exhibit A.

“**Associated PPC Loan**” has the meaning given in Section 2.01(g).

“**Bankruptcy Loan**” means a loan with respect to which the Borrower (a) has made an assignment for the benefit of creditors or has petitioned or applied to any tribunal for the appointment of a custodian, receiver, trustee or similar Person for the Borrower or a substantial part of the Borrower’s assets, (b) has commenced any proceeding under any bankruptcy, reorganization, readjustment of debt, receivership, dissolution, liquidation or similar law or statute of any jurisdiction, or (c) has pending against him any such petition, application or proceedings.

“**Bid Deposit**” means \$[\_\_\_\_\_], such amount representing the amount, wired to HUD by Purchaser in conjunction with its bid and held by HUD to be applied in accordance with the terms Section 2.01(b)(iii) of this Agreement.

“**Bid Form**” means the form supplied by HUD on which potential purchasers are required to submit their bids to HUD for the Mortgage Loans on the day bids are accepted for the loans offered in SFLS 2012-3.

“**Bid Percentage**” means, for each Mortgage Loan, the percentage (carried to five (5) decimal places) bid by Purchaser on the Bid Form.

“**Borrower**” means the obligor on a Note.

**“Business Day”** means any day other than a Saturday, Sunday, federal holiday or any other day on which HUD or commercial banks in the District of Columbia are authorized or required by law or executive order to close.

**“CERCLA”** means the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, and the rules and regulations promulgated from time to time thereunder.

**“Claim”** means any claim (including any counterclaim or defensive claim), demand, complaint, cause of action, suit or proceeding, or judgment.

**“Claim Date”** means, with respect to each Mortgage Loan, the date on which the Prior Servicer is paid the Insurance Claim by HUD as set forth for such Mortgage Loan on Schedule I (and any supplements thereto) of this Agreement.

**“Collateral File”** means the original Note or, if unavailable, an original lost instrument affidavit or bailee letter, the original or a copy of the recorded Mortgage, the original or copies of all assignments of the Mortgage, and the original or a copy of the title policy referred to in Section 3.04(f).

**“Control”** shall mean, as to any Person, the power, directly and/or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

**“Controlled”** shall have a correlative meaning.

**“Effective Date”** means the date of this Agreement, as first set forth above.

**“Eligible Mortgage Loan”** means a single-family mortgage loan, which meets all of the following requirements as of the Claim Date:

- (a) the related Mortgaged Property has no more than four (4) dwelling units;
- (b) it is an FHA-Insured Loan;
- (c) it is Non-Performing;
- (d) it has an Unpaid Principal Balance of no less than \$20,000;
- (e) the related Mortgaged Property has not been seized by the United States Department of Justice and is not otherwise the subject of a seizure order;
- (f) as of the Claim Date, the Mortgaged Property had not sustained any Surchargeable Damage; and
- (g) no foreclosure sale has been scheduled within the sixty (60) calendar day period after the Claim Date, there has been no foreclosure sale or pre-foreclosure sale, and no deed-in-lieu of foreclosure has been accepted.

“**FHA**” means the Federal Housing Administration, an administrative unit within the United States Department of Housing and Urban Development, and any successor thereto.

“**FHA-Insured Loans**” means single-family mortgage loans actively insured by FHA under either Section 203(b) or Section 234(c) of the National Housing Act, 12 U.S.C. §§ 1709(b) and 1715y(c), that are secured by Mortgaged Property in jurisdictions other than Hawaii, Guam, American Samoa and the Northern Marianas Islands, and are either (a) owned and serviced by Prior Servicer or (b) serviced (but not owned) by Prior Servicer, but with respect to which Prior Servicer is authorized by the holder to purchase such mortgage loans from, or submit Insurance Claims on behalf of, the holder.

“**First Settlement Date**” has the meaning given in Section 2.01(a).

“**First Settlement Date Payment**” means the payment made by Purchaser to HUD on the First Settlement Date, in accordance with Section 2.01(a) the Settlement Statement provided by HUD in the form of Exhibit E-1 to this Agreement.

“**Ground Lease**” means, with respect to any Mortgaged Property, a leasehold interest therein instead of a fee interest therein.

“**HUD**” means the Secretary of Housing and Urban Development or the United States Department of Housing and Urban Development, as applicable.

“**Initial Assets**” has the meaning given in Section 2.01(a).

“**Initial Repurchase Date**” means the date on which a repurchase by HUD is effected (and the Repurchase Price paid) pursuant to Section 3.05(a).

“**Insurance Claim**” means, with respect to any Mortgage Loan, the claim submitted by the Prior Servicer for payment by HUD pursuant to the FHA contract of insurance with such claim to be paid upon the assignment of the defaulted FHA-Insured Mortgage Loan.

“**Interim Servicing Fees and Expenses**” has the meaning given in Section 2.02.

“**Lien**” means any lien, Claim, mortgage, security interest, pledge, charge, servitude or other encumbrance of any kind that is secured by the Mortgaged Property.

“**MERS**” means Mortgage Electronic Registration Systems, the mortgage electronic registry that tracks the transfer of beneficial ownership in and servicing rights to some mortgage loans.

“**Mortgage**” means the mortgage, deed of trust or other security instrument, including any amendments or modifications, creating a lien on or security interest in a Mortgaged Property securing the Note.

“**Mortgage File**” means, with respect to a Mortgage Loan, all documents and correspondence that are in the possession or control of the Prior Servicer and that relate to the origination and servicing of the Mortgage Loan, other than the Collateral File.

**“Mortgage Loan”** means each mortgage loan offered and/or sold to Purchaser pursuant to this Agreement, all of which shall be listed on Schedule I hereto, as the same may be supplemented by delivery of a supplement to Schedule I by HUD to Purchaser, and each Mortgaged Property held as a result of the conversion of a mortgage loan to the related Mortgaged Property as a result of foreclosure, acceptance of a deed-in-lieu or any comparable proceedings.

**“Mortgaged Property”** means the underlying property securing a Mortgage Loan consisting of a fee simple estate or Ground Lease in a parcel of land improved by a one-to-four family residential dwelling, together with any personal property, fixtures, leases and other property or rights pertaining thereto.

**“New Servicer”** means Purchaser, or any Person selected by the Purchaser to service the Mortgage Loans.

**“NHA”** means the National Housing Act, 12 U.S.C. §§ 1701 *et seq.*, as amended, and any successor thereto.

**“Non-Performing”** means that, as of the date specified, the Mortgage Loan is not currently, or has not been for at least the immediately preceding five (5) consecutive months, performing in accordance with the terms of the Note.

**“Note”** means, with respect to any Mortgage Loan as of any date of determination, the note or other evidence of indebtedness and/or agreement evidencing the indebtedness of a Borrower under such Mortgage Loan, including any amendments or modifications, or any renewal or substitution notes, as of such date.

**“Party”** means either HUD or Purchaser, and **“Parties”** means both HUD and Purchaser.

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

**“Post-Claim Servicing Period”** has the meaning given in Section 2.08.

**“Post-Sale Report”** has the meaning given in Section 2.09 of this Agreement.

**“Prior Servicer or Participating Servicer”** means, with respect to any Mortgage Loan, the FHA-approved servicer from which the Mortgage Loan was assigned to HUD and from which the servicing for such Mortgage Loan will be transferred to the New Servicer.

**“Proposed Adjustment Notice”** has the meaning given such term in Section 2.01(c).

**“Purchaser”** means the person or entity identified on the cover page of this Agreement.

**“REO”** means Mortgaged Property to which title has been taken as a result of a foreclosure, acceptance of a deed-in-lieu of foreclosure, or any comparable proceeding.

**“Repurchase Price”** means an amount equal to (i) the Sales Price *plus* (ii) all unreimbursed advances (which shall in no event include any allocation of overhead or indirect costs of Purchaser) made after the Claim Date by or on behalf of Purchaser, *minus* (iii) an amount equal to all principal and interest collections received after the Claim Date, and *minus* (iv) the balance on the Initial Repurchase Date of all escrow and suspense accounts with respect to the Mortgage Loan.

**“RESPA”** means the Real Estate Settlement Procedures Act, as amended, and any successor thereto, and rules and regulations promulgated from time to time thereunder.

**“Reverse Repurchase Date”** means the date on which a repurchase by Purchaser is effected (and the Reverse Repurchase Price paid) pursuant to Section 3.05(c).

**“Reverse Repurchase Price”** means, (a) with respect to any Mortgage Loan to be repurchased by Purchaser that was originally sold to Purchaser repurchased by HUD in accordance with Section 3.05, an amount equal to (i) the Repurchase Price *plus* (ii) all unreimbursed advances made after the Initial Repurchase Date by HUD, *minus* (iii) an amount equal to all collections received after the Initial Repurchase Date by HUD and, *minus* (iv) the balance on the Reverse Repurchase Date of all escrow and suspense accounts with respect to the Mortgage Loan

**“Sales Price”** means, for each Mortgage Loan, an amount equal to the product of the applicable Bid Percentage and the Unpaid Principal Balance.

**“Second Settlement Date”** has the meaning given in Section 2.01(b).

**“Second Settlement Date Payment”** means the payment made by Purchaser to HUD on the Second Settlement Date, in accordance with Section 2.01(b) the Settlement Statement provided by HUD in the form of Exhibit E-2 to this Agreement.

**“Servicing Transfer”** means, for each Mortgage Loan, the transfer of servicing duties from the Prior Servicer to the New Servicer after the applicable Settlement Date.

**“Servicing Transfer Date”** means with respect to any Mortgage Loan the date, which must occur no later than December 31, 2012, on which the actual servicing duties for such Mortgage Loan has been or will be transferred from the Prior Servicer to the New Servicer.

**“Settlement Date”** means the First Settlement Date or the Second Settlement Date, or Subsequent Settlement Date, if any.

**“Settlement Date Payment”** means the payment made to HUD by Purchaser on the First Settlement Date, the Second Settlement Date, or subsequent Settlement Date mutually agreed upon by the Parties pursuant to Section 4.01 of this Agreement, as applicable.

**“Settlement Statement”** means a Settlement Statement in the form of Exhibit E-1, Exhibit E-2 or Exhibit E-3, as applicable.

**“Subsequent Assets”** has the meaning given in Section 2.01(c).

**“Subsequent Settlement Date”** means a Settlement Date subsequent to the First and Second Settlement Dates when payment is made by the Purchaser to HUD for a previously undelivered group of Mortgage Loans that has been agreed upon by the Parties and incorporated into this Agreement through an amendment made pursuant to Section 4.01.

**“Subsequent Settlement Date Payment”** means the payment made by Purchaser to HUD on the Subsequent Settlement Date, if any, in accordance with Section 2.01(c) the Settlement Statement provided by HUD in the form of Exhibit E-3 to this Agreement

**“Surchargeable Damage”** means damage due to fire, flood, earthquake, hurricane, tornado, mortgagee neglect and, in the case of condominiums (only) boiler explosion. For purposes of this definition, “mortgagee neglect” shall mean damage or destruction due to the mortgagee’s failure to take reasonable action to inspect, protect and preserve the property as provided in 24 C.F.R. § 203.377.

**“Unpaid Principal Balance”** means, as of the relevant date, the outstanding principal amount due on the Mortgage Loan.

## **1.02 Rules of Construction.**

This Agreement shall be construed in accordance with the following rules of construction:

- (a) The section and article headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- (b) References in this Agreement to articles, sections and subsections (unless expressly referring to another instrument) are to articles, sections and subsections of this Agreement.
- (c) This Agreement shall be construed fairly as to all Parties and not in favor of or against any Party regardless of which Party prepared this Agreement.
- (d) Terms defined in this Agreement include the plural as well as the singular and pronouns and variations thereof used in this Agreement refer to the masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require.
- (e) Use of the term or phrase “including”, “including, without limitation” or “including, but not limited to” shall mean “including, without limitation.”
- (f) References in this Agreement to a “state” shall be inclusive of the District of Columbia, the Virgin Islands and Puerto Rico.

- (g) All times herein refer to Eastern Daylight Time or Eastern Standard Time, as applicable.

**ARTICLE II**  
**SALE, CONVEYANCE AND SERVICING TRANSFER**

**2.01 Sale, Conveyance and Assumption.**

- (a) **First Settlement.** The first settlement date is October 31, 2012 (the “First Settlement Date”). On or before October 29, 2012, HUD shall deliver to Purchaser a list of the Mortgage Loans acquired by HUD from the Prior Servicer for the First Settlement Date (the “Initial Assets”). The list shall include for each such Mortgage Loan on such list, the information set forth on Exhibit C hereto. On the First Settlement Date, the list of Initial Assets shall be attached as Schedule I to this Agreement. Purchaser shall purchase the Initial Assets for an amount equal to the Aggregate Sales Price of such Initial Assets. On the First Settlement Date, the Settlement Date Payment shall be an amount equal to the amount set forth on the Settlement Statement for the Initial Assets. The aggregate positive escrow and suspense balances for the Initial Assets shall be subtracted from the Aggregate Sales Price to determine the net amount due as the Settlement Date Payment. The Settlement Date Payment is to be wired on the First Settlement Date prior to 2:00 p.m. ET to the account identified below:

R & T Number	061008766
Bank	FHLB ATL
City/State	Atlanta, GA
To Credit	FHA Single Family Account
Account Number	02997500
Reference	SFLS 2012-3

Upon receipt of the Settlement Date Payment by HUD, HUD shall be deemed to have sold and conveyed to Purchaser, as of the applicable Claim Date for each Mortgage Loan, the Initial Assets identified as being purchased on Schedule I.

On or before October 29, 2012, HUD shall deliver to Purchaser a Settlement Statement in the form of Exhibit E-1 for the First Settlement Date and Schedule I for all of the Initial Assets to be conveyed on the First Settlement Date.

- (b) **Second Settlement.** The second settlement date is December 13, 2012 (the “Second Settlement Date”). On or before December 11, 2012, HUD shall deliver to Purchaser a list of the Mortgage Loans acquired by HUD from the Prior Servicer for the Second

Settlement Date (the “Additional Assets”). The list shall include for each such Mortgage Loan on such list, the information set forth on Exhibit C hereto. On the Second Settlement Date, the list of Additional Assets shall be a supplement to and an amendment of Schedule I (and shall be identified as “Supplement No. 1 to Schedule I”). Purchaser shall purchase those Additional Assets for an amount equal to the Aggregate Sales Price of such Additional Assets.

On or before December 11, 2012, HUD shall deliver to Purchaser a Settlement Statement in the form of Exhibit E-2 for any Mortgage Loans to be purchased on such Second Settlement Date and the Supplement No. 1 to Schedule I for all of the Additional Assets to be conveyed on the Second Settlement Date.

On the Second Settlement Date, the Settlement Date Payment shall be an amount equal to:

- (i) the aggregate amount of the Sales Price for each of the Additional Assets;
- (ii) minus the aggregate positive escrow and suspense balances for the Additional Assets;
- (iii) minus the entire amount of the Bid Deposit.

The Settlement Date Payment is to be wired on the Second Settlement Date prior to 2:00 p.m. ET to the account identified below:

R & T Number	061008766
Bank	FHLB ATL
City/State	Atlanta, GA
To Credit	FHA Single Family Account
Account Number	02997500
Reference	SFLS 2012-3

Upon receipt of the Settlement Date Payment by HUD, HUD shall be deemed to have sold and conveyed to Purchaser, as of the applicable Claim Date for each Mortgage Loan, the Additional Assets identified as being purchased on the Supplement No. 1 to Schedule I.

