



BEST PRACTICES LANGUAGE

Article III

I. Delivery of Documents in the Mortgage File by the Trustee

The following is recommended language to be added to the section addressing the delivery of the Mortgage Loan Files from the Trustee to the Master Servicer, as an addition to the requirement that the Trustee deliver powers of attorney:

The Trustee shall promptly deliver to the Master Servicer upon receipt copies of (i) each UCC-2 or UCC-3 evidencing transfer of the related security interest to the Trustee, with evidence of recording or filing (or, such information as Master Servicer and Trustee otherwise agree is necessary to enable Master Servicer to file UCC Continuation Statements in accordance with the Servicing Standard), (ii) a copy of the Mortgage and any intervening assignments thereof showing a complete chain of assignment from the originator of the Mortgage Loan to the most recent assignee of record thereof prior to the Trustee, each with evidence of recording and (iii) an assignment of the Mortgage executed by the most recent assignee of record thereof prior to the Trustee, in favor of the Trustee, with evidence of recording. In addition, the Trustee shall deliver to the Master Servicer or Special Servicer any other documents in the Mortgage File promptly upon written request from the Master Servicer or Special Servicer. The Master Servicer shall not be liable for any loss resulting from any lapse of any UCC for which no UCC-2 or UCC-3 is delivered to the Master Servicer pursuant to this paragraph and the cost of any UCC search undertaken by the Master Servicer as a result of the failure to deliver any UCC-2 or UCC-3 shall constitute a Servicing Advance.

II. Original Letter of Credit

Frequently borrowers are able to deliver letters of credit in favor of the lender in lieu of various reserves or escrow requirements, as additional credit support or in lieu of certain insurance requirements. Frequently, the original letters of credit have to be accessed quickly if a draw is needed. The Master Servicer is typically the party that must make the draw. Every Master Servicer, however, is not in a position to hold original letters of credit. Accordingly, the following alternative language is recommended to assure quick access to original documents.

- (a) (Trustee Held -- insert to section dealing with conveyance of mortgage loans to the Trust:

The applicable Mortgage Loan Seller shall be deemed to have satisfied the delivery requirements of the related Mortgage Loan Purchase

Agreement and this Section _____ by delivering the original of such document on or prior to the Closing Date together with an assignment of such Letter of Credit to the Trustee.

Notwithstanding anything to the contrary herein, within two (2) Business Days of receipt by the Trustee of a written request from the Master Servicer or Special Servicer, the Trustee shall deliver to the Master Servicer or the Special Servicer the original of any letter of credit included in the Mortgage File in order to permit the Master Servicer or Special Servicer to draw in the name of the Trustee on such letter of credit. The Depositor pursuant to Section _____ of the Mortgage Loan Purchase Agreement shall pay any costs of any required assignment or re-issuance of such letter of credit in order for the Master Servicer, Special Servicer or Trustee to draw on such letter of credit.

- (b) (Master Servicer Held -- insert to the section dealing with conveyance of mortgage loans to the Trust:

Notwithstanding anything herein to the contrary, with respect to any letter of credit included in the Mortgage File, the Master Servicer shall be permitted to hold the original of such document in trust on behalf of the Trustee in order to draw in the name of the Trustee on such letter of credit. The applicable Mortgage Loan Seller shall be deemed to have satisfied the delivery requirements of the related Mortgage Loan Purchase Agreement and this Section _____ by delivering the original of such document on or prior to the Closing Date together with an assignment of such Letter of Credit to the Trustee, who will certify receipt of such document and forward the original to the Servicer (or as otherwise in accordance with the PSA), and the Trustee shall appoint the Servicer as custodian with respect to such letter of credit. The Trustee shall retain a copy of each letter of credit forwarded to the Master Servicer. The applicable Mortgage Loan Seller pursuant to Section _____ of the Mortgage Loan Purchase Agreement shall pay any costs of any required assignment or re-issuance of such letter of credit in order for the Master Servicer to draw on such letter of credit.

The letter of credit language should provide for the Master Servicer and the Trustee to each receive either the original or a copy of the letter of credit for their records.