- (c) **Subsequent Settlement.** If mutually agreed upon by the Parties, on or before the date specified in such agreement, HUD shall deliver to Purchaser a list of the Mortgage Loans acquired by HUD from the Prior Servicer for any Subsequent Settlement Date (the “Subsequent Assets”). The list shall include for each such Mortgage Loan on such list, the information set forth on Exhibit C hereto. On the Subsequent Settlement Date, the list of Subsequent Assets shall be attached as Supplement No. 2 to Schedule I. Purchaser shall purchase the Subsequent Assets for an amount equal to the Aggregate Sales Price of such Subsequent Assets. On the Subsequent Settlement Date, the Settlement Date Payment shall be an amount equal to the amount set forth on the Settlement Statement for the Subsequent Assets. The

aggregate positive escrow and suspense balances for the Subsequent Assets shall be subtracted from the Aggregate Sales Price to determine the net amount due as the Settlement Date Payment. The Settlement Date Payment is to be wired on the Subsequent Settlement Date prior to 2:00 p.m. ET to the account identified below:

R & T Number	061008766
Bank	FHLB ATL
City/State	Atlanta, GA
To Credit	FHA Single Family Account
Account Number	02997500
Reference	SFLS 2012-3

Upon receipt of the Settlement Date Payment by HUD, HUD shall be deemed to have sold and conveyed to Purchaser, as of the applicable Claim Date for each Mortgage Loan, the Subsequent Assets identified as being purchased on Supplement No. 2 to Schedule I.

On or before the date agreed upon by the parties, HUD shall deliver to Purchaser a Settlement Statement in the form of Exhibit E-3 for the Subsequent Settlement Date and Supplement No. 2 to Schedule I for all of the Subsequent Assets to be conveyed on the Subsequent Settlement Date.

- (d) **Use of Special Purpose Entity Acquisition Vehicle (SPE).** Purchaser shall be permitted to use a special purpose entity acquisition vehicle (SPE) in settling on the purchase of the Mortgage Loans, whereby HUD will assign such Mortgage Loans directly to the SPE pursuant to the terms of a Consent to Assignment (a sample of which was provided in the Bidder Information Package). As provided in the Qualification Statement, the SPE must satisfy the requirements of a qualified bidder pursuant to the Qualification Statement prior to the settlement date. The Purchaser shall provide HUD with the legally sufficient reference to the SPE for purposes of completing the assignment of the Mortgage Loans.
- (e) **Post-Settlement Date Revisions to Settlement Statement.** Within 60 calendar days after the Second Settlement Date (or Subsequent Settlement Date, if applicable), if HUD or Purchaser determine that any one or more of the amounts set forth on any Settlement Statement was computed incorrectly, the Party making such determination will, within such 60 calendar day period, provide the other Parties hereto with a written notice identifying the error (such notice a "Proposed Adjustment Notice"). The Proposed Adjustment Notice must identify the affected Mortgage Loans and include a reasonably detailed description of any purported error on the Settlement Statement. If HUD determines that an adjustment is required, within five (5) Business Days of receipt of the Proposed Adjustment Notice HUD will either remit any net overpayment to Purchaser or Purchaser will remit any net underpayment to HUD, as applicable, in either case without interest. HUD will also revise Schedule I or Supplement No. 1 (or Supplement No. 2) to Schedule I (as applicable) to reflect such adjustments.

- (f) **Escrows.** For each Mortgage Loan, positive escrow account balances as of the calendar day prior to the Claim Date will be accounted for on the Settlement Statement and credited towards the Settlement Date Payment due from the Purchaser on the applicable Settlement Date. Escrow funds remitted to the Prior Servicer by borrowers on and after the Claim Date will be remitted to Purchaser by the Prior Servicer as part of the Servicing Transfer. Furthermore, upon purchase of the Mortgage Loans, Purchaser shall fund each individual Borrower's escrow account in an amount equal to the balance provided in Column L of Schedule I (refer to Exhibit C). For any of the Mortgage Loans without a positive escrow balance, the Prior Servicer will furnish such information as may be necessary to establish an escrow account for the Borrower.
- (g) **Application of Bid Deposit.** The Bid Deposit shall be applied against amounts due by Purchaser to HUD on the Second Settlement Date.
- (h) **Assignment and Assumption.** Effective as of the applicable Claim Date, and subject to the consummation of the transactions described in Section 2.01(a) and 2.01(b), and subject further to the other terms and conditions of this Agreement, HUD does hereby sell, transfer, assign, set over and convey, without recourse, to Purchaser, all right, title and interest of HUD in and to the Initial Assets and the Additional Assets (and the Subsequent Assets, if applicable), including all amounts received with respect thereto on and after the applicable Claim Date. On and after the applicable Claim Date, Purchaser assumes and shall be responsible for all obligations and liabilities of HUD relating to and arising from the Initial Assets and the Additional Assets (and the Subsequent Assets, if applicable).
- (i) **Associated Partial Payment of Claim Loans.** In some instances, the Prior Servicer may have completed a loss mitigation action that resulted in a partial payment of claim under the FHA contract of insurance for a Mortgage Loan. In these cases the Borrower executed a promissory note creating a secondary mortgage payable to HUD (the "Associated PPC Loan"). HUD does hereby transfer, assign, set over and convey, without recourse, to Purchaser, the Associated PPC Loans held by HUD, identified on Schedule I, in accordance with the same terms applicable to the Mortgage Loans as provided in Section 2.01(f). There shall be no purchase price applicable to the Associated PPC Loans. On and after the applicable Claim Date, Purchaser assumes and shall be responsible for all obligations and liabilities of HUD relating to and arising from the Associated PPC Loans.

## 2.02 **Servicing Transfer.**

On the related Servicing Transfer Date, in accordance with the terms of the Interim Servicing Agreement, attached as Exhibit F of this Agreement, the Prior Servicer shall transfer to the New Servicer the servicing for the Mortgage Loans. HUD shall request that the Prior Servicer coordinate and cooperate with Purchaser and the New Servicer to affect an orderly and timely transfer of the servicing for each Mortgage Loan onto the New Servicer's servicing system. Within three (3) Business Days after the Effective

Date, Purchaser shall provide HUD (and, if directed by HUD, the Prior Servicer) with all of the information necessary to allow the Prior Servicer to prepare and send to Borrowers any required disclosures regarding the sale or transfer of servicing, including “goodbye/hello” letters meeting the requirements of RESPA with respect to both the Prior Servicer and the New Servicer.

Within twenty (20) Business Days after receipt from a Prior Servicer of an invoice for interim servicing fees due to and advances made by such Prior Servicer from the Claim Date through the Servicing Transfer Date (the “Interim Servicing Fees and Expenses”), Purchaser shall pay or cause the New Servicer to pay such Interim Servicing Fees and Expenses in full in accordance with Article II of the Interim Servicing Agreement, attached as Exhibit F of this Agreement.

### **2.03 Mortgage Loan Information.**

In accordance with the terms the Interim Servicing Agreement, attached as Exhibit F of this Agreement, the Prior Servicer shall deliver to the New Servicer, within five (5) Business Days after the Servicing Transfer Date for any Mortgage Loans and to the extent available on Prior Servicer’s servicing system, with respect to such Mortgage Loans: (i) a trial balance as of the Claim Date and as of the Servicing Transfer Date (including with the Servicing Transfer Date trial balance a list or some other appropriate identification of Bankruptcy Loans, and loans with respect to which the foreclosure process has been initiated or litigation exists), (ii) master record data as of the Servicing Transfer Date in an electronic format, (iii) one or more reports itemizing dates and amounts of payments received and applied, including each principal and interest payment, tax payment, special assessment, hazard insurance premium payment, mortgage insurance premium payment, ground rent payment and other payments (including each advance), (iv) histories for the period prior to the Servicing Transfer Date, (v) escrow data, including escrow balances, coverage, accrual and payees, (vi) default data, including any modification and repayment plan terms and the names and addresses of any foreclosure or bankruptcy attorneys or trustee.

### **2.04 Delivery of Collateral Files and Mortgage Files.**

With respect to each Mortgage Loan, subject to the payment by Purchaser of all amounts required pursuant to Section 2.01, as of the Claim Date, the ownership of the contents of the Collateral File and the Mortgage File shall be vested in Purchaser. After the consummation of the transactions described in Section 2.01(a) or 2.01(b), on the Settlement Date or the first Business Day following the Settlement Date, HUD shall instruct the Prior Servicer to (1) deliver to Purchaser a complete Collateral File for each of the Mortgage Loans sold to Purchaser pursuant to Sections 2.01(a) and (b), and (2) deliver to the New Servicer the Mortgage File for each of the Mortgage Loans on the Servicing Transfer Date. Failure to deliver a Collateral File on the Settlement Date shall not affect the obligation of Purchaser to accept the related Mortgage Loan or the obligation of the Purchaser to make payment to HUD for such Mortgage Loan; provided, however, that all Collateral Files shall be delivered to Purchaser within sixty (60) calendar days of the applicable Settlement Date.

For purposes of this Section, delivery shall be deemed to have occurred when a Mortgage File or Collateral File is released by the shipper to Purchaser or the New Servicer, as applicable. Upon such release of a Collateral File or Mortgage File by a delivery service, Purchaser shall bear the risk of loss of such Collateral File or Mortgage File. In the event that any collateral file or mortgage file for a mortgage loan that is not paid for in accordance with, and conveyed to Purchaser pursuant to, Section 2.01 is delivered to Purchaser or the New Servicer, Purchaser shall return such files to HUD immediately upon discovery of, or a request by HUD for, the same.

## **2.05 Books and Records.**

Purchaser shall maintain a complete set of books and records for each Mortgage Loan reflecting the ownership of each Mortgage Loan by Purchaser.

## **2.06 Notes and Mortgages.**

The original Note, if available, shall be delivered to Purchaser as part of the Collateral File. The original Note will subsequently be endorsed "Pay to the order of [Purchaser Name], without recourse" and signed by facsimile or manual signature by HUD. If the original Note is not available, HUD shall cause a lost note affidavit or bailee letter (if applicable) and assignment to be executed and delivered to the Purchaser (along with a copy of the Note, if available). For Mortgage Loans not registered in MERS, HUD also shall cause to be delivered to Purchaser as part of the Collateral File an Assignment of Mortgage setting forth the assignment of the Mortgage to HUD and an Assignment of Mortgage setting forth the assignment of the Mortgage by HUD to Purchaser. At its discretion, HUD will provide a Limited Power of Attorney granting the Purchaser the power, as necessary, to endorse Notes and execute assignments of the Mortgage on behalf of HUD.

For Mortgage Loans not registered in MERS, Purchaser (at its expense) shall deliver or shall cause to be delivered both such Assignments of Mortgage for recordation, in the proper order, within thirty (30) Business Days after receipt by Purchaser from HUD. Purchaser shall (or shall cause the New Servicer to) review the Collateral File immediately upon delivery and, within sixty (60) calendar days after receipt of the Collateral File by Purchaser, notify HUD in writing of any documents missing there from and any endorsements missing from the Note (including endorsements required to reflect transfers occurring prior to the transfer to HUD). If Purchaser fails to identify and provide notice to HUD of any deficiencies in the Collateral File in accordance with the preceding sentence, Purchaser shall be deemed to have waived any rights it may have against HUD for such deficiencies (including any rights it may have had under Section 3.05).

For each Associated PPC Loan, if so requested by HUD, Purchaser (at its expense) shall deliver or shall cause to be delivered to HUD an Assignments of Mortgage for execution by HUD. Purchaser (at its expense) shall also deliver or shall cause to be delivered such Assignments of Mortgage for recordation, in the proper order, within thirty (30) Business Days after receipt by Purchaser from HUD.

## **2.07 Tax Reporting.**

Purchaser shall prepare or shall cause the New Servicer to prepare a report to the Internal Revenue Service and provide to Borrowers, all in accordance with applicable law, rules and regulations, any and all tax information required to be provided with respect to the Mortgage Loans for any period on or after the Servicing Transfer Date. Purchaser shall not be obligated hereunder, nor shall it be obligated to cause New Servicer, to prepare, provide to Borrowers or report to the Internal Revenue Service such tax information for any period prior to the Servicing Transfer Date.

## **2.08 Interim Servicing by the Prior Servicer.**

Purchaser hereby grants to the Prior Servicer, full power and authority to service, administer and collect the Mortgage Loans during the period from the Claim Date through the Servicing Transfer Date (the “Post-Claim Servicing Period”).

During the Post Claim Servicing Period, the Prior Servicer: (i) will remit to the Purchaser all principal and interest received net of any advances, (ii) will send invoices to Borrower until the Servicing Transfer Date, (iii) may pay real estate tax bills, (iv) may seek extensions of time or continuances in connection with foreclosures and bankruptcies, and (v) in conjunction with Purchasers, will send the Mortgagor Notification advising the Borrowers of the change of servicers. The Servicing Transfer Date must occur within sixty (60) calendar days from the Second Settlement Date. Exhibit F to this Agreement provides the Interim Servicing Agreement between the Purchaser and the Prior Servicer for the Post Claim Servicing Period.

## **2.09 Post-Sale Requirements.**

(a) **Post-Sale Reporting.** Purchaser or its Affiliate(s) shall provide summary reporting to HUD on the current status of the sale portfolio semi-annually in the format provided in Exhibit B-1 (the “Post-Sale Report”) at the address provided for notices in Section 4.05. The initial reporting period begins on the Second Settlement Date and ends on the last day of the sixth calendar month following the Second Settlement Date. Thereafter the reporting periods begins on the first day of the calendar month following the end of the prior reporting period and end on the last day of the sixth calendar month following the prior reporting period. The post sale reporting requirement expires the earlier of (a) the last reporting date after the sale portfolio has been liquidated; or (b) in the third year, after a total of six (6) Post Sale Reports have been delivered. The Post-Sale Reports are due by the twentieth (20<sup>th</sup>) Business Day of the month following the end of the applicable reporting period.

(b) **Post-Sale Servicing.** The Mortgage Loans must be serviced by a servicer that is (i) either an FHA-approved mortgagee or a Fannie Mae or Freddie Mac approved servicer; and, (ii) in good standing with and rated average or above by the applicable Agencies. Purchaser shall provide a self-certification regarding compliance with this provision in the format provided in Exhibit B-1 with each Post-Sale Report.

The Purchaser(s) shall be required to avoid finalizing any foreclosure action for six months from the applicable Settlement Date for each Mortgage Loan that is owner occupied unless there are extenuating circumstances. For loans where a foreclosure is completed prior to the end of the six- month period, the Purchaser shall report on reason(s) for the foreclosure as part of the Post-Sale Reporting Requirements set forth in Exhibit B-1 with the initial Post-Sale Report. Purchaser shall provide a self-certification regarding compliance with this provision in the format provided in Exhibit B-3 with the initial Post Sale Report.

- (c) **Post-Settlement Meeting.** Within forty-five (45) calendar days after the Second Settlement Date, representatives of Purchaser and HUD shall conduct a post settlement meeting to discuss various aspects of the SFLS 2012-3 transaction. The meeting may be held in person or via conference call.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES; REPURCHASES**

#### **3.01 Reserved**

#### **3.02 Representations and Warranties of Purchaser.**

Purchaser represents and warrants to HUD as of the Effective Date and such other dates as are set forth below as follows:

(a) **Organization; Good Standing; Licenses; Net Worth.** Purchaser:

- (i) is a [\_\_\_\_\_] duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_\_];
- (ii) has qualified or will qualify to do business as a foreign corporation and, on each Settlement Date, will remain so qualified, and on each Settlement Date, will remain in good standing, in each jurisdiction where the character of its properties or the Mortgage Loans or the nature of its activities makes such qualification necessary and in which failure to so qualify would have a material adverse effect upon Purchaser or its ability to perform its obligations hereunder,
- (iii) has and, on each Settlement Date, will have full power to own its property, to carry on its business as presently and, on each Settlement Date, then conducted, and to enter into and perform its obligations under this Agreement,
- (iv) has and, on each Settlement Date, will have all licenses or other governmental approvals necessary to perform its obligations hereunder;

provided, however, that, to the extent failure to have any such license or approval on the date hereof or on any Settlement Date does not materially interfere with the performance by Purchaser of its obligations hereunder, failure to have any such license or approval shall not be a breach of the representation and warranty set forth in this clause (iv) if Purchaser uses reasonable efforts to obtain such license or approval; and

- (v) has and, on each Settlement Date, will have a net worth calculated in accordance with generally accepted accounting principles of not less than \$5,000,000.

- (b) **Authorization; No Violation.** The execution and delivery by Purchaser of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor compliance with the provisions hereof, will conflict with or result in a breach of, or constitute a default under, (i) any of the provisions of any law, governmental rule, regulation, judgment, decree, agreement, settlement, or order binding on Purchaser or its properties, (ii) the constituent documents of Purchaser, or (iii) any of the provisions of any indenture, mortgage, contract or other instrument to which Purchaser is a party or by which it is bound or result in the creation or imposition of any lien, charge or encumbrance upon any of its property pursuant to the terms of any such indenture, mortgage, contract or other instrument.
- (c) **Governmental Approvals.** All actions, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights and licenses required to be taken, given or obtained, as the case may be, by or from any federal, state or other governmental authority or agency (other than any such actions, approvals, etc. under any state securities laws, real estate syndication or “Blue Sky” statutes, as to which Purchaser makes no such representation or warranty), that are necessary in connection with the execution and delivery by Purchaser of this Agreement and the consummation of the transactions contemplated hereby and the performance of its obligations hereunder, have been duly taken, given or obtained, as the case may be, are in full force and effect, are not subject to any pending proceedings or appeals (administrative, judicial or otherwise) and either the time within which any appeal there from may be taken or review thereof may be obtained has expired or no review thereof may be obtained or appeal there from taken.
- (d) **Binding Agreement.** This Agreement has been duly executed and delivered by Purchaser and, assuming due authorization, execution and delivery by the other Parties hereto, constitutes a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of the rights of creditors generally and the application of equitable principles in any proceeding, whether at law or in equity).

- (e) **No Litigation.** There is no action, suit, proceeding or investigation pending or, to the best of Purchaser's knowledge, threatened against Purchaser before any court, administrative agency, arbitrator or governmental body which (i) relates to any of the transactions contemplated by this Agreement, or (ii) either in any one instance or in the aggregate, if determined against Purchaser, would reasonably be likely (A) to draw into question the validity of this Agreement or of any action taken or to be taken in connection with the obligations of Purchaser contemplated herein, (B) to materially and adversely affect Purchaser's business, assets, operations or condition (financial or otherwise), or (C) to materially and adversely affect the ability of Purchaser to perform its obligations under this Agreement.
- (f) **No Violation of Orders, Decrees, etc.** Purchaser is not in default with respect to any order or decree of any court or any order, rule, regulation, agreement, settlement or demand of any federal, state, municipal or governmental agency, which default might have consequences that would reasonably be likely to materially and adversely affect Purchaser's performance under this Agreement or the transactions contemplated hereby.
- (g) **Third Party Consents.** No consents, approvals, waivers or notifications of stockholders, creditors, lessors or other nongovernmental persons are required to be obtained by Purchaser in connection with the execution and delivery of this Agreement and the consummation of all the transactions herein contemplated.
- (h) **No Finder's Fee or Brokerage Commission.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by Purchaser or its Affiliates directly with HUD or Affiliates thereof and without the intervention of any Person who, as a result of any act of Purchaser or its Affiliates, has or will have a valid claim against HUD or any of its respective Affiliates for a finder's fee, brokerage commission or other like payment with respect to this Agreement or such transactions.

### 3.03 **Representations and Warranties of HUD as to HUD.**

HUD represents and warrants to Purchaser as of the Effective Date as follows:

- (a) **Organization; Good Standing; Licenses.** HUD is the Secretary of the United States Department of Housing and Urban Development and has and will have full power to enter into and perform its obligations under this Agreement.
- (b) **Authorization; No Violation.** The execution and delivery by HUD of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor compliance with the provisions hereof, will conflict with or result in a breach of, or constitute a default under, (i) any of the provisions of any law, governmental rule, regulation, judgment, decree or order binding on HUD or its properties, or (ii) any of the provisions of any contract or other instrument to which

HUD is a party or by which it is bound or result in the creation or imposition of any lien, charge or encumbrance upon any of the Mortgage Loans.

- (c) **Governmental Approvals.** All actions, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights and licenses required to be taken, given or obtained, as the case may be, by or from any federal, state or other governmental authority or agency (other than any such actions, approvals, etc. under any state securities laws, real estate syndication or “Blue Sky” statutes, as to which HUD makes no such representation or warranty), that are necessary in connection with the execution and delivery by HUD of this Agreement and the consummation of the transactions contemplated hereby and the performance of its obligations hereunder, have been duly taken, given or obtained, as the case may be, are in full force and effect, are not subject to any pending proceedings or appeals (administrative, judicial or otherwise) and either the time within which any appeal there from may be taken or review thereof may be obtained has expired or no review thereof may be obtained or appeal there from taken.
- (d) **Binding Agreement.** This Agreement has been duly executed and delivered by HUD and, assuming due authorization, execution and delivery by the other Party hereto, constitutes a valid and binding obligation of HUD enforceable against HUD in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of the rights of creditors generally and the application of equitable principles in any proceeding, whether at law or in equity).
- (e) **No Litigation.** There is no action, suit, proceeding or investigation pending or, to the best of HUD’s knowledge, threatened against HUD before any court, administrative agency, arbitrator or governmental body which (i) relates to any of the transactions contemplated by this Agreement, or (ii) either in any one instance or in the aggregate, if determined against HUD, would reasonably be likely (A) to draw into question the validity of this Agreement or of any action taken or to be taken in connection with the obligations of HUD contemplated herein, (B) to materially and adversely affect HUD’s business, assets, operations or condition (financial or otherwise), or (C) to materially and adversely affect the ability of HUD to perform its obligations under this Agreement.
- (f) **No Violation of Orders, Decrees, etc.** HUD is not in default with respect to any order or decree of any court or any order, rule, regulation or demand of any federal, state, municipal or governmental agency, which default might have consequences that would reasonably be likely to materially and adversely affect HUD’s performance under this Agreement or the transactions contemplated hereby.
- (g) **Third Party Consents.** No consents, approvals, waivers or notifications of stockholders, creditors, lessors or other nongovernmental persons are required to be obtained by HUD in connection with the execution and delivery of this Agreement and the consummation of all the transactions herein contemplated.

**(h) No Finder's Fee or Brokerage Commission.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by HUD or its Affiliates directly with Purchaser or Affiliates thereof and without the intervention of any Person who, as a result of any act of HUD or its Affiliates, has or will have a valid claim against Purchaser or any of its respective Affiliates for a finder's fee, brokerage commission or other like payment with respect to this Agreement or such transactions.

### **3.04 Representations as to Individual Mortgage Loans.**

HUD represents and warrants to Purchaser with respect to each Mortgage Loan, as of the Claim Date for such Mortgage Loan and on such other dates as are expressly set forth herein, the following:

- (a) Eligible Mortgage Loans.** Each Mortgage Loan is an Eligible Mortgage Loan.
- (b) Lost Instrument Affidavits.** In the event any Collateral File contains a lost instrument affidavit in lieu of a Note, such lost instrument affidavit, and accompanying assignment, will be sufficient to effect the transfer of title to the related Mortgage Loan, without the need for a judicial proceeding, administrative action, court or regulatory order, or similar action or order.
- (c) No Rescission, Set-off.** The Mortgage Loan is not subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, nor will the operation of any of the terms of the Note or the Mortgage, or the exercise of any right thereunder, render either the Note or the Mortgage unenforceable in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury, and no right of rescission, set-off, counterclaim or defense has been asserted with respect thereto.
- (d) No Mechanics' Liens.** There is no mechanics' lien or claim for work, labor or material affecting any Mortgaged Property, which is or may be a lien prior to, or equal with, the lien of the Mortgage except those, which are insured against by the title insurance policy referred to in Section 3.04(f).
- (e) Compliance with Law.** Each Mortgage Loan, at the time it was originated, complied in all material respects with applicable local, state and federal laws, rules and regulations, including usury, equal credit opportunity and disclosure laws and, since that time, has been serviced in compliance in all material respects with applicable local, state and federal laws, rules and regulations.
- (f) Title Policy.** With respect to each Mortgage Loan, a lender's title insurance policy, issued in standard American Land Title Association long or short form or, if the jurisdiction does not accept the standard American Land Title Association form, such other form as is generally acceptable to prudent lending institutions that originate or purchase mortgage loans similar to the Mortgage Loan in that particular jurisdiction, by a title insurance company authorized to transact business in the jurisdiction in which the related Mortgaged Property is situated, together with a condominium

endorsement, if applicable, in an amount at least equal to the original principal balance of such Mortgage Loan, insuring HUD's interest under the related Mortgage Loan as the holder of a valid first priority mortgage lien of record on the real property described in the Mortgage, subject only to exceptions for (i) liens for real property taxes and assessments not yet due and payable or liens for taxes and assessments which, as of the Claim Date, have been paid, (ii) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of the Mortgage which are acceptable to mortgage lending institutions generally and specifically reflected in the appraisal made in connection with the origination of the Mortgage Loan, and (iii) other matters to which like properties are commonly subject which do not, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Mortgage, was effective on any date on or prior to the Claim Date, and, as of the Claim Date, such policy will be valid and thereafter shall continue in full force and effect. With respect to each Mortgage Loan, the holder is the sole named insured of such mortgage title insurance policy, and such mortgage title insurance policy is in full force and effect and will be in full force and effect and inure to the benefit of Purchaser (and any subsequent mortgagee) upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such mortgage title insurance policy and no prior holder of the related Mortgage, including HUD, has done, by act or omission, anything that would impair the coverage of such mortgage title insurance policy.

(g) **Hazard Insurance.** With respect to the Mortgage Loans, either (i) the improvements upon a Mortgaged Property are covered by a valid and existing fire and hazard insurance policy with a generally acceptable carrier that provides for extended coverage customary in the area where the Mortgaged Property is located, that is endorsed with a standard mortgagee clause with losses payable to HUD, and in an amount that is at least equal to the lesser of (A) the Unpaid Principal Balance, (B) the full insurable value of the Mortgaged Property, or (C) the minimum amount required to compensate for damage or loss on a replacement cost basis, or (ii) the Prior Servicer maintains a blanket policy, insuring against fire and hazards that provides for extended coverage, on the Mortgage Loans for which no insurance of the type described in clause (i) exists, naming HUD as loss payee and providing for coverage in an amount equal to the aggregate Unpaid Principal Balance of all such Mortgage Loans, without co-insurance.

(h) **Flood Insurance.** For each Mortgage Loan with respect to which the Mortgaged Property is located in an area identified on a Flood Hazard Boundary Map or Flood Insurance Rate Map issued by the Federal Emergency Management Agency as having special flood hazards and flood insurance has been made available, a flood insurance policy meeting the current guidelines of the Federal Insurance Administration with a generally acceptable carrier in an amount representing coverage of not less than the lesser of (i) the Unpaid Principal Balance, or (ii) the maximum amount of insurance which is available under applicable federal law, rules and regulations.

- (i) **Binding Mortgages and Notes.** Each Mortgage and Note is the legal, valid and binding obligation of the maker thereof and is enforceable in accordance with its terms, except only as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (whether considered in a proceeding or action in equity or at law). All parties to each Mortgage Loan had full legal capacity to execute all Mortgage Loan documents (including the Notes and Mortgages) and convey the estate therein purported to be conveyed, and all Mortgage Loan documents (including the Notes and Mortgages) have been duly and properly executed by such parties.
- (j) **Modifications; Mortgages Recorded.** The terms of the Note and the Mortgage have not been impaired, altered or modified in any material respect, except by a written instrument which has been recorded, if required, or is in the process of being recorded (and, in either case, contained in the Collateral File), if necessary, to protect the interest of Purchaser and which has been or will be delivered to Purchaser. Each original Mortgage was recorded, and all subsequent assignments of the original Mortgage have been recorded in the appropriate jurisdictions wherein such recordation is necessary to perfect the lien thereof as against creditors of HUD (or, are in the process of being recorded, or are, in the opinion of counsel which has been provided to HUD and on which HUD is entitled expressly therein to rely, not required to be recorded).
- (k) **No Releases.** No instrument of release or waiver has been executed in connection with the Mortgage Loan, and no Borrower has been released, in whole or in part.
- (l) **No Condemnation.** The Mortgaged Property is not subject to a condemnation order, and there is no proceeding pending or threatened for the total or partial condemnation of the Mortgaged Property.
- (m) **Improvements; No Encroachments.** To the best of HUD's actual knowledge, all of the improvements which were included for the purpose of determining the appraised value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of such property, and no improvements on adjoining properties encroach upon the Mortgaged Property.
- (n) **No Zoning Violation.** To the best of HUD's knowledge, no improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning law, rule or regulation. To the best of HUD's knowledge, all inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities and the Mortgaged Property is or, if vacant, may be lawfully occupied under applicable law.
- (o) **Proceeds Disbursed.** The proceeds of the Mortgage Loan have been fully disbursed, and pursuant to the terms and conditions thereof as of the Claim Date there is no

obligation on the part of HUD, nor will there be any obligation on the part of the Purchaser (or any other mortgagee), to make future advances thereunder, at the option of the Borrower or otherwise. Any and all requirements as to completion of any on-site or off-site improvements and as to disbursements of any escrow funds therefore have been complied with. All costs, fees and expenses incurred in making or closing or recording the Mortgage Loans were paid.

- (p) **No Security Except Mortgage.** The related Note is not and has not been secured by any collateral, pledged account or other security except the lien of the corresponding Mortgage.
- (q) **No Third Party Obligors.** There is no obligation on the part of HUD or any other party to make payments in addition to those made by the Borrower.
- (r) **Qualified Trustees.** With respect to each Mortgage constituting a deed of trust, a trustee, duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in such Mortgage, and no fees or expenses are or will become payable by Purchaser (or any other mortgagee) to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Borrower.
- (s) **Certain Loan Types.** No Mortgage Loan has a shared appreciation feature, or other contingent interest feature, provides for deferred interest or negative amortization. None of the Mortgaged Property is subject to a land trust.
- (t) **Due on Sale.** The Mortgage contains a customary provision for the acceleration of the payment of the unpaid principal balance of the Mortgage Loan in the event the related Mortgaged Property is sold without the prior consent of the mortgagee thereunder.
- (u) **Single Rate of Interest, Repayment Term.** The entire Unpaid Principal Balance bears a single interest rate (whether fixed or adjustable), as reflected on the Note, and a single repayment term, as is reflected on Schedule I hereto. The interest rate of each Mortgage Loan, as of the Claim Date, is accurately reflected on Schedule I hereto.
- (v) **Benefits of Security.** The related Mortgage contains customary and enforceable provisions which render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security, including, (i) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (ii) otherwise by judicial foreclosure. There is no homestead or other exemption available to the Borrower, which would materially interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage.
- (w) **No Hazardous Substances.** HUD has no actual knowledge that there exist, with respect to any Mortgaged Property, any hazardous substances, hazardous wastes or solid wastes, as such terms are defined in CERCLA, or other federal, state or local environmental legislation.