III. Incorporation of “Best Practices” Standard to Document Delivery Requirements

The following definition of “Best Practices” is recommended language to be added to the “Defined Terms” section of the Pooling and Servicing Agreement (the “PSA”):

“Best Practices” shall mean those certain standards and practices set forth in the Final Report and Recommendations of the Joint CMSA/MBA CMBS Loan Document Integrity Task Force, dated as of June 2001 and available on MBA and CMSA Website’s, as amended, modified or in effect as of the date hereof.

Below is recommended language to be added to the section of the PSA addressing the conveyance of Mortgage Loans to the Trust, in order to obligate the Mortgage Loan Seller or Depositor to make (or cause to be made) delivery of the documents contained in the Mortgage Loan File to the Trustee in accordance with Best Practices. The Depositor should also deliver (or cause to the Mortgage Loan Seller to deliver) to the Master Servicer, a copy of each Mortgage Loan File:

[Replaces initial sentence of the section addressing the conveyance of Mortgage Loans to the Trust] “The Depositor hereby represents and warrants that it has contractually obligated the Mortgage Loan Seller (at the Mortgage Loan Seller’s expense) pursuant to the related Mortgage Loan Purchase Agreement, to deliver to and deposit with, or cause to be delivered to and deposited with, the Trustee or a Custodian appointed thereby, with a copy of _____ to the Master Servicer, in each case on or before the Closing Date, the Mortgage File for each Original Mortgage Loan acquired by the Depositor from the Mortgage Loan Seller all in accordance with Best Practices.”

Alternatively, where the applicable PSA requires the Depositor (and not the Mortgage Loan Seller) to deliver the Mortgage File to the Trustee, the PSA should incorporate language to the effect that the Depositor is obligated to deliver to the Trustee the Mortgage Loan File in accordance with Best Practices and to deliver a copy of the Mortgage Loan File to the Master Servicer.

IV. Delivery of Loan Closing Checklist

Often, because certain important transaction-specific documents executed in connection with the closing of a particular loan do not fit neatly into the more generalized categories of documentation comprising a “Mortgage File,” the Trustee or the Master Servicer is unable to determine if all of the documents with respect to a particular loan have been delivered.

Accordingly, the following recommended language (which incorporates the Best Practices “Closing Checklist” as makes delivery of such Closing Checklist a condition precedent to the Trustee’s acceptance of the deposit of a loan into the Trust) should be added to the PSA:

[Add to Defined Terms section] “Loan Closing Checklist” means, with respect to each Mortgage Loan, a complete “Loan Closing Checklist” substantially in the form included in the Best Practices, which sets forth (among other things) a complete list of the documentation executed in connection with such Mortgage Loan.

[Add to the section addressing the conveyance of Mortgage Loans to the Trust] “On or prior to the Closing Date and as a condition precedent to the Trustee’s acceptance of the Mortgage Loan pursuant to Section _____ hereof, the Depositor shall deliver or cause the Mortgage Loan Seller to deliver to the Trustee and the Master Servicer the Loan Closing Checklist for each Mortgage Loan.

V. Standard of Care

Pooling and Servicing Agreements (“PSAs”) generally require the Master Servicer or Special Servicer (as applicable) to use some specified level or degree of “effort” in performing their respective functions, for example, collecting the payments called for under the terms of the mortgage loans or resolving defaulted loans. Often, different terms are used within the same PSA to describe the standard of care and effort expected; in some places “best efforts” are to be used; in others, “commercially reasonable efforts” are expected. The use of these different terms is confusing and may lead to the unintended conclusion that servicers are expected to use different standards of care for different servicing functions rather than using the same standard of care for all servicing obligations.

The Task Force believes it is desirable to promote a uniform standard of “care” to be used by Master Servicers and Special Servicers in carrying out their duties and that this standard should in all cases be the Servicing Standard. By way of example, it is recommended that the initial portion of the section addressing the collection of loan payments be revised to read as follows:

“The Master Servicer (with respect to Performing Loans) and the applicable Special Servicer (with respect to Specially Serviced Loans) shall undertake such efforts as are consistent with the Servicing Standard to collect all payments called for under the terms and provisions of the loan documents.”

It is advised that conforming changes be made throughout the PSA.

VI. Powers of Servicer

PSAs generally intend to broadly empower the Master Servicer to do anything that is required to be done to service a Mortgage Loan, except that certain actions (which vary by agreement) may require the consent of the Special Servicer, Directing Certificateholder or a Rating Agency. The broad empowerment generally is described in the first section describing the Master Servicer’s powers, but the limitations on the power appear later in the document. As a drafting matter, it is important that the PSAs provide for the following:

- The powers should be broadly drafted and specifically include consents to easements, alterations to collateral, demolition of collateral, partial releases and any other action required to service the Mortgage Loan.
- The empowerment language should specifically cross-reference each section, which describes a limitation so a clear roadmap exists with respect to limitations.
- Limitations should be consolidated to the extent possible in one or two sections.

The following language illustrates the above concepts:

Subject only to the Servicing Standard, the Servicer and the Special Servicer each shall have full power and authority, acting alone or through Sub-Servicers, to do or cause to be done any and all things in connection with such servicing and administration for which it is responsible which it may deem necessary or desirable. Without limiting the generality of

the foregoing, each of the Servicer and the Special Servicer, in its own name, is hereby authorized and empowered by the Trustee and obligated to execute and deliver, on behalf of the Certificateholders and the Trustee or any of them, with respect to each Mortgage Loan it is obligated to service under this Agreement: (i) any and all financing statements, continuation statements, financing statements in lieu of continuation statements and other documents or instruments necessary to maintain the lien created by the related Mortgage or other security document in the related Mortgage File on the related Mortgaged Property and related collateral; (ii) subject to Section ____, any and all modifications, waivers, amendments or consents to or with respect to any documents contained in the related Mortgage File including consents to the alteration of collateral, demolition of collateral, granting of easements and subordination, nondisturbance and attornment agreements; and (iii) any and all instruments of satisfaction or cancellation, or of partial or full release or discharge, and all other comparable instruments. Subject to Section ____, the Trustee shall, upon the receipt of a written request of a Servicing or Special Servicing Officer, furnish to such party a power of attorney in the form of Exhibit __ hereto and any other documents prepared by the Servicer or Special Servicer that are necessary or appropriate to enable it to carry out its servicing and administrative duties hereunder. The Trustee shall not be held responsible and shall be indemnified by the Servicer or the Special Servicer, as applicable, for any misuse of such power of attorney or other such document.

VII. Establishment and Maintenance of Escrow and Reserve Accounts (Collection of Taxes, Assessments and Similar Items)

(a) **[MANAGEMENT OF THE ESCROW ACCOUNTS]** The Servicer shall segregate and hold all funds collected and received pursuant to any Mortgage Loan constituting Escrow Payments separate and apart from any of its own funds and general assets and shall establish and maintain one or more segregated custodial accounts (each, an “Escrow Account”) into which all Escrow Payments shall be deposited. The Servicer shall also deposit into each Escrow Account any Insurance Proceeds or Liquidation Proceeds which are required to be applied to the restoration or repair of any Mortgaged Property pursuant to the related Mortgage Loan. Escrow Accounts shall be Eligible Accounts (except to the extent the related Mortgage Loan requires it to be held in an account that is not an Eligible Account) and shall be entitled “ [Servicer] _____, in trust for _____, as Trustee for _____ Mortgage Pass-Through Certificates, Series _____, and Escrow Account”. Withdrawals from an Escrow Account may be made by the Servicer only:

- (i) to effect timely payments of items for which Escrow Payments have been deposited by the related Borrower;
- (ii) to transfer funds to the Collection Account to reimburse the Servicer, the Special Servicer or the Trustee, as applicable, for any Advance made with respect to the related Mortgage Loan;

- (iii) for application to the restoration or repair of the related Mortgaged Property in accordance with the related Mortgage Loan and the Servicing Standard;
- (iv) to withdraw the funds in the Escrow Account related to the Mortgage Loan in the event the Mortgaged Loan is repurchased or otherwise sold by the Trust;
- (v) to clear and terminate such Escrow Account upon the termination of this Agreement;
- (vi) to pay from time to time to the related Borrower any amounts in excess of the amount the Borrower is required to keep in such Escrow Account and any interest or investment income earned on funds deposited in the Escrow Account if such income is required to be paid to the related Borrower by the terms of the Mortgage Loan, or otherwise to the Servicer; and
- (vii) to remove any funds deposited in an Escrow Account that were not required to be deposited therein.