- (x) **First Lien Mortgage.** Each Mortgage is a valid and subsisting first lien of record on the Mortgaged Property subject to (1) the exceptions to title set forth in the title insurance policy, with respect to the related Mortgage Loan, which exceptions are generally acceptable to first mortgage lending companies, and (2) such other exceptions to which similar properties are commonly subject and which do not individually, or in the aggregate, materially and adversely affect the benefits of the security intended to be provided by such Mortgage.
- (y) **Unpaid Principal Balance.** The Unpaid Principal Balance of the Mortgage Loan as of the Claim Date, as set forth on Schedule I hereto, is true, accurate and correct.
- (z) **Ground Leases.** If a Mortgaged Property is subject to a ground lease, the terms of the ground lease and the rights of the mortgagee and the obligations of the lessor (whether such rights and obligations arise by contract or under law, rule or regulation) comply in all respects, as of the Claim Date, with the applicable provisions of HUD's Handbook 4150.1. Without limiting the generality of the foregoing, with respect to each such ground lease, (i) the mortgagee is entitled to notice of each lessee default and is allowed at least 120 calendar days in which to cure any such default before the lessor may terminate such ground lease; (ii) the ground lease is in full force and effect; and (iii) either (A) HUD has not received any notice of a default thereunder and, to HUD's knowledge, there exists no condition that, but for the passage of time or the giving of notice or both, would result in a default thereunder or, (B) if HUD has received notice of any default thereunder, such default has been cured.
- (aa) **Title; No Liens.** Upon assignment of a Mortgage Loan to Purchaser, Purchaser will have good title to such Mortgage Loan, free and clear of all Liens.
- (bb) **Reserved.**

### **3.05 Repurchases; Cure and Purchase Price Reductions.**

- (a) **Breach of Section 3.04.** Within the ten (10) month period after the Servicing Transfer Date, Purchaser or the New Servicer shall conduct an affirmative investigation as to whether there is a breach of any of HUD's representations and warranties contained in Section 3.04. All breaches of Sections 3.04 (excluding Section 3.04(m), 3.04(n) and 3.04(w)) will be determined without reference to HUD's knowledge. Notwithstanding any qualification in the representation or warranty with regard to HUD's knowledge, the remedies available under this section for breach shall also be available upon the development of a condition or occurrence of any event described in Section 3.04(m), 3.04(n) and 3.04(w)) (hereinafter included in the term "breach"). Upon discovery by Purchaser or the New Servicer with respect to any Mortgage Loan of a breach of any of the representations or warranties in Section 3.04, provided the Mortgage Loan has not been modified on or after the Claim Date, Purchaser or New Servicer shall give prompt written notice to HUD and identify, in such notice, in reasonable detail, the nature of the breach (including the

representations or warranties breached) and, include with such notice, documentation evidencing or supporting the alleged breach. Such notice shall also include the information required by Item 1 on Exhibit D. No breach shall be asserted regarding any typographical errors unless Purchaser demonstrates that such typographical error will have a material and adverse impact on the value of the Mortgage Loan or the benefits of the security intended to be provided by the Mortgaged Property for the Mortgage Loan.

Within seventy-five (75) calendar days of its receipt of notice of any such breach, HUD shall notify Purchaser that HUD either has accepted the notice as to a Mortgage Loan or does not accept the notice as giving sufficient evidence of the asserted breach. If HUD accepts the notice as to a Mortgage Loan, HUD shall, as set forth in detail below, (x) cure such breach in all material respects, or (y) repurchase such Mortgage Loan. HUD shall have sole and absolute discretion to make the final determination as to whether a breach is curable.

- (i) If HUD elects to cure a breach in all material respects, it shall advise Purchaser in writing of that fact as well as the cure it intends to implement and, upon implementation of such cure, deliver to Purchaser documentation effecting or evidencing such cure.
  - (ii) If HUD elects to repurchase such Mortgage Loan, HUD shall pay Purchaser the Repurchase Price.
  - (iii) In the event of a repurchase, on or prior to the Initial Repurchase Date, the information required by Item 2 of Exhibit D shall be delivered to HUD.
- (b) **Purchaser Representations Regarding Repurchased Mortgage Loans.** Upon the repurchase by HUD of a Mortgage Loan hereunder, as of the date of such repurchase, Purchaser hereby makes the following representations and warranties with respect to such Mortgage Loan:
- (i) the terms of the Mortgage Loan were not modified on or after the Claim Date by (or on behalf of) Purchaser;
  - (ii) the Purchaser has title to, and the right to sell, transfer and assign to HUD, the Mortgage Loan and, immediately prior to its repurchase, the Mortgage Loan will not be subject to any Liens placed by (or on behalf of) HUD or Purchaser;
  - (iii) on and after the Claim Date, Purchaser (and any subservicers) employed usual and customary care in the servicing, administration and collection of the Mortgage Loan and the maintenance and preservation of the related Mortgaged Property;
  - (iv) no instrument of release or waiver was executed in connection with the Mortgage Loan and the Borrower was not released, in whole or in part, on or after the Claim Date by (or on behalf of) Purchaser;

- (v) no act or omission on or after the Claim Date by (or on behalf of) Purchaser has caused (A) the priority of title to the Mortgaged Property or the Lien of the Mortgage to be less than that conveyed to Purchaser by HUD, or (B) except to the extent applied for its intended purpose or otherwise expended on the Mortgaged Property in a commercially reasonable manner, the Mortgaged Property securing the Mortgage Loan to be different from that securing the Mortgage Loan on the Claim Date;
  - (vi) no act or omission on or after the Claim Date by (or on behalf of) Purchaser has caused a Claim of any Person to arise against Purchaser (or any subservicer) that, as a result of the repurchase pursuant to this Agreement, might be asserted against HUD;
  - (vii) the contents of the Collateral File and Mortgage File, when returned to HUD, will include the contents delivered by HUD to Purchaser (in the case of the Collateral File) and the contents delivered by the Prior Servicer to the New Servicer (in the case of the Mortgage File) pursuant to Section 2.04 and such other documentation as has been generated on or after the Claim Date by (or on behalf of) Purchaser to evidence activity with respect to the Mortgage Loan on and after the Claim Date, except to the extent that items missing from the Collateral File do not materially and adversely affect the ability of HUD to enforce the Mortgage Loan, and except to the extent that items missing from the Mortgage File do not materially and adversely affect the ability of HUD to service the Mortgage Loan;
  - (viii) the title policy referred to in Section 3.04(f), if in effect on the Claim Date and transferred to Purchaser on the Servicing Transfer Date, remains in effect or has been replaced with a comparable policy; and
  - (ix) the insurance policies referred to in Sections 3.04(g) and (h), if in effect on the Claim Date and transferred to Purchaser on the Servicing Transfer Date, remain in effect or have been replaced with comparable policies.
- (c) **Breach of Section 3.05(b)**. HUD may allege a breach of a representation or warranty in Section 3.05(b) only if the breach materially and adversely affects the value of the related Mortgage Loan and may demand that Purchaser repurchase the Mortgage Loan only if the breach is not curable by Purchaser. HUD shall have sole and absolute discretion to make the final determination as to whether a breach is curable. If a breach is curable, HUD shall notify Purchaser in writing of the same and the necessary cure and, subject to the provisions of the next succeeding sentence, Purchaser shall cure such breach and pay the expenses of the same. To the extent that an alleged breach is curable by the payment of money and the amount of such payment, had it been made by Purchaser prior to the Initial Repurchase Date, would have been includable (but was not included) as an advance when calculating the Repurchase Price, such amount shall be paid by HUD (without reimbursement from Purchaser).

Subject to the foregoing, in the event there exists a breach of any of the representations or warranties in Section 3.05(b) with respect to and that materially and adversely affects a Mortgage Loan, and such breach is not curable, HUD shall not be required to repurchase such Mortgage Loan but shall cooperate with Purchaser and use commercially reasonable efforts to cure the breach that led to the initial demand that HUD repurchase such Mortgage Loan and, if such breach is not curable, at HUD's sole and absolute discretion, HUD and Purchaser shall negotiate in good faith to reach agreement on an appropriate reduction in the Sales Price, taking into consideration both the breach of Section 3.05(b) and the breach of Section 3.04. Any Mortgage Loan repurchased by Purchaser pursuant to this Section shall be repurchased for an amount equal to the Reverse Repurchase Price and, the date on which payment of the Reverse Purchase Price is made shall be the Reverse Repurchase Date.

**(d) Exclusive Remedies.** The right of Purchaser to request a cure or a repurchase, and HUD's discretion to cure, repurchase or (in the case of a Mortgage Loan subject to Section 3.05(c)) accept a Sales Price Reduction for a Mortgage Loan with respect to which there exists a breach of a representation or warranty contained in Section 3.04, as provided in Section 3.05(a), constitute the sole and exclusive remedies of Purchaser for a breach of HUD's representations and warranties contained in Section 3.04. The right of HUD to refuse to repurchase a Mortgage Loan, as set forth in Section 3.05(c), and the obligation of Purchaser to pay the expense of curing or, if applicable, to negotiate in good faith to agree on a Sales Price Reduction as set forth in Section 3.05(c), with respect to any such Mortgage Loan are the sole and exclusive remedies of HUD and the sole and exclusive obligations of Purchaser in the event there exists a breach of Section 3.05(b).

### **3.06 Expiration of Representations and Warranties.**

Except with respect to any breach of Section 3.04(f) or Section 3.04(x) or as otherwise provided in this Agreement, notice of a breach of a representation or warranty made by HUD in Section 3.04 with respect to a Mortgage Loan must be made, in writing and delivered to HUD, within ten (10) months after the Servicing Transfer Date for such Mortgage Loan. In the event no notice is received alleging a breach of any of such representations or warranties with respect to a Mortgage Loan within such ten (10) month period, then the representations and warranties contained in Section 3.04 (other than in Section 3.04(f) or (x)), and the rights and remedies of Purchaser in Section 3.05, as they relate to such Mortgage Loan, shall expire and be of no further force or effect. Notice of a breach of a representation or warranty made by Purchaser in Section 3.05(b) with respect to a repurchased Mortgage Loan must be made, in writing and delivered to Purchaser, within three (3) months after the Initial Repurchase Date for such Mortgage Loan. In the event no notice is received alleging a breach of any of such representations or warranties with respect to a Mortgage Loan within such three (3)-month period, then the representations and warranties contained in Section 3.05(b), and the rights and remedies of HUD in Section 3.05(c), as they relate to such Mortgage Loan, shall expire and be of no further force or effect. The representations and warranties in Section 3.04(f) and 3.04(x) and all other representations and warranties made by the Parties in this

Agreement shall survive and shall not be subject to the foregoing limitations. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the representations and warranties in Section 3.04 with respect to a Mortgage Loan shall terminate upon the modification of the Mortgage Loan by or on behalf of Purchaser or the release and/or satisfaction of all or part of the Mortgage Loan or security.

**3.07 Interpretation of Representations.**

All determinations as to the existence of a breach of a representation or warranty shall be made without reference to any qualification as to the maker's knowledge, it being understood that all such qualifications are made in the interest of full and fair disclosure and to preclude any claim of fraud or misrepresentation, but are not intended to limit the remedies available for a breach of this Agreement.

**ARTICLE IV  
MISCELLANEOUS PROVISIONS**

**4.01 Amendment.**

This Agreement may not be amended except by an instrument in writing signed on behalf of each Party.

**4.02 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument.

**4.03 Entire Agreement.**

This Agreement (including all exhibits and schedules hereto) contains the entire agreement between the Parties, and supersedes all prior oral and written negotiations, agreements, arrangements, representations, warranties and understandings, relating to the subject matter hereof.

**4.04 Rights Cumulative; Waiver.**

Except as otherwise expressly provided herein, the rights and remedies of each of the Parties under this Agreement are cumulative, may be exercised as often as any Party considers appropriate and are in addition to each such Party's rights under law. The Parties may not waive or vary any right hereunder except by an express written waiver or variation. Any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right.

**4.05 Notices.**

All notices and other communications under this Agreement shall be in writing and delivered by hand delivery, by overnight courier, by United States Express Mail, or by registered or certified mail (return receipt requested, postage prepaid), and shall be deemed to have been duly given when received in all cases addressed to the Parties at the following addresses (or at such other addresses as shall be specified by like notice):

If to HUD:

U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, S.W., Room 3136  
Washington, D.C. 20401  
**Attention: Asset Sales Office, SFLS 2012-2**

and an electronic copy to: [assetsales@hud.gov](mailto:assetsales@hud.gov)

If to the Purchaser:

[name]  
[address]  
Attention: SFLS 2012-2

#### **4.06 Governing Law.**

This Agreement shall be governed by and construed in accordance with federal law, including federal common law. In the event that no federal law exists on a particular point, this Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to any conflict of laws rule or principle that might refer the governance or the construction of this Agreement to the law of any other jurisdiction).

#### **4.07 Severability.**

Should any provision of this Agreement or the application thereof for any reason be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be construed and enforced as if it had been more narrowly drawn so as not to be invalid, illegal or unenforceable, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

#### **4.08 Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. No Party may assign or otherwise transfer this Agreement (in whole or in part) or delegate its rights or duties hereunder except with the prior written consent of the other Party, and any attempted assignment, transfer or delegation in violation of this provision shall be void *ab initio*.

#### **4.09 Waiver of Jury Trial.**

PURCHASER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED THEREBY.

**4.10 Third Party Beneficiaries.**

This Agreement is intended for the sole benefit of the Parties and their respective successors and permitted assigns, and there shall be no third party beneficiaries.

**4.11 Further Assurances.**

Each of the Parties shall act reasonably and in good faith in complying with its obligations under this Agreement.

**4.12 Submission to Jurisdiction; Appointment of Agent for Service of Process.**

Purchaser hereby irrevocably and unconditionally:

- (a) (i) agrees that any suit, action or proceeding against it arising out of or relating to or in connection with this Agreement may be instituted, and that any suit, action or proceeding by it against any other Party arising out of or relating to or in connection with this Agreement shall be instituted only, in the U.S. District Court for the District of Columbia or the U.S. Court of Claims (and appellate courts from either of the foregoing), as the Person instituting such suit, action or proceeding may elect in its sole discretion, (ii) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it, and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law;
- (b) agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 4.12(a) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 4.05, such service to become effective 30 calendar days after such mailing, provided that nothing contained in this Section 4.12(b) shall affect the right of any Party to serve process in any other manner permitted by law; and
- (c) (i) waives any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to or in connection with this Agreement brought in any court specified in Section 4.12(a), (ii) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum, and (iii) agrees not to plead or claim either of the foregoing.

**4.13 Costs and Expenses.**

The costs and expenses incurred by or on behalf of a Party in connection with the negotiation, execution or delivery of this Agreement or the sale, purchase, transfer or assignment to Purchaser of the Mortgage Loans shall be borne by the Party who incurs such costs or expenses. Purchaser shall bear the expense of (i) any transfer taxes, or transfer, recording or filing fees relating to the Mortgage Loans; (ii) title commitment or title insurance obtained by Purchaser; and (iii) costs incurred by Purchaser that relate to the transfer of the servicing to the Mortgage Loans to Purchaser.

#### **4.14 Facsimile Signature.**

This Agreement (and any amendments thereto), to the extent signed and delivered by means of a facsimile machine, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of a Party to this Agreement, any other Party so executing and delivering this Agreement (or any amendment thereto) by means of a facsimile machine shall re-execute original forms thereof and deliver them to the requesting Party. No Party shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such Party forever waives any such defense.

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be duly executed by its duly authorized officer or agent as of the day and year first above written.

**SECRETARY OF HOUSING AND URBAN DEVELOPMENT**

By:  
Name:  
Title:

**PURCHASER:**

By:  
Name:  
Title:

**EXHIBIT A**

**FORM OF ASSIGNMENT OF MORTGAGE**

(For Mortgage Loans not registered in MERS)

**Loan No.** \_\_\_\_\_

After recording, please  
return to:

This instrument  
prepared by:

**ASSIGNMENT OF MORTGAGE AND  
OTHER LOAN DOCUMENTS**

\_\_\_\_\_ whose address is  
\_\_\_\_\_ (“Assignor”), and in consideration of Ten Dollars (\$10.00) and  
other good and valuable consideration received by Assignor, hereby assigns, transfers, sets over  
and conveys, effective as of \_\_\_\_\_, 20\_\_\_\_, to \_\_\_\_\_ and  
its successors and assigns, without recourse, the following:

1. that certain \_\_\_\_\_ dated \_\_\_\_\_, \_\_\_\_\_, and recorded [as  
Instrument Number \_\_\_\_\_] [in Book/Volume/Liber/Register/Reel \_\_\_\_\_,  
at Page/Folio \_\_\_\_\_], among the land records of \_\_\_\_\_ County,  
\_\_\_\_\_, as amended or modified (the “Mortgage”), which  
Mortgage secures that certain promissory note dated \_\_\_\_\_, \_\_\_\_\_ (the  
“Note”); and
2. such other documents, agreements, instruments and other collateral that evidence,  
secure or otherwise relate to Assignor’s right, title or interest in and to the Mortgage  
and/or the Note, including without limitation the title insurance policies and hazard  
insurance policies that might presently be in effect.