(b) **[MANAGEMENT OF THE RESERVE ACCOUNTS]** The Servicer shall segregate and hold all funds collected and received pursuant to any Mortgage Loan constituting Reserve Payments separate and apart from any of its own funds and general assets and shall establish and maintain one or more segregated custodial accounts (each, a “Reserve Account”) into which all Reserve Payments shall be deposited. Reserve Accounts shall be Eligible Accounts (except to the extent the related Mortgage Loan allows it to be held in an account that is not an Eligible Account) and shall be entitled “_____ [Servicer] _____, in trust for _____, as Trustee for _____ Mortgage Pass-Through Certificates, Series _____, Reserve Account”. Withdrawals from a Reserve Account may be made by the Servicer only:

- (i) to effect timely payments of items constituting Reserve Payments pursuant to the terms of the related Mortgage Loan;
- (ii) to transfer funds to the Collection Account to reimburse the Servicer, the Special Servicer, the Trustee or the Fiscal Agent, as applicable, for any Advance made with respect to the related Mortgage Loan;
- (iii) to clear and terminate such Reserve Account upon the termination of this Agreement;
- (iv) withdraw the funds in the Reserve Account related to the Mortgage Loan in the event the Mortgage Loan is repurchased or otherwise sold by the Trust;
- (v) to pay from time to time to the related Borrower any interest or investment income earned on funds deposited in the Reserve Account if such income is required to be paid to the related Borrower by the terms of the Mortgage Loan, or otherwise to the Servicer; and
- (vi) to remove any funds deposited in an Reserve Account that were not required to be deposited therein.

(c) The Servicer shall notify the Trustee in writing of the location of these Escrow and Reserve Accounts and shall thereafter give the Trustee written notice of any change of the location of these Accounts promptly following such change.

VIII. Property Insurance for Mortgage Loans and REO Mortgage Loans

(a) [INSURANCE POLICIES THAT THE MASTER SERVICER/SPECIAL SERVICER MONITORS/PLACES]

Each of the Master Servicer (in the case of Mortgage Loans other than Specially Serviced Mortgage Loans) and the Special Servicer (in the case of Specially Serviced Mortgage Loans) shall use reasonable efforts to cause each Borrower to maintain in respect of the related Mortgaged Property all insurance coverage as is required under the related Mortgage (to the extent such insurance is available at commercially reasonable terms and to the extent the Trustee has an insurable interest as determined by the Master Servicer or Special Servicer, as applicable which shall be entitled to rely on an opinion of counsel or insurance consultants in making such determination); provided that if any Mortgage permits the holder thereof to dictate to the Borrower the insurance coverage to be maintained on such Mortgaged Property, the Master Servicer or the Special Servicer, as appropriate, shall impose such insurance requirements as are consistent with the Servicing Standard. If a Borrower fails to maintain such insurance, the Master Servicer (at the direction of the Special Servicer in the case of a Specially Serviced Loan) shall (to the extent available at commercially reasonable terms as determined by the Master Servicer, which shall be entitled to rely on an opinion of counsel or insurance consultants in making such determination) obtain such insurance (which may be through a master or single interest policy) and the cost (including any deductible relating to such insurance and any out of pocket cost incurred in connection with obtaining the advise of counsel or insurance consultant) of such insurance (or in the case of a master or single interest policy, the incremental cost (including any deductible relating to such insurance and any out of pocket cost incurred in connection with obtaining the advise of counsel or insurance consultant) of such insurance relating to the specific Mortgaged Property), shall be a Servicing Advance and shall be recoverable by the Master Servicer pursuant to Section _____. If at any time a Mortgaged Property is located in an area identified in the Flood Hazard Boundary Map or Flood Insurance Rate Map issued by the Federal Emergency Management Agency as having special flood hazards or it becomes located in such area by virtue of remapping conducted by such agency (and flood insurance has been made available), the Master Servicer (or in the case of a Specially Serviced Loan, the Special Servicer) shall, if and to the extent that the Mortgage Loan requires the Borrower or permits the lender to require the Borrower to do so, use reasonable efforts to cause the related Borrower to maintain a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration in the maximum amount of insurance coverage available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as amended, unless otherwise specified by the related Mortgage Loan. If (i) the Borrower is required by the terms of the Mortgage Loan to maintain such insurance (or becomes obligated by virtue of the related Mortgaged Property becoming located in such area by virtue of such remapping) or (ii) the terms of the Mortgage Loan permit the Lender to require the Borrower to obtain such insurance, the Master Servicer (or in the case of a Specially Serviced Loan, the Special Servicer), shall promptly notify the Borrower of its obligation to obtain such insurance. If the Borrower fails to obtain such flood insurance within 120 days of such notification, the Master Servicer (or in the case of a Specially Serviced Loan, the Special Servicer) shall obtain such insurance (to the extent available at commercially reasonable terms and to the extent the Trustee has an insurable interest), the cost of which shall be a Servicing Advance and shall be recoverable by the Master Servicer or Special Servicer pursuant to Section ____; provided that the Master Servicer or Special Servicer shall not be required to incur any such cost if such Advance would constitute

a Nonrecoverable Servicing Advance; provided further that if the Master Servicer shall determine that the payment of such amounts is necessary to preserve the Mortgaged Property and would be in the best interest of the Certificateholders, then the Master Servicer shall make such payment from the certificate Account. Subject to Section _____, the Special Servicer shall also use reasonable efforts to cause to be maintained for each REO Property (to the extent available at commercially reasonable terms) no less insurance coverage than was previously required of the Borrower under the related Mortgage or as is consistent with the Servicing Standard. All such insurance policies shall contain a “standard” lender clause, with loss payable to the Master Servicer (in the case of Mortgaged Properties) or the Special Servicer (in the case of REO Properties) on behalf of the Trustee, and shall be issued by an insurer authorized under applicable law to issue such insurance. Any amounts collected by the Master Servicer or the Special Servicer under any such policies (other than amounts to be applied to the restoration or repair of the related Mortgaged Property or REO Property or amounts to be released to the related Borrower, in each case in accordance with applicable law, the terms of the related Mortgage Loan documents and the Servicing Standard) shall be deposited in the Certificate Account, subject to withdrawal pursuant to Section _____, in the case of amounts received in respect of a Mortgage Loan, or in the REO Account, subject to withdrawal pursuant to Section _____, in the case of amounts received in respect of an REO Property. Any cost incurred by the Master Servicer or the Special Servicer in maintaining any such insurance shall not, for purposes hereof, including, without limitation, calculating monthly distributions to Certificateholders, be added to the outstanding principal balance of the related Mortgage Loan, notwithstanding that the terms of such Mortgage Loan so permit, but shall be recoverable by the Master Servicer as a Servicing Advance pursuant to Section _____.

If a Mortgaged Property is related to a Mortgage Loan pursuant to which terrorism insurance was in place at the time the loan was contributed to the Trust, the Mortgage Loan schedule for such loan shall list the amount, the deductible payable in respect of such coverage, and the insurer and the rating assigned to the insurer providing such coverage. If terrorism insurance continues to be available from insurers with acceptable ratings at commercially reasonable rates, the Master Servicer (at the direction of the Special Servicer in the case of a Specially Serviced Mortgage Loan) shall use efforts consistent with the Servicing Standard to maintain or cause the Borrower to maintain coverage for terrorism providing substantially the same coverage required by the Mortgage Loan or, if not specified, in place at the time the Mortgage Loan was contributed to the Trust. If such coverage is not available from acceptably rated insurers at commercially reasonable rates, then the Master Servicer shall procure such coverage as it (or the Special Servicer in the case of a Specially Serviced Mortgage Loan or REO Property) reasonably believes is consistent with the Servicing Standard. [In the event the outstanding principal balance of such a Mortgage Loan is greater than \$ _____, and the Master Servicer is unable to obtain coverage from an acceptably rated insurer at commercially reasonable rates, the Master Servicer shall submit its proposed course of action with regard to such insurance to [the Rating Agencies for confirmation that such course of action will not result in a downgrade of any Class of Certificates][the Directing Certificateholder for its consent to such course of action.]