TO HAVE AND TO HOLD unto Assignee and its successors and assigns forever.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered by its duly authorized officer as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

**ACKNOWLEDGMENT**

\_\_\_\_\_)  
) , ss:  
\_\_\_\_\_)

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_ for \_\_\_\_\_, in the capacity noted in the foregoing instrument.

\_\_\_\_\_  
Notary Public  
[SEAL] My commission expires \_\_\_\_\_

**EXHIBIT B-1  
POST-SALE REPORTING REQUIREMENTS**

For the period ending: \_\_\_\_\_

Report Date: \_\_\_\_\_

Purchaser Name: \_\_\_\_\_

**Part I:** For each Mortgage Loan, provide the following information as of the end of the applicable reporting period. For assets that have been disposed of, report the UPB at the time of disposition

**SFLS 2012-3 Post-Sale Report**

Table 1 Disposal of Program Assets

FHA Case Number	Status	Performance Category:*(Non-Performing, Re-Performing, In Foreclosure)	Modified (Y/N)	Types of Modification(s)**(Principal Write Down, Forbearance, Interest Rate Reduction, P&I Adjustment, etc.)	UPB

\* Applicable to Whole Loan Sales only.

\*\* Applicable to modified loans only. Please indicate the type(s) of modification(s) made to the loan, specific loan terms are not required.

**Status Codes for Disposed Assets**

Paid In Full (PIF)

Whole Loan Sale

Pre-Foreclosure Sale

Foreclosure Sale

Sale of Foreclosed REO

Sale of Deed-in-Lieu REO

Charge Off/Repurchase

Table 2 Active Loans

FHA Case Number	Status	Performance Category:*(Non-Performing, Re-Performing, In Foreclosure)	Modified (Y/N)	Types of Modification(s)**(Principal Write Down, Forbearance, Interest Rate Reduction, P&I Adjustment, etc.)	UPB

- \* Applicable to loans in Active Servicing only.
- \*\* Applicable to modified loans only. Please indicate the type(s) of modification(s) made to the loan, specific loan terms are not required.

**Status Codes for Active Loans**

- Active Servicing
- Foreclosed REO
- Deed-in Lieu REO

**Part II:** For each Mortgage Loan that was foreclosed within six months of the applicable Settlement Date, report below on the reason for the foreclosure. Indicate if the loan was either: a) not owner occupied, or b) provide a summary explanation of the extenuating circumstance for the foreclosure action. Note that this requirement is only applicable to the initial reporting period.

FHA Case Number	Reason for Foreclosure

## Exhibit B-2 Self-Certification Form Servicer Eligibility Provision

**SFLS 2012-3 Purchaser  
Compliance Certification**

**U. S. Department of Housing  
and Urban Development**

<p>This SFLS 2012-3 Purchaser Compliance Form will be used by Purchasers to self-certify the Purchaser's compliance with the post sale requirement that the Mortgage Loans purchased by the Purchaser must be serviced by a servicer that is (i) either an FHA-approved mortgagee or a Fannie Mae or Freddie Mac approved servicer; and, (ii) in good standing with and rated above average by the applicable Agencies. This requirement is set forth in Section 2.09(b) of the U.S. Department of Housing and Urban Development's SFLS 2012-3 Conveyance, Assignment and Assumption Agreement with Purchaser dated _____, 2012.</p>		
<p>1. Purchaser Information (Name, Address and ZIP Code)</p>	<p>2. Purchaser Contact Information (Name, Phone Number and e-mail Address)</p>	<p>3. Date of Submission</p>
<p>4. Servicer Name(s)</p>	<p>5. Basis for Servicer Eligibility (Check all that apply)</p> <p><input type="checkbox"/> FHA-approved mortgagee</p> <p><input type="checkbox"/> Fannie Mae approved servicer</p> <p><input type="checkbox"/> Freddie Mac approved servicer</p>	
<p>Certification: The undersigned hereby certifies to that: (a) to the best of his/her knowledge and belief that the information provided above is true and correct as of the report submission date; and (b) upon request of any authorized official of the Department of Housing and Urban Development the Purchaser will furnish or make available supporting documentation.</p>		
<p>Title of Certifying Official</p>	<p>Signature</p>	<p>Date</p>

## Exhibit B-3 Self-Certification Form Foreclosure Avoidance Provision

**SFLS 2012-3 Purchaser  
Compliance Certification**

**U. S. Department of Housing  
and Urban Development**

This SFLS 2012-3 Purchaser Compliance Form will be used by Purchasers to self-certify the Purchaser's compliance with the post sale requirement that for each Mortgage Loan that is occupied by the owner thereof, Purchaser shall avoid finalizing any foreclosure action for six months from the applicable Settlement Date unless there are extenuating circumstances. For loans where a foreclosure is completed prior to the end of the six-month period, the Purchaser shall report on reason(s) for the foreclosure with the initial Post Sale Report as part of the Post Sale Reporting Requirements set forth in Exhibit B-1 of the Conveyance, Assignment and Assumption Agreement. This requirement is set forth in Section 2.09(b) of the U.S. Department of Housing and Urban Development's SFLS 2012-3 Conveyance, Assignment and Assumption Agreement with Purchaser dated \_\_\_\_\_, 201\_\_.

1. Purchaser Information (Name, Address and ZIP Code)	2. Purchaser Contact Information (Name, Phone Number and e-mail Address)	3. Date of Submission
---	--	-----------------------

Certification: The undersigned hereby certifies to that: (a) to the best of his/her knowledge and belief that the information provided above is true and correct as of the report submission date; and (b) upon request of any authorized official of the Department of Housing and Urban Development the Purchaser will furnish or make available supporting documentation.

Title of Certifying Official	Signature	Date
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## EXHIBIT C

### SCHEDULE I

#### FORM OF MORTGAGE LOAN SCHEDULE

Set forth below are the columns of information to be included in the Mortgage Loan Schedule (and all Supplements thereto) and the instructions relating thereto. The Mortgage Loan Schedule (and all Supplements thereto) shall be prepared, delivered and attached as Schedule I to this Agreement in accordance with Section 2.01 and the instructions set forth below. The columns of information shall be ordered as set forth below and the column indicator (i.e., Column A) included.

Column A	FHA Loan Number
Column B	Prior Servicer
Column C	Claim Date
Column D	Unpaid Principal Balance as of Claim Date
Column E	Revised Unpaid Principal Balance as of Claim Date
Column F	Bid Percentage
Column G	Sales Price
Column H	Settlement Date
Column I	Servicing Transfer Date
Column J	FHA Loan Number of Associated PPC Loan
Column K	Balance of Associated PPC Loan
Column L	Escrow Balance

#### INSTRUCTIONS

**Column F:** This is the Bid Percentage of the Mortgage Loan (carried to five (5) decimal places) bid by Purchaser on the Bid Form.

**Column G:** This is the Sales Price of the Mortgage Loan, which is an amount equal to the product of the applicable Bid Percentage and the Unpaid Principal Balance (expressed as a dollar amount).

## EXHIBIT D

### REPURCHASED ASSET INFORMATION REQUIREMENTS

1. The following dollar amounts must be included with any request that HUD repurchase an Asset:

Sales Price (amount paid for Mortgage Loan, as may have been revised)  
Total amount collected by Purchaser with respect to the Asset  
Escrow balance as of the Initial Repurchase Date  
Advances made by Purchaser with respect to the Asset

2. A report in an Excel spreadsheet containing (for each repurchased Asset) the information set forth below (including the descriptive line items and related information) must be provided:

#### REQUIRED INFORMATION FIELDS

FHA Case Number  
Borrower Name  
Alternate Name  
Property Address  
Billing Address  
Borrower SSN  
Alternate SSN  
Accrual Start Date  
Unpaid Principal Balance  
Original Mortgage Amount  
Original Loan Date  
Term of Loan (years/months)  
Next Installment Due Date  
Interest Rate  
Loan Type (Fixed, ARM, GPM)  
Loan Purpose (New Purchase, Refinance, etc.)  
Maturity Date  
Principal & Interest Constant  
Monthly Real Estate Tax Constant  
Tax Escrow Balance/Advance  
  
Name of **First** Taxing Authority  
Parcel Number  
Frequency of Disbursements  
Next Disbursement Date

Name of **Second** Taxing Authority  
Parcel Number  
Frequency of Disbursements  
Next Disbursement Date

Name of **Third** Taxing Authority  
Parcel Number  
Frequency of Disbursements  
Next Disbursement Date

#### OPTIONAL INFORMATION FIELDS

Borrower Home Telephone  
Borrower Work Telephone

**EXHIBIT E-1**

**FORM OF SETTLEMENT STATEMENT -- FIRST SETTLEMENT DATE**

**SETTLEMENT STATEMENT  
(First Settlement Date – SFLS 2012-3)**

Aggregate Sales Price:*	\$
(___ Initial Assets)	
<i>minus</i>	
Aggregate positive escrow and suspense balances:**	\$
<i>equals</i>	
Net Amount Due***:	\$

---

\* Sales Price means, for each Mortgage Loan, an amount equal to the product of the applicable Bid Percentage and the Unpaid Principal Balance. Schedule I to the Agreement sets forth, among other things, the Sales Price, Bid Percentage, and the Unpaid Principal Balance for each Mortgage Loan. The Aggregate Sales Price means an amount equal to sum of the individual Sales Prices. .

\*\* Detail on attached. See Escrow Amount.

\*\*\* The Net Amount Due is equal to the Settlement Date Payment.

Initially capitalized terms used and not defined herein have the meanings given in the Conveyance, Assignment and Assumption Agreement dated \_\_\_\_\_, 20\_\_ (“Agreement”), between the Secretary of the Department of Housing and Urban Development (“HUD”) and \_\_\_\_\_ (“Purchaser”).

Amounts to be remitted to HUD to be sent to the following account:

[HUD wire instructions]

ACKNOWLEDGED AND AGREED as of \_\_\_\_\_, 2012.

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

By:  
Name:  
Title:

PURCHASER:  
By:  
Name:  
Title:

**EXHIBIT E-2**

**FORM OF SETTLEMENT STATEMENT– SECOND SETTLEMENT DATE**

**SETTLEMENT STATEMENT  
(Second Settlement Date – SFLS 2012-3)**

Aggregate Sales Price:*	\$
(___Additional Assets)	
<i>minus</i>	
Aggregate positive escrow and suspense balances:**	\$
<i>minus</i>	
Total Bid Deposit:	\$
<i>equals</i>	
Net Amount Due***:	\$

---

\* Sales Price means, for each Mortgage Loan, an amount equal to the product of the applicable Bid Percentage and the Unpaid Principal Balance. Schedule I to the Agreement sets forth, among other things, the Sales Price, Bid Percentage, and the Unpaid Principal Balance for each Mortgage Loan. The Aggregate Sales Price means an amount equal to sum of the individual Sales Prices.

\*\* Detail on attached. See Escrow Amount.

\*\*\* The Net Amount Due is equal to the Settlement Date Payment.

Initially capitalized terms used and not defined herein have the meanings given in the Conveyance, Assignment and Assumption Agreement (“Agreement”) dated \_\_\_\_\_, 20\_\_\_\_, between the Secretary of the Department of Housing and Urban Development (“HUD”) and \_\_\_\_\_, (“Purchaser”).

Amounts to be remitted to HUD to be sent to the following account:

[HUD wire instructions]

ACKNOWLEDGED AND AGREED as of \_\_\_\_\_, 20\_\_\_\_.  
SECRETARY OF HOUSING AND URBAN DEVELOPMENT,

By:  
Name:  
Title:

PURCHASER

By:  
Name:  
Title:

**EXHIBIT E-3**

**FORM OF SETTLEMENT STATEMENT – SUBSEQUENT SETTLEMENT DATE**

**SETTLEMENT STATEMENT  
(Subsequent Settlement Date – SFLS 2012-3)**

Aggregate Sales Price:*	\$
(___ Subsequent Assets)	
<i>minus</i>	
Aggregate positive escrow and suspense balances:**	\$
<i>equals</i>	
Net Amount Due***:	\$

---

\* Sales Price means, for each Mortgage Loan, an amount equal to the product of the applicable Bid Percentage and the Unpaid Principal Balance. Supplement No. 2 to Schedule I to the Agreement sets forth, among other things, the Sales Price, Bid Percentage, and the Unpaid Principal Balance for each Mortgage Loan. The Aggregate Sales Price means an amount equal to sum of the individual Sales Prices.

\*\* Detail on attached. See Escrow Amount.

\*\*\* The Net Amount Due is equal to the Settlement Date Payment.

Initially capitalized terms used and not defined herein have the meanings given in the Conveyance, Assignment and Assumption Agreement dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”), between the Secretary of the Department of Housing and Urban Development (“HUD”) and \_\_\_\_\_ (“Purchaser”).

Amounts to be remitted to HUD to be sent to the following account:

[HUD wire instructions]

ACKNOWLEDGED AND AGREED as of \_\_\_\_\_, 2012.

SECRETARY OF HOUSING AND URBAN DEVELOPMENT

By:  
Name:  
Title:

PURCHASER:  
By:  
Name:  
Title:

**EXHIBIT F-1**  
**INTERIM SERVICING AGREEMENT**

**EXHIBIT D**

**SINGLE FAMILY LOAN SALE 2012-3  
INTERIM SERVICING AGREEMENT**

**BY AND BETWEEN**

\_\_\_\_\_  
**as the Purchaser**

**AND**

**BANK OF AMERICA, N.A.,  
as the Prior Servicer**

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## INTERIM SERVICING AGREEMENT

**THIS INTERIM SERVICING AGREEMENT** (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between \_\_\_\_\_ ("Purchaser"), and \_\_\_\_\_ (the "Prior Servicer").

### RECITALS

**WHEREAS**, pursuant to Sections 601(a) and (d) of Public Law 105-276 (1998), codified at 12 U.S.C. §§ 1710(a) and (g), the Secretary of Housing and Urban Development ("HUD") has on \_\_\_\_\_, 2012 offered for sale at the Single Family Loan Sale 2012-3 ("SFLS 2012-3") all of its right, title and interest in the Mortgage Loans, with servicing released and without FHA Mortgage Insurance; and

**WHEREAS**, certain FHA servicers agreed to participate in SFLS 2012-3; and

**WHEREAS**, the Prior Servicer has assigned or will in the future assign to HUD certain defaulted single-family FHA-insured mortgage loans and HUD has accepted or will in the future accept an assignment of such mortgage loans and has paid or will in the future pay the FHA insurance claim with respect thereto in accordance with the Participating Servicer Agreement; and

**WHEREAS**, pursuant to the terms and subject to the conditions set forth in the Conveyance Agreement, HUD has agreed to sell to Purchaser and Purchaser has agreed to purchase from HUD such mortgage loans (the "Mortgage Loans");

**WHEREAS**, pursuant to the terms set forth in the Conveyance Agreement, HUD and Purchaser agree that on and after the applicable Claim Date, Purchaser assumes and shall perform all obligations and liabilities relating to and arising from the Mortgage Loans;

**WHEREAS**, pursuant to the terms and subject to the conditions set forth in this Agreement, Purchaser has agreed to retain the Prior Servicer and the Prior Servicer has agreed to service and administer the Mortgage Loans for Purchaser during the Post-Claim Servicing Period; and

**WHEREAS**, at the end of the Post-Claim Servicing Period, servicing shall be transferred to the new servicer appointed by Purchaser (the "New Servicer").

**NOW THEREFORE**, in consideration of the foregoing and the covenants and agreements set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Purchaser and the Prior Servicer agree as follows:

**ARTICLE I**  
**DEFINITIONS**

**Section 1.01 Defined Terms.**

Whenever used in this Agreement, the following terms have the meanings specified below:

**"Agreement"** means this interim servicing agreement and all exhibits and schedules hereto, as amended from time to time.

**"Affiliate"** means, with respect to any specified Person, any other Person controlling, controlled by or under common control with such specified Person.

**"Asset"** means any Mortgage Loan and any REO Property.

**"Bankruptcy Loan"** means a Mortgage Loan with respect to which the Borrower (a) has made an assignment for the benefit of creditors or has petitioned or applied to any tribunal for the appointment of a custodian, receiver, trustee or similar Person for the Borrower or a substantial part of the Borrower's assets, (b) has commenced any proceeding under any bankruptcy, reorganization, readjustment of debt, receivership, dissolution, liquidation or similar law or statute of any jurisdiction, or (c) has pending against him any such petition, application or proceedings.

**"Borrower"** means the obligor on a Note.

**"Business Day"** means any day other than a Saturday, Sunday, or other day on which HUD or commercial banks in Washington, D.C. are authorized or required by law to close.

**"CERCLA"** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*, and the rules and regulations promulgated from time to time thereunder.

**"Claim"** means any claim, (including any counterclaim or defensive claim), demand, complaint, cause of action, suit or proceeding, or judgment.

**"Claim Date"** means, for any Mortgage Loan, the date on which HUD paid the Insurance Claim as set forth for such Mortgage Loan on Schedule I (and any supplements thereto) of the Conveyance Agreement.

**"Collateral File"** means the original hardcopy of the Note or, if unavailable, an original lost instrument affidavit or bailee letter, the original or a copy of the recorded Mortgage, the original or copies of all assignments of the Mortgage, and the original or a copy of the Title Policy.

**"Conveyance Agreement"** means the Conveyance, Assignment and Assumption Agreement by and between Purchaser and HUD executed in connection with SFLS 2012-3.

**“Effective Date”** means the date of this Agreement, as first set forth above.

**“FHA”** means the Federal Housing Administration, an administrative unit within the United States Department of Housing and Urban Development, and any successor thereto.

**“Ground Lease”** means, with respect to any Mortgaged Property, a leasehold interest therein instead of a fee simple interest therein.

**“HUD”** means the Secretary of the United States Department of Housing and Urban Development or the United States Department of Housing and Urban Development, as applicable.

**“Independent”** means, when used with respect to any specified Person, any such Person who (a) does not have any direct financial interest, or any material indirect financial interest, in such Person or any Affiliate thereof, and (b) is not connected with such Person or any Affiliate thereof as an officer, employee, promoter, underwriter, trustee, partner, member, director or Person performing similar functions; provided, however, that a Person shall not fail to be Independent of a specified Person or any Affiliate thereof merely because such Person is the beneficial owner of one percent (1%) or less of any class of securities issued by the specified Person or any Affiliate thereof, as the case may be.

**“Insurance Claim”** means, with respect to any Mortgage Loan, the claim filed by Prior Servicer for payment by HUD under the FHA mortgage insurance contract.

**“Mortgage”** means the mortgage, deed of trust or other instrument, including any amendments or modifications, creating a lien on or ownership interest in a Mortgaged Property securing a Note.

**“Mortgage File”** means, with respect to a Mortgage Loan, all documents and correspondence that are in the possession or control of or otherwise available to Prior Servicer and that relate to the origination or servicing of the Mortgage Loan through the date on which the Mortgage File is delivered to the New Servicer pursuant to this Agreement.

**“Mortgage Loan”** means each mortgage loan subject to the Conveyance Agreement, all of which will be listed on Schedule I (and any supplements thereto) to the Conveyance Agreement, as the same may be supplemented from time to time.

**“Mortgaged Property”** means the underlying property securing a Mortgage Loan consisting of a fee simple estate or Ground Lease in a parcel of land improved by a one-to-four family residential dwelling, together with any personal property, fixtures, leases and other property or rights pertaining thereto.

**“New Servicer”** has the meaning given in the Recitals to this Agreement.

**"Note"** means, with respect to any Mortgage Loan as of any date of determination, the note or other evidence of indebtedness and/or agreements evidencing the indebtedness of a Borrower under such Mortgage Loan, including any amendments or modifications, or any renewal or substitution notes, as of such date.

**"Party"** means the Purchaser or the Prior Servicer, and **"Parties"** means both the Purchaser and the Prior Servicer.

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

**"Post-Claim Servicing Period"** has the meaning given in Section 2.01.

**"Post-Closing Servicing Fee"** has the meaning given in Section 2.08.

**"Prior Servicer"** has the meaning given in the Recitals to this Agreement, and **"Participating Servicer"** has the same meaning.

**"Participating Servicer Agreement"** means the Participating Servicer Agreement by and between the Participating Servicers and HUD to participate in the SFLS 2012-3.

**"Participating Servicer Desk Guide"** means Exhibit B of the Participating Servicer Agreement.

**"Purchaser"** has the meaning given in the Recitals to this Agreement.

**"REO Property"** means any Mortgaged Property held as a result of the conversion of a Mortgage Loan to the related Mortgaged Property as a result of foreclosure, acceptance of a deed-in-lieu or any comparable proceedings.

**"RESPA"** means the Real Estate Settlement Procedures Act, as amended, and any successor thereto, and rules and regulations promulgated from time to time thereunder.

**"Servicing Transfer Date"** means, with respect to any Mortgage Loan, the date designated on Schedule I (and any supplements thereto) to the Conveyance Agreement, on which the servicing for such Mortgage Loan shall be transferred from the Prior Servicer to the New Servicer. In no event shall the servicing transfer date be later than December 31, 2012.

**"SFLS"** means single family loan sale.

**"Title Policy"** means, with respect to each Mortgage Loan, a lender's title insurance policy, issued in standard American Land Title Association form or, if the jurisdiction does not accept the standard American Land Title Association form, such other form as is generally acceptable to prudent lending institutions that originate or purchase mortgage loans similar to

the Mortgage Loan in that particular jurisdiction, by a title insurance company authorized to transact business in the jurisdiction in which the related Mortgaged Property is situated, together with a condominium endorsement, if applicable, in an amount at least equal to the original principal balance of such Mortgage Loan, insuring the Purchaser's interest under the related Mortgage Loan as the holder of a valid first priority mortgage lien of record on the real property described in the Mortgage, subject only to exceptions for (i) liens for real property taxes and assessments not yet due and payable, (ii) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of the Mortgage which are acceptable to mortgage lending institutions generally and specifically reflected in the appraisal made in connection with the origination of the Mortgage Loan, and (iii) other matters to which like properties are commonly subject which do not, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Mortgage, that was either effective on or prior to the Claim Date, and, as of the Claim Date, such policy will be valid and thereafter shall continue in full force and effect; and the holder is the sole named insured of such mortgage title insurance policy, and such mortgage title insurance policy is in full force and effect and will be in full force and effect and inure to the benefit of Purchaser (and any subsequent mortgagee) upon the sale, transfer and assignment of such Mortgage Loan to Purchaser.

**"Unpaid Principal Balance"** means, as of the relevant date, the outstanding principal amount due on the Mortgage Loan.

#### **Section 1.02 Rules of Construction.**

This Agreement shall be construed in accordance with the following rules of construction:

- (a) The section and article headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- (b) References in this Agreement to articles, sections and subsections (unless expressly referring to another instrument) are to articles, sections and subsections of this Agreement.
- (c) This Agreement shall be construed fairly as to all Parties and not in favor of or against any Party regardless of which Party prepared this Agreement.
- (d) Terms defined in this Agreement include the plural as well as the singular and pronouns and variations thereof used in this Agreement refer to the masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require.
- (e) Use of the term or phrase "including", "including, without limitation" or "including, but not limited to" shall mean "including, without limitation".
- (f) References in this Agreement to a "state" shall include the District of Columbia, the Virgin Islands and Puerto Rico.

## ARTICLE II

### POST-CLAIM SERVICING

#### **Section 2.01 Post-Claim Servicing Period.**

Following the Claim Date, Prior Servicer shall continue to service the Mortgage Loans until the Servicing Transfer Date ("Post-Claim Servicing Period") on behalf of Purchaser. For Mortgage Loans registered with MERS, Prior Servicer shall remain as servicer of record on MERS during the Post-Claim Servicing Period. The Servicing Transfer Date for any Mortgage Loan shall be the date on which the servicing for such Mortgage Loan shall be transferred from the Prior Servicer to the New Servicer, as designated on Schedule I (and any supplements thereto) to the Conveyance Agreement and identified by HUD to Prior Servicer in accordance with the terms of the Participating Servicer Agreement. The Servicing Transfer Date shall not be later than December 31, 2012.

#### **Section 2.02 Post-Claim Servicing Responsibilities.**

During the Post-Claim Servicing Period, Prior Servicer shall comply with the obligations contained in this Section and otherwise in this Article II.

- (a) **Monthly Collections.** If it currently does so, Prior Servicer shall continue to prepare and send invoices to Mortgagors for the monthly payments (and any other amounts), which are due with respect to the Mortgage Loans. If Prior Servicer does not currently invoice Mortgagors on a monthly basis, Prior Servicer shall continue its current collection practices with respect to the Mortgage Loans.
- (b) **Remittances.** Prior Servicer shall remit to New Servicer, on the Servicing Transfer Date or at such other time or times prior thereto as is directed by New Servicer, all amounts received during the Post-Claim Servicing Period with respect to Mortgage Loans the servicing to which is transferred to New Servicer. Payment shall be made by wire transfer or such other means as is agreed to by New Servicer in writing. If Prior Servicer has deposited payments received from any Mortgagor during the Post-Claim Servicing Period and issues a payment therefor to New Servicer pursuant to this Section, New Servicer shall bear the risk that any such payment so deposited by Prior Servicer may be returned due to insufficient funds or any other failure of collection.

Prior Servicer shall have a period of thirty (30) Business Days after the date Prior Servicer delivers to New Servicer payments made by or on behalf of any Mortgagor to provide a written notice to Purchaser with a copy to New Servicer that any such payments were returned due to insufficient funds or any other failure of collection and specifying the amount thereof, whereupon Purchaser shall cause New Servicer to pay promptly, but not later than ten (10) Business Days following receipt of such Notice, to Prior Servicer the amount of such payment by certified check (or by wire transfer if so directed by Prior Servicer) and identify for Prior Servicer, either on the check or by any other reasonable means, the Mortgage Loan. Prior to the remittances pursuant hereto,

Prior Servicer shall deposit all amounts collected with respect to the Mortgage Loans during the Post-Claim Servicing Period into a custodial account held in trust by Prior Servicer for the benefit of New Servicer.

- (c) **Advances.** Unless otherwise directed in writing by New Servicer, Prior Servicer shall pay any bill for real estate taxes, assessments or insurance premiums with respect to a Mortgaged Property which it receives during the Post-Claim Servicing Period and shall otherwise pay bills and make other advances to protect and preserve the Mortgage Loan or the Mortgaged Property, or prevent a lien from attaching thereto, including but not limited to advances for attorneys' fees, trustees' fees, recording, filing, publication fees, title report and title search costs, court costs, witness fees, other costs incurred with respect to foreclosure sale, trustees' sale or acquisition of a deed-in-lieu of foreclosure, inspections, engineering surveys, environmental assessments, repair, restoration and maintenance, water, sewer and other utility bills, ground rents, and condominium fees and homeownership association fees. Prior Servicer may net from amounts due to be remitted pursuant to Section 2.02(b) any amounts that it advances pursuant to this Section or otherwise in accordance with its obligations in this Article II and the Post-Claim Servicing Fee (if any) due to it pursuant to Section 2.08.

Prior Servicer shall invoice New Servicer, with a copy delivered by written notice to Purchaser, for any advances that it makes in accordance with the provisions of this Article II and the Post-Claim Servicing Fee (if any) that it does not net (in accordance with the preceding sentence). In addition, Prior Servicer may include in such advances (and on such invoice to New Servicer) retainer amounts advanced in connection with the Mortgage Loans to attorneys (whether before, on or after the Claim Date) against which attorneys' fees have not been charged as of the Servicing Transfer Date. Notwithstanding the foregoing, advances relating to Mortgage Loans that have been redelivered to Prior Servicer or with respect to which HUD has notified Prior Servicer that a redelivery will be required (which advances shall be for the account of Prior Servicer) shall not be invoiced to New Servicer. Purchaser shall cause New Servicer to reimburse Prior Servicer for the amount of any Post-Claim Servicing Fee and advances properly invoiced, within twenty (20) Business Days after the receipt by New Servicer of the invoice for the same. All such invoices shall be accompanied by supporting documentation as to the amount and reason for each advance. If Prior Servicer is directed by New Servicer, in writing, not to pay certain bills with respect to all or some portion of the Mortgaged Properties, Prior Servicer shall forward to New Servicer, no less frequently than monthly and otherwise in a manner so as to permit New Servicer, to pay such bills in a timely manner, any such bills which it may receive during the Post-Claim Servicing Period. By written notice hereunder, Prior Servicer shall provide Purchaser with a copy of all written directions that it receives from New Servicer.

- (d) **No Modifications, etc.** Prior Servicer shall not modify, restructure or settle any Mortgage Note or Mortgage, or enter into any other agreement with a Mortgagor with respect to a Mortgage Loan or Mortgaged Property, without the prior written consent of New Servicer. Prior Servicer shall not release any Mortgage Note or Mortgage without receipt of payment in full on the Mortgage Loan from (or on behalf of) the Mortgagor.

- (e) **Foreclosure Actions.** Unless otherwise directed in writing by New Servicer, if foreclosure was initiated before the Post-Claim Servicing Period, Prior Servicer shall continue to pursue the foreclosure using the same counsel but shall not complete a trustee's or other sale.
- (f) **Insurance and Other Matters.** Prior Servicer shall respond to all inquiries from Mortgagors, report any required information to Mortgagors, monitor the status of insurance policies insuring the Mortgaged Properties, force place insurance if any Mortgagor fails to maintain insurance with respect to a Mortgaged Property, and hold all collected and undisbursed escrow funds in escrow accounts properly established and maintained.
- (g) **Records.** Prior Servicer shall maintain records with respect to each Mortgage Loan, including the status of each Mortgage Loan, the amount and application of any collections received on account of each Mortgage Loan, the status of ground rents, real estate taxes and assessments, and other charges which may become a lien on the Mortgaged Property, and the amount and reason for advances made with respect to each Mortgage Loan. All such information will be made available, upon request, to Purchaser and New Servicer and, as it relates to Mortgage Loans the servicing to which is transferred to New Servicer, will be included in the information delivered to New Servicer in connection with such servicing transfer.
- (h) **Application of Funds.** Other than with respect to a Mortgage Loan for which a foreclosure action has been initiated or a motion to lift stay in a bankruptcy action is pending, as to which Prior Servicer will contact New Servicer for instructions, collections received by Prior Servicer shall be applied to the Mortgage Loans in accordance with the terms thereof unless New Servicer (in the case of the Mortgage Loans) directs in writing that Prior Servicer do otherwise. Prior Servicer shall notify Purchaser of any Mortgage Loan that is paid in full after the Claim Date.
- (i) **Further Direction.** Upon mutual agreement of both parties, the New Servicer may provide Prior Servicer with further direction from time to time in writing regarding the manner in which the Prior Servicer is to service the Mortgage Loans.

### **Section 2.03 Servicing Standards.**

Except as is otherwise expressly set forth in this Article II or directed in writing by the Purchaser upon mutual agreement (of content and timing) of both parties, Prior Servicer shall service, administer, collect and foreclose on the Mortgage Loans in accordance with the customary and usual procedures of institutions which service and collect similar mortgage loans or receivables portfolios secured by similar properties and, in any event, not less than the degree of care, skill, prudence and attention that Prior Servicer generally exercises with respect to comparable loans that it services for itself.

### **Section 2.04 Power and Authority.**

During the Post-Claim Servicing Period, Prior Servicer shall service, administer and collect the Mortgage Loans. Subject to the provisions of Section 2.02, Prior Servicer shall have full power and authority to do or cause to be done any and all things in connection with such servicing, administration and collection as may be necessary or desirable to optimize the recoverable value from the Mortgage Loans and preserve the Purchaser's rights with respect thereto. Without limiting the generality of the foregoing, Prior Servicer is authorized and empowered to (a) make all communications with Mortgagors under Mortgage Loans in the name of the Purchaser, (b) subject to the provisions of Section 2.07, hold (and not sell) any Mortgaged Property to which title is taken, and (c) subject to the provisions of Section 2.02(d), execute and deliver, on behalf of the Purchaser any and all instruments of satisfaction, cancellation, sale, transfer, release, discharge and all other comparable instruments.