(b) **[MASTER SERVICER'S INSURANCE PREMIUM MONITORING AND PAYMENT MECHANISM]** With respect to Mortgage Loans for which the Borrower is required to maintain an escrow for insurance premiums or taxes (each an "Escrowed Loan"), the Servicer shall maintain accurate records with respect to each related Mortgaged Property reflecting the status of insurance premiums payable with respect thereto. For each Escrowed Loan, the Servicer shall (i) obtain all bills for the payment of insurance premiums (including renewal premiums), and (ii) effect payment of all such bills with respect to such Mortgaged Properties prior to the applicable penalty or termination date, in each case employing for such purpose Escrow Payments as allowed under the terms of the related Mortgage Loan. With respect to Mortgage Loans for which the Borrower is not required to maintain an escrow for insurance premiums or taxes (each a "Non-Escrowed Loan"), the Servicer shall maintain accurate records with respect to each related Mortgaged Property reflecting the status of insurance premiums payable with respect thereto. For each Non-Escrowed Loan, the Servicer shall utilize efforts consistent with the Servicing Standard to verify that the Borrower is maintaining all insurance required by this Agreement and the terms of the Mortgage Loan.

(c) **[ABILITY TO USE BLANKET POLICIES]** The Servicer or the Special Servicer, as applicable, may cause any Mortgaged Property or REO Property to be covered by a master force placed insurance policy or mortgage impairment policy, provided such policy shall be issued by a Qualified Insurer and provide no less coverage in scope and amount for such Mortgaged Property or REO Property than the insurance required to be maintained by the Borrower pursuant to this Section. If the Servicer or the Special Servicer causes any Mortgaged Property or REO Property to be covered by a master force placed insurance policy or mortgage impairment policy, the Servicer or Special Servicer shall conclusively be deemed to have satisfied its respective obligations to maintain insurance pursuant to this Section. Such policy may contain a deductible clause, in which case the Servicer or the Special Servicer, as applicable, shall, in the event that (i) there shall not have been maintained on the related Mortgaged Property or REO Property a policy otherwise complying with the provisions of this Section, and (ii) there shall have been one or more losses which would have been covered by such a policy had it been maintained, immediately deposit into the Collection Account from its own funds the amount not otherwise payable under such policy because of such deductible to the extent that any such deductible exceeds the deductible limitation that pertained to the related Mortgage Loan, or, in the absence of any such deductible limitation, the deductible limitation which is consistent with the Servicing Standard. The Servicer or the Special Servicer, respectively, agrees to prepare and present, on behalf of itself, the Trustee and the Certificateholders, claims under any blanket policy which it maintains in a timely fashion in accordance with the terms of such policy and to take such reasonable steps in accordance with the Servicing Standard as are necessary to receive payment or permit recovery thereunder.

(d) **[AUTHORITY/REQUIREMENT TO FORCE PLACE AND TO ADVANCE PREMIUMS]** In the event a Borrower fails or refuses to maintain the insurance (to the extent such insurance is available at commercially reasonable rates) the Servicer itself shall maintain such insurance with Qualified Insurers and the cost of such insurance shall constitute a Servicing Advance to the extent the Servicer determines that such Advance would not be a Nonrecoverable Advance and otherwise shall be paid out of the Collection Account. The Servicer shall be entitled to reimbursement of such advances, with interest thereon at the Advance Rate, as a Property Advance. To the extent permitted, pursuant to the Mortgage Loan Documents, the Servicer shall seek reimbursement from the Borrower in accordance with the Servicing Standard. If a Borrower fails to pay any insurance premium (including force place premiums) on a timely basis, no costs incurred by the Servicer in effecting the payment of insurance premiums with respect to any

Mortgaged Property shall, for the purpose of calculating distributions to Certificateholders, be added to the amount owing under the related Mortgage Loan, notwithstanding that the terms of such Mortgage Loan so permit.