To the extent necessary to preserve the rights of the Purchaser, Prior Servicer is hereby authorized to commence, in the name of the Purchaser, legal proceedings to enforce Mortgage Loans or to commence or participate in any other legal proceeding otherwise relating to or involving a Mortgage Loan or any Mortgaged Property, which shall be commenced in the name of Prior Servicer. If Prior Servicer commences or participates in any such legal proceedings, Prior Servicer is authorized and empowered to execute and deliver, in the name of the Purchaser, any notices, demands, claims, complaints, responses, affidavits or other documents or instruments in connection with any such proceeding. Upon request, Purchaser shall cause the New Servicer to furnish Prior Servicer with any powers of attorney or other documents which Prior Servicer may reasonably request in order to take such steps as Prior Servicer deems necessary, appropriate or expedient to carry out its servicing, administration and collection activities under this Agreement, provided, however, that if the Purchaser fails to provide such powers of attorney or other documents, Prior Servicer shall not be obligated to take the steps that it otherwise would have taken hereunder, but shall immediately provide a Notice to New Servicer and a copy of such Notice to the Purchaser regarding the same.

#### **Section 2.05 Legal Compliance.**

Prior Servicer shall perform all of its obligations under this Article II in material compliance with all applicable laws, rules and regulations, including laws, rules and regulations governing debt collection practices and procedures.

#### **Section 2.06 Fidelity Bond Insurance.**

Prior Servicer will maintain in effect during the term of the Post-Claim Servicing Period a fidelity bond and an errors and omissions insurance policy, affording coverage for all directors, officers, employees and other persons acting on Prior Servicer's behalf. Prior Servicer will promptly report to Purchaser by Notice with a copy to New Servicer all cases of embezzlement or fraud, or irregularities of operation involving amounts in excess of \$10,000 in the aggregate in any consecutive six-month period relating to the Mortgage Loans.

**Section 2.07 Mortgaged Property.**

Prior Servicer shall provide Notice to New Servicer and Purchaser immediately after discovery that a Mortgaged Property is, and shall not accept a deed in lieu of foreclosure or otherwise obtain legal or beneficial title to any property that does not constitute Mortgaged Property but instead constitutes commercial (and not one to four family residential) real property. If Prior Servicer forecloses upon, accepts a deed-in-lieu of foreclosure with respect to, or otherwise, by any comparable proceedings, acquires title to a Mortgaged Property with respect to any Mortgage Loan, title to such Mortgaged Property shall be placed in the name of such Person as is directed in writing by Purchaser. Prior Servicer shall cause to be managed and protected all Mortgaged Property (real and personal) which is hereafter acquired as a result of foreclosure or by deed in lieu of foreclosure, in preparation for its disposition and sale by the New Servicer. Prior Servicer shall not attempt to sell any Mortgaged Property, and may not rent the same unless otherwise directed in writing by New Servicer to do so and then only on such terms and conditions as are expressly approved, in writing, by New Servicer. Any out-of-pocket expenses incurred by Prior Servicer pursuant to this Section, including manager and broker fees that are customary and reasonable expenses of managing, protecting and disposing of Mortgaged Property shall be included in and payable pursuant to this Article II as advances.

**Section 2.08 Post-Claim Servicing Fee.**

In the event that the Post-Claim Servicing Period for a Mortgage Loan extends for a period of more than forty-five (45) calendar days, Prior Servicer shall be entitled to a monthly fee (the "Post-Claim Servicing Fee") for each month thereafter. The Post-Claim Servicing Fee, which will be calculated and paid each month in arrears, will be equal to: (i) for any non-performing Mortgage Loans: (a) the Unpaid Principal Balance of the Mortgage Loan as of the last day of the calendar month immediately preceding the month to which the Post-Claim Servicing Fee relates *multiplied by* 0.0065, with the result *divided by* (b) 12; (ii) for any performing Mortgage Loans: (a) the Unpaid Principal Balance of the Mortgage Loan as of the last day of the calendar month immediately preceding the month to which the Post-Claim Servicing Fee relates *multiplied by* 0.0025, with the result *divided by* (b) 12; and (iii) \$60 for each REO, if any, as of the last day of the calendar month immediately preceding the month to which the Post-Claim Servicing Fee relates.

The Post-Claim Servicing Fee shall be prorated for any partial month based upon the number of days of such partial month included in the Post-Claim Servicing Period. Prior Servicer shall not be entitled to any Post-Claim Servicing Fee (i) for servicing a Mortgage Loan during the first forty-five (45) calendar days of any Post-Claim Servicing Period or (ii) for servicing (regardless of the length of time of such post-claim servicing) any Mortgage Loan that is redelivered to Prior Service for any reason. Prior Servicer shall calculate and include the amount of any Post-Claim Servicing Fee to which it is entitled hereunder (with supporting documentation) in the invoices sent to New Servicer pursuant to Section 2.02(c). For purposes of this Agreement, (i) whether a Mortgage Loan is "non-performing" or "performing" or whether the Mortgage Loan has been converted to REO shall be determined

by the status of the Mortgage Loan (or the existence of REO) on the last day of the calendar month immediately preceding the month to which the Post-Claim Servicing Fee relates, and (ii) (A) the term "performing" means that, as of that date, the Mortgage Loan is and, for at least the immediately preceding five (5) consecutive months, the Mortgage Loan has been performing in accordance with the terms of the Mortgage Note, and (B) the term "non-performing" means that, as of that date, the Mortgage Loan is not "performing", as defined in clause (ii)(A).

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

##### **Section 3.01 Representations and Warranties of the Prior Servicer.**

The Prior Servicer represents and warrants to Purchaser as of the Effective Date and covenants as follows:

- (a) Organization; Good Standing; Licenses. The Prior Servicer (i) is a \_\_\_\_\_, duly organized, validly existing and in good standing under the laws of the \_\_\_\_\_, (ii) has qualified or will qualify to do business as a foreign corporation, partnership or other entity and will remain so qualified, and is and will remain in good standing, in each jurisdiction where the character of its properties or the Assets or the nature of its activities makes such qualification necessary and in which failure to so qualify would have a material adverse effect upon the Prior Servicer or its ability to perform its obligations hereunder, (iii) has and will have full power to own its property, to carry on its business as presently conducted, and to enter into and perform its obligations under this Agreement either directly or through a subservicer, and (iv) has and will have (or its subservicer has or will have) all licenses or other governmental approvals necessary to perform its obligations hereunder; provided, however, that, to the extent failure to have any such license or approval on the date hereof does not materially interfere with the performance by Prior Servicer of its obligations hereunder, failure to have any such license or approval shall not be a breach of the representation and warranty set forth in this clause (iv) if the Prior Servicer uses reasonable efforts to obtain such license or approval.
- (b) Authorization; No Violation. The execution and delivery by Prior Servicer of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor compliance with the provisions hereof, will conflict with or result in a breach of, or constitute a default under, (i) any of the provisions of any law, governmental rule, regulation, judgment, decree or order binding on Prior Servicer or its properties, (ii) the constituent documents of the Prior Servicer, or (iii) any of the provisions of any indenture, mortgage, contract or other instrument to which the Prior Servicer is a party or by which it is bound or result in the creation or imposition of any lien, charge or

encumbrance upon any of its property pursuant to the terms of any such indenture, mortgage, contract or other instrument.

- (c) **Governmental Approvals.** All actions, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights and licenses required to be taken, given or obtained, as the case may be, by or from any federal, state or other governmental authority or agency (other than any such actions, approvals, etc. under any state securities laws, real estate syndication or "Blue Sky" statutes, as to which the Prior Servicer makes no such representation or warranty), that are necessary in connection with the execution and delivery by the Prior Servicer of this Agreement and the consummation of the transactions contemplated hereby and the performance of its obligations hereunder, have been duly taken, given or obtained, as the case may be, are in full force and effect, are not subject to any pending proceedings or appeals (administrative, judicial or otherwise) and either the time within which any appeal there from may be taken or review thereof may be obtained has expired or no review thereof may be obtained or appeal there from taken.
- (d) **Binding Agreement.** This Agreement has been duly executed and delivered by the Prior Servicer and, assuming due authorization, execution and delivery by the other Parties hereto, constitutes a valid and binding obligation of the Prior Servicer enforceable against the Prior Servicer in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of the rights of creditors generally and the application of equitable principles in any proceeding, whether at law or in equity).
- (e) **No Litigation.** There is no action, suit, proceeding or investigation pending or, to the best of the Prior Servicer's knowledge, threatened against the Prior Servicer before any court, administrative agency, arbitrator or governmental body which (i) relate to any of the transactions contemplated by this Agreement, or (ii) either in any one instance or in the aggregate, if determined against the Prior Servicer, would reasonably be likely (A) to draw into question the validity of this Agreement or of any action taken or to be taken in connection with the obligations of the Prior Servicer contemplated herein, (B) to materially and adversely affect the Prior Servicer's business, assets, operations or condition (financial or otherwise), or (C) to materially and adversely affect the ability of the Prior Servicer to perform its obligations under this Agreement.
- (f) **No Violation of Orders, Decrees, etc.** The Prior Servicer is not in default with respect to any order or decree of any court or any order, rule, regulation or demand of any federal, state, municipal or governmental agency, which default might have consequences that would reasonably be likely to materially and adversely affect the Prior Servicer's performance under this Agreement or the transactions contemplated hereby.
- (g) **Third Party Consents.** No consents, approvals, waivers or notifications of stockholders, creditors, lessors or other nongovernmental persons are required to be obtained by Prior Servicer in connection with the execution and delivery of this Agreement and the consummation of all the transactions herein contemplated.

**Section 3.02 Representations and Warranties of Purchaser.**

The Purchaser represents and warrants to Prior Servicer as of the Effective Date and covenants as follows:

- (a) **Organization; Good Standing; Licenses.** The Purchaser (i) is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the \_\_\_\_\_, (ii) has qualified or will qualify to do business as a foreign corporation and will remain so qualified, and is and will remain in good standing, in each jurisdiction where the character of its properties or the Assets or the nature of its activities makes such qualification necessary and in which failure to so qualify would have a material adverse effect upon Purchaser or its ability to perform its obligations hereunder, (iii) has and will have full power to own its property, to carry on its business as presently conducted, and to enter into and perform its obligations under this Agreement, and (iv) has and will have all licenses or other governmental approvals necessary to perform its obligations hereunder; **provided, however,** that, to the extent failure to have any such license or approval on the date hereof does not materially interfere with the performance by Purchaser of its obligations hereunder, failure to have any such license or approval shall not be a breach of the representation and warranty set forth in this clause (iv) if Purchaser uses reasonable efforts to obtain such license or approval.
- (b) **Authorization; No Violation.** The execution and delivery by Purchaser of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action. Neither the execution and delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor compliance with the provisions hereof, will conflict with or result in a breach of, or constitute a default under, (i) any of the provisions of any law, governmental rule, regulation, judgment, decree or order binding on Purchaser or its properties, (ii) the constituent documents of Purchaser, or (iii) any of the provisions of any indenture, mortgage, contract or other instrument to which Purchaser is a party or by which it is bound or result in the creation or imposition of any lien, charge or encumbrance upon any of its property pursuant to the terms of any such indenture, mortgage, contract or other instrument.
- (c) **Governmental Approvals.** All actions, approvals, consents, waivers, exemptions, variances, franchises, orders, permits, authorizations, rights and licenses required to be taken, given or obtained, as the case may be, by or from any federal, state or other governmental authority or agency (other than any such actions, approvals, etc. under any state securities laws, real estate syndication or "Blue Sky" statutes, as to which Purchaser makes no such representation or warranty), that are necessary in connection with the execution and delivery by Purchaser of this Agreement and the consummation of the transactions contemplated hereby and the performance of its obligations hereunder, have been duly taken, given or obtained, as the case may be, are in full force and effect, are not subject to any pending proceedings or appeals (administrative, judicial or otherwise) and

either the time within which any appeal there from may be taken or review thereof may be obtained has expired or no review thereof may be obtained or appeal there from taken.

- (d) **Binding Agreement.** This Agreement has been duly executed and delivered by Purchaser, assuming due authorization, execution and delivery by the other Parties hereto, constitutes a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms (except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of the rights of creditors generally and the application of equitable principles in any proceeding, whether at law or in equity).
- (e) **No Litigation.** There is no action, suit, proceeding or investigation pending or, to the best of Purchaser's knowledge, threatened against Purchaser before any court, administrative agency, arbitrator or governmental body which (i) relate to any of the transactions contemplated by this Agreement, or (ii) either in any one instance or in the aggregate, if determined against Purchaser, would reasonably be likely (A) to draw into question the validity of this Agreement or of any action taken or to be taken in connection with the obligations of Purchaser contemplated herein, (B) to materially and adversely affect the Purchaser's business, assets, operations or condition (financial or otherwise), (C) to materially and adversely affect the ability of Purchaser to perform its obligations under this Agreement.
- (f) **No Violation of Orders, Decrees, etc.** Purchaser is not in default with respect to any order or decree of any court or any order, rule, regulation or demand of any federal, state, municipal or governmental agency, which default might have consequences that would reasonably be likely to materially and adversely affect Purchaser's performance under this Agreement or the transactions contemplated hereby.
- (g) **Third Party Consents.** No consents, approvals, waivers or notifications of stockholders, creditors, lessors or other nongovernmental persons are required to be obtained by Purchaser in connection with the execution and delivery of this Agreement and the consummation of all the transactions herein contemplated.

## ARTICLE IV

### **INDEMNIFICATION AND OTHER COVENANTS**

#### **Section 4.01 Prior Servicer's Indemnification and Other Covenants.**

Prior Servicer hereby indemnifies and holds harmless Purchaser and its employees, agents, contractors, representatives and attorneys ("Indemnified Parties") from and against any and all Claims alleged and Losses incurred as a result of (i) the breach or inaccuracy of any of Prior Servicer's representations or warranties in Section 3.01, and (ii) the breach by Prior Servicer of any agreement, covenant or obligation contained in this Agreement. Prior Servicer covenants and agrees further as follows:

- (a) No Releases or New Foreclosures. Except as is permitted hereunder during the Post-Claim Servicing Period, Prior Servicer shall not, and shall not cause any other Person to, release the Mortgage (in whole or in part) with respect to any Mortgage Loan. Except as directed in writing by New Servicer, Prior Servicer shall not initiate a foreclosure with respect to any Mortgage Loan during the Post-Claim Servicing Period.
- (b) Mortgage Files. For each Mortgage Loan, the Mortgage File shall be delivered to the New Servicer on the Servicing Transfer Date. For purposes of this Section, delivery shall be deemed to have occurred when a Mortgage File is confirmed as received by the recipient. Until such time as a Mortgage File is confirmed to have been received by the recipient, Prior Servicer shall bear the risk of loss with respect to the Mortgage File.
- (c) Preservation of Rights to Insurance. In connection with the transfer of the servicing to any Mortgage Loans, Prior Servicer shall notify all insurers of the transfer of such Mortgage Loans to New Servicer and shall otherwise cause to be performed any and all acts required to be performed to preserve the rights and remedies of New Servicer in any insurance policies applicable to the Mortgage Loans (other than blanket policies), including any assignments or endorsements of policies or interests therein, and establishments of co-insured, joint loss payee and mortgagee rights in favor of New Servicer.
- (d) Goodbye/Hello Letters. Within five (5) Business Days after the delivery by HUD of a notice to prepare and send "goodbye/hello" letters, Prior Servicer shall, at its expense, prepare and send to the Mortgagor with respect to each Mortgage Loan identified in such notice, a "goodbye/hello" letter advising such Mortgagor of the transfer of the servicing for such Mortgage Loan from Prior Servicer to New Servicer. Prior Servicer shall include in such letter all information required by law and prudent servicing practices to be provided to a Mortgagor by both Prior Servicer (as a servicing transferor) and New Servicer (as a servicing transferee) in connection with the servicing transfer and such other information as HUD may require. This goodbye/hello letter shall also include notice to the Mortgagor that FHA mortgage insurance premium may be reinstated in the event the Mortgage Loan is subject to repurchase pursuant to this Agreement. All "goodbye/hello" letters shall comply with and be provided to Mortgagors in compliance with applicable law, including RESPA, and each letter shall be substantially in the form provided to HUD by Prior Servicer. In the event a "goodbye/hello" letter is sent to a Mortgagor and the servicing for the related Mortgage Loan is not transferred to New Servicer, then Prior Servicer shall send (on behalf of itself and New Servicer) a second letter to such Mortgagor advising such Mortgagor that the servicing transfer will not take place. Furthermore, in the event a Mortgage Loan is subject to repurchase pursuant to this Agreement, the Participating Servicer shall send (on behalf of itself and New Servicer) a second letter to the Mortgagor advising the Mortgagor of such repurchase and the reinstatement of FHA mortgage insurance premium. Any such retraction letter shall be in compliance with applicable law, including RESPA, and substantially in the form provided to HUD by Prior Servicer.