IX. Property Taxes for Mortgage Loans and REO Mortgage Loans

(a) **[TAXES THAT THE MASTER SERVICER MONITORS/PAYS]** With respect to each Escrowed Loan, the Servicer shall maintain accurate records with respect to each Mortgaged Property reflecting the status of taxes, assessments and other similar items that are or may become a lien on the related Mortgaged Property. For each Escrowed Loan, the Servicer shall (i) obtain all bills for the payment of such taxes, assessments and other similar items, and (ii) effect payment of all such bills with respect to such Mortgaged Properties prior to the applicable penalty date, in each case employing for such purpose Escrow Payments as allowed under the terms of the related Mortgage Loan. For each Non-Escrowed Loan, the Servicer shall utilize efforts consistent with the Servicing Standard to verify that the Borrower continues to pay all taxes, assessments and other similar items that are or may become a lien on the related Mortgaged Property.

(b) **[TAXES THAT THE SPECIAL SERVICER MONITORS/PAYS]** The Special Servicer shall maintain accurate records with respect to each REO Property reflecting the status of taxes, assessments and other similar items that are or may become a lien on the related REO Property. The Special Servicer shall (i) obtain all bills for the payment of such taxes, assessments and other similar items, and (ii) to the extent sufficient funds are on deposit in the related Escrow Account, direct the Servicer to effect payment of all such bills with respect to such REO Properties prior to the applicable penalty date, or to the extent funds on deposit in the Escrow Account are insufficient therefore, pay all such bills out of the REO Account.

(c) **[AUTHORITY/REQUIREMENT TO ADVANCE TAXES]** If a Borrower fails to pay any taxes, assessments and other similar items, and amounts in escrow for such purpose are not sufficient (or with respect to any REO Mortgage Loan, the amount in the REO Account is not sufficient.) the Servicer, in accordance with Servicing Standard shall advance the amount of the taxes, assessments and other similar items or any shortfall as a Property Advance unless the Servicer determines in accordance with the Servicing Standard that such Advance would be a Nonrecoverable Advance in which case the Servicer may pay such costs out of the Collection Account. With respect to any Mortgage Loan pursuant to which the Borrower is required to deposit into an Escrow Account amounts required to pay taxes, assessments and similar items, to the extent the amounts on deposit are insufficient to pay any such item on or before the applicable penalty date, the Servicer shall advance the amount of such taxes, assessments and other similar items or any shortfall as a Property Advance unless the Servicer determines that such Advance would be a Nonrecoverable Advance. The Servicer shall be entitled to reimbursement of such Advances, with interest thereon at the Advance Rate, as a Property Advance. No costs incurred by the Servicer in effecting the payment of any taxes, assessments and other similar items with respect to any Mortgaged Property shall, for the purpose of calculating distributions to Certificateholders, be added to the amount owing under the related Mortgage Loan, notwithstanding that the terms of such Mortgage Loan so permit.

X. Servicer’s Fidelity Bond and Errors and Omissions Coverage

Each of the Master Servicer and the Special Servicer shall at all times during the term of this Agreement keep in force with Qualified Insurers that possess (or whose obligations are guaranteed or backed, in writing, by entities having) the Required Claims-Paying Rating, a fidelity bond in such form and amount as would permit it to be a qualified Fannie Mae or Freddie Mac seller-servicer of multifamily mortgage loans. Each of the Master Servicer and the Special Servicer shall be deemed to have complied with the foregoing provision if an Affiliate thereof has such fidelity bond coverage and, by the terms of such fidelity bond, the coverage afforded thereunder extends to the Master Servicer or the Special Servicer, as the case may be. The Servicer shall notify the Trustee of any notice of cancellation of such fidelity bond prior to the effective date of such cancellation.