- (e) Notice to Tax Authorities and Bankruptcy Trustees. In connection with the transfer of the servicing for any Mortgage Loans, Prior Servicer shall provide written notice to tax bill services or tax authorities (as applicable) of the assignment of the Mortgage Loans and shall provide notice, in accordance with applicable court procedures, to bankruptcy trustees with respect to the assignment of any Bankruptcy Loans. Copies of all such notices shall be provided to New Servicer.
- (f) Tax Reporting. For any period prior to (but not including) the Servicing Transfer Date, Prior Servicer shall prepare, report to the Internal Revenue Service and provide to Mortgagors, all in accordance with applicable law, rules and regulations, any and all tax information required to be provided with respect to the Mortgage Loans for that period. Prior Servicer shall not be obligated hereunder to prepare, provide to Mortgagors or report to the Internal Revenue Service such tax information for any period after (and including) the Servicing Transfer Date.
- (g) Post-Servicing Transfer Date Items. Any checks or other funds with respect to a Mortgage Loan which are received by Prior Servicer after the Servicing Transfer Date shall be endorsed, without recourse, and forwarded by Prior Servicer on a weekly basis, by overnight delivery service, to New Servicer. All Mortgagor and insurer correspondence, tax bills and other correspondence or documentation relating to the Mortgage Loans that is received by Prior Servicer after the Servicing Transfer Date shall be delivered promptly to New Servicer.
- (h) Servicing Transfer Information. Within five (5) Business Days after the Servicing Transfer Date for any Mortgage Loans, Prior Servicer shall deliver to New Servicer with respect to such Mortgage Loans (i) a trial balance as of the Claim Date and as of the Servicing Transfer Date (including with the Servicing Transfer Date trial balance a list or some other appropriate identification of Bankruptcy Loans, and loans with respect to which the foreclosure process has been initiated or litigation exists), (ii) master record data as of the Servicing Transfer Date in an electronic format, (iii) one or more reports itemizing dates and amounts of payments received and applied, including each principal and interest payment, tax payment, special assessment, hazard insurance premium payment, mortgage insurance premium payment, ground rent payment and other payments (including each advance), (iv) histories for the 36 month period prior to the Servicing Transfer Date, (v) escrow data, including escrow balances, coverage, accrual and payees, (vi) default data, including any modification and repayment plan terms and the names and addresses of any foreclosure or bankruptcy attorneys or trustee and, (vii) to the extent not included in the foregoing, the records and information required to be provided to New Servicer in accordance with Section 2.02(g).

Without limiting the foregoing, Prior Servicer shall capture the Unpaid Principal Balance (and any escrow and other balances) of each Mortgage Loan as of the Claim Date and thereafter record all activity (each individual transaction) with respect to the Mortgage Loan during the Post-Claim Servicing Period and provide such information electronically to New Servicer in a format that allows New Servicer to readily reconcile the balance of each Mortgage Loan as of the Servicing Transfer Date. Furthermore, for any Mortgage

Loan registered in MERS, Prior Servicer shall, within five (5) calendar days after the Servicing Transfer Date for any Mortgage Loan, register a transfer of servicing rights on MERS to the New Servicer, effective as of the Servicing Transfer Date, in accordance with the MERS Procedures Manual and the MERS Terms and Conditions and the Participating Servicer Desk Guide unless otherwise directed by HUD.

**Section 4.02 Limitations on Damages.**

- (a) **Actual Losses Only.** Regardless of whether a Claim is made by one Party against the other Party or by a third party against a Party, and regardless of whether any such Claim is asserted pursuant to an indemnification provision or otherwise (whether based on contract, tort, strict liability or any other legal theory, including fraud), a Party may recover from the other Party only the actual losses incurred by the Party claiming recovery, including such Party's costs and expenses (including attorneys' fees and litigation and similar costs) to pursue such recovery.
- (b) **No Consequential Damages.** Neither Party shall indemnify or otherwise be liable to the other Party, under any theory of contract, tort, strict liability or other legal or equitable theory, including fraud, for any consequential, special, indirect or punitive damages, including lost profits or operating losses or lost investment or business opportunity (regardless of whether any such damages are characterized as direct or indirect), exemplary damages, treble damages or nominal damages, each of which is hereby excluded by agreement of the Parties, regardless of whether or not the other Party has been advised of the possibility of any such damages, unless, in each case, such losses are incurred by the Party asserting the Claim as a direct result of a Claim asserted against such Party by a third party (other than an Affiliate, director, officer, partner, employee, agent or contractor of such Party).
- (c) **Performance Condition.** Neither Party shall indemnify or otherwise be liable to the other Party for any Losses with respect to which the Party asserting the Claim has failed, in any material respect, to perform its obligations under this Agreement.
- (d) **Recoveries.** Neither Party shall make any Claim or seek indemnification or otherwise seek recovery from the other Party for any loss that is reimbursed by or recovered from any other Person, including any insurer and including any loss that is recoverable through the use by such Party of a direct contractual right of or tax benefit available to it.
- (e) **Mitigation.** Each Party shall be obligated to use commercially reasonable efforts to mitigate all losses that could be incurred by it and for which it seeks or may seek recovery from the other Party upon becoming aware of any event that could give rise to losses including seeking to recover such losses from a third party against whom such Party has a right of action, provided, however, that neither Party shall be required to litigate or pursue any other formal action (such as arbitration) against a third party in order to mitigate a loss unless both Parties agree to do so.

## ARTICLE V

### EVENTS OF DEFAULT

#### **Section 5.01 Events of Default.**

- (a) **Prior Servicer Events of Default.** Any of the following acts or occurrences shall constitute an Event of Default by Prior Servicer under this Agreement:
- (i) Any failure by Prior Servicer to remit to Purchaser any amount required to be so remitted under the terms of this Agreement that continues unremedied for a period of five (5) Business Days after the date upon which such amount was due to be so remitted; or
  - (ii) Failure on the part of Prior Servicer duly to observe or perform in any material respect any other covenant or agreement of Prior Servicer in this Agreement that continues unremedied for a period of thirty (30) Business Days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to Prior Servicer by Purchaser; or
  - (iii) There occurs with respect to Prior Servicer, any insolvency event
  - (iv) Any representation, warranty or statement of Prior Servicer made in this Agreement or any certificate, report or other writing delivered pursuant hereto shall prove to be incorrect in any material adverse respect as of the time made and, within thirty (30) Business Days after written notice thereof shall have been given to Prior Servicer by Purchaser, the circumstance or condition in respect of which such representation, warranty or statement was incorrect shall not have been eliminated or otherwise cured; or
  - (vi) The Prior Servicer assigns this Agreement without the prior written consent of Purchaser.
- (b) **Remedies for Prior Servicer Default.** If any Event of Default shall have occurred and be continuing, Purchaser, by notice given to Prior Servicer, may terminate all of the rights and powers of Prior Servicer under this Agreement. On and after the receipt of any such notice, all rights, powers, duties and responsibilities of Prior Servicer under this Agreement shall vest in and be assumed by Purchaser or such Person as Purchaser shall designate. The Prior Servicer agrees to cooperate with the Purchaser to effect such termination, and shall provide a successor servicer with such documents and monies in its possession and held in its capacity as servicer hereunder. In lieu of or in addition to terminating all of the rights and powers of the Prior Servicer pursuant to the foregoing, upon the occurrence of an Event of Default of the type described in Section 5.01(a)(i) or (ii) above, may institute a suit in equity, an action at law or other judicial or administrative proceedings for the collection of all amounts then due from the Prior Servicer under this Agreement or for the specific performance of any provision of this

Agreement. Purchaser shall be authorized to collect from Prior Servicer, and Prior Servicer hereby agrees to pay, to the extent permitted by applicable law, all reasonable expenses, disbursements and advances incurred or made by Purchaser in connection with any such proceeding (including the reasonable compensation and the expenses and disbursements of Purchaser's agents and counsel), except any such expenses, disbursement or advance as may be attributable to the Purchaser's negligence or bad faith.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

#### **Section 6.01 Amendment.**

This Agreement may not be amended except by an instrument in writing signed on behalf of each Party.

#### **Section 6.02 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument.

#### **Section 6.03 Entire Agreement.**

This Agreement (including all exhibits and schedules hereto) contains the entire agreement among the Parties, and supersedes all prior oral and written negotiations, agreements, arrangements, representations, warranties and understandings, relating to the subject matter hereof.

#### **Section 6.04 Rights Cumulative; Waiver.**

Except as otherwise expressly provided herein, the rights and remedies of each of the Parties under this Agreement are cumulative, may be exercised as often as any Party considers appropriate and are in addition to each such Party's rights under law. The Parties may not waive or vary any right hereunder except by an express written waiver or variation. Any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right.

#### **Section 6.05 Notices.**

All notices and other communications under this Agreement shall be in writing and delivered by hand delivery, by overnight courier, by United States Express Mail, or by registered or certified mail (return receipt requested, postage prepaid), and shall be deemed to have been

duly given when received in all cases addressed to the Parties at the following addresses (or at such other addresses as shall be specified by like notice):

If to the Purchaser:

[To Be Determined]

Attention: \_\_\_\_\_

If to the New Servicer:

[To Be Determined]

Attention: \_\_\_\_\_

If to the Prior Servicer:

[To Be Determined]

Attention: \_\_\_\_\_

**Section 6.06 Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without regard to any conflict of laws rule or principle that might refer the governance or the construction of this Agreement to the law of any other jurisdiction).

**Section 6.07 Severability.**

Should any provision of this Agreement or the application thereof for any reason be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be construed and enforced as if it had been more narrowly drawn so as not to be invalid, illegal or unenforceable, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

**Section 6.08 Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and permitted assigns. Notwithstanding anything else to the contrary contained in this Agreement, neither Party may assign or otherwise transfer this Agreement (in whole or in part) or delegate its rights or duties hereunder except with the

prior written consent of the other Party, and any attempted assignment, transfer or delegation in violation of this provision shall be void *ab initio*.

**Section 6.09 Waiver of Jury Trial.**

**EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, ARISING OUT OF OR RELATING TO OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED THEREBY.**

**Section 6.10 Third Party Beneficiaries.**

This Agreement is intended for the sole benefit of the Parties and their respective successors and permitted assigns, and there shall be no third party beneficiaries.

**Section 6.11 Further Assurances.**

Each of the Parties shall act reasonably and in good faith in complying with its obligations under this Agreement.

**Section 6.12 Inspection and Audit Rights.**

The Prior Servicer agrees that, on reasonable prior notice, it will permit any representative of the Purchaser, during the Prior Servicer's normal business hours, to examine all the books of account, records, reports and other papers of the Prior Servicer directly relating to the Assets or the servicing thereof, to cause such books to be audited by Independent accountants selected by Purchaser and to discuss its affairs, finances and accounts directly relating to the Assets with its officers, employees and Independent accountants (and by this provision the Prior Servicer hereby authorizes such Independent accountants to discuss with such representatives such affairs, finances and accounts), all at such reasonable times and as often as may be reasonably requested. Any expense incident to the exercise by Purchaser of any right under this Section shall be borne by Purchaser, provided that if an audit is made during the continuance of an Event of Default, the expense incident to such audit shall in all cases be borne by the Prior Servicer.

**Section 6.13 Submission to Jurisdiction.**

The Purchaser and the Prior Servicer each hereby irrevocably and unconditionally:

- (a) (i) agrees that any suit, action or proceeding against it by the other arising out of or relating to or in connection with this Agreement may be instituted, and that any suit, action or proceeding by it against the other arising out of or relating to or in connection with this Agreement shall be instituted only, in the Supreme Court of the State of New York, County of New York, or the U.S. District Court for the Southern District of New York (and appellate courts from any of the foregoing), as the Person instituting such suit, action or proceeding may elect in its or his sole discretion, (ii) consents and submits, for

itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it, and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law;

- (b) agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 6.13(a) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 6.05, such service to become effective 30 calendar days after such mailing, provided that nothing contained in this Section 6.13(b) shall affect the right of any Party to serve process in any other manner permitted by law; and
- (c) (i) waives any objection which it or he may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any court specified in Section 6.13(a), (ii) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum, and (iii) agrees not to plead or claim either of the foregoing.

**Section 6.14 No Partnership.**

Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture between or among all or any of the Parties and the services of the Prior Servicer shall be rendered as an independent contractor.

**Section 6.15 Facsimile Signature.**

This Agreement (and any amendments thereto), to the extent signed and delivered by means of a facsimile machine, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of a Party to this Agreement, any other Party so executing and delivering this Agreement (or any amendment thereto) by means of a facsimile machine shall reexecute original forms thereof and deliver them to the requesting Party. No Party shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine as a defense to the formation or enforceability of a contract and each such Party forever waives any such defense.

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be duly executed by its duly authorized officer or agent as of the day and year first above written.

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

\_\_\_\_\_  
**as the Purchaser**

By: Robert Gather  
Name: ROBERT GATHER  
Title: SENIOR VICE PRESIDENT

BANK OF AMERICA, NA  
**as the Prior Servicer**

### **SFLS 2012-3 Interim Servicing Agreement Rider**

This Interim Servicing Agreement Rider is made this       day of       , 2012, and is incorporated into and shall be deemed to amend and supersede the terms of the SFLS 2012-3 Interim Servicing Agreement of the same date made by the Prior Servicer and the New Servicer to the extent that such terms are inconsistent with this Rider.

#### **I. Definitions.**

**Contested Litigation:** Any lawsuit or other dispute resolution mechanism (including but not limited to arbitration or mediation) involving a Mortgage Loan and in which a standalone lawsuit or a responsive claim (including but not limited to a counterclaim or third party claim filed in a judicial foreclosure action) is brought against any Prior Servicer Block person or entity.

Any judicial foreclosure lawsuit, bankruptcy or other dispute resolution mechanism (including but not limited to arbitration or mediation) involving a Mortgage Loan and in which neither the borrower (or debtor) of such Mortgage Loan nor any third party files a claim brought against any Prior Servicer Block person or entity is not Contested Litigation. In addition, no filing by a Borrower, debtor or third party of an appearance or answer or the raising of affirmative defenses without an accompanying claim related to a Mortgage Loan, will constitute Contested litigation.

**Prior Servicer Block:** The Prior Servicer and any of its past or present officers, directors, employees, affiliates, parents, subsidiaries, agents, successors, assigns or representatives.

#### **II. Management and Defense of Litigation.**

If, at any point following the Servicing Transfer Date, any Mortgage Loan becomes subject to a Contested Litigation, the New Servicer shall notify Prior Servicer promptly and may not, absent confirmation from Prior Servicer that its position in such Contested Litigation will be managed by the Prior Servicer, allow any default to occur pending a response. Management of Contested Litigation will be coordinated according to terms mutually acceptable to the Parties.

**IN WITNESS WHEREOF**, each of the Parties has caused this Rider to the 2012-3 Interim Servicing Agreement to be duly executed by its duly authorized officer or agent as of the day and year first above written.

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

\_\_\_\_\_  
**as the Purchaser**

By: Robert Gaither CMB  
Name: ROBERT GAITHER  
Title: SENIOR VICE PRESIDENT

BANK OF AMERICA, N.A.

**as the Prior Servicer**