In addition, each of the Master Servicer and the Special Servicer shall at all times during the term of this Agreement keep in force with Qualified Insurers that possess (or whose obligations are guaranteed or backed, in writing, by entities having) the Required Claims-Paying Ratings, a policy or policies of insurance covering loss occasioned by the errors and omissions of its officers and employees in connection with its obligation to service the Mortgage Loans for which it is responsible hereunder, which policy or policies shall be in such form and amount as would permit it to be a qualified Fannie Mae or Freddie Mac seller-servicer of multifamily mortgage loans. The Servicer shall notify the Trustee of any notice of cancellation of such errors and omissions policy prior to the effective date of such cancellation.

XI. Investment of Funds

The following language is suggested as standard language for investment of funds in the Certificate Account, REO Account and any other applicable account. All investment provisions should limit liability of the Servicer for losses to accounts for which the Servicer is entitled to the income from such accounts and should not require the Servicer to reimburse losses resulting solely from the failure of a financial institution meeting the rating requirements established for the transaction.

Investment of Funds in the Certificate Account and the REO Account.

(a) The Servicer may direct any depository institution maintaining the Certificate Account, the Interest Reserve Account and, to the extent permitted by applicable law, the Escrow Account (for purposes of this Section ____, an “Investment Account”) and the Special Servicer may direct any depository institution maintaining the REO Account (also for purpose of this Section ____, an “Investment Account”) to invest, or if it is such depository institution, may itself invest, the funds held therein only in one or more Permitted Investments bearing interest or sold at a discount, and maturing, unless payable on demand, (i) no later than the Business Day immediately preceding the next succeeding date on which such funds are required to be withdrawn from such account pursuant to this Agreement, if a Person other than the depository institution maintaining such account is the obligor thereon and (ii) no later than the date on which such funds are required to be withdrawn from such account pursuant to this Agreement, if the depository institution maintaining such account is the obligor thereon. All such Permitted Investments shall be held to maturity, unless payable on demand. Any investment of funds in an Investment Account shall be made in the name of the Trustee (in its capacity as such). The Servicer (in the case of the Certificate Account) or the Special Servicer (in the case of the REO Account), on behalf of the Trustee, shall maintain continuous physical possession of any Permitted Investment of amounts in the Certificate Account or REO Account that is either (i) a

“certificated security,” as such term is defined in the UCC (such that the Trustee shall have control pursuant to Section 8-106 of the UCC) or (ii) other property in which a secured party may perfect its security interest by physical possession under the UCC or any other applicable law, provided, however, that so long as a Permitted Investment is maintained in the form of a “security entitlement” by a “securities intermediary” such that the Trustee or the Servicer or the Special Servicer, as applicable, has “control” of the Permitted Investment (the terms “security entitlement”, “securities intermediary” and “control” being used as defined in the UCC), then possession by the Servicer or the Special Servicer shall not be required. Funds on deposit in the Distribution Accounts, if any, shall remain uninvested. In the case of any Permitted Investment held in the form of a “security entitlement” (within the meaning of Section 8-102(a)(17) of the UCC), the Servicer or the Special Servicer, as applicable, shall take or cause to be taken such action as the Trustee deems reasonably necessary to cause the Trustee to have control over such security entitlement. In the event amounts on deposit in an Investment Account are at any time invested in a Permitted Investment payable on demand, the Servicer (in the case of the Certificate Account), the Special Servicer (in the case of the REO Account) shall:

- (i) consistent with any notice required to be given thereunder, demand that payment thereon be made on the last day such Permitted Investment may otherwise mature hereunder in an amount equal to the lesser of (a) all amounts then payable thereunder and (b) the amount required to be withdrawn on such date; and
- (ii) demand payment of all amounts due thereunder promptly upon determination by the Servicer, the Special Servicer or the Trustee, as the case may be, that such Permitted Investment would not constitute a Permitted Investment in respect of funds thereafter on deposit in the Investment Account.

(b) Interest and investment income realized on funds deposited in the Certificate Account, to the extent of the Net Investment Earnings, shall be for the sole and exclusive benefit of the Servicer and shall be subject to its withdrawal, or withdrawal at its direction, in accordance with Section _____ or _____, as the case may be. Interest and investment income realized on funds deposited in the REO Account, to the extent of the Net Investment Earnings, if any, with respect to such account shall be for the sole and exclusive benefit of the Special Servicer and shall be subject to its withdrawal in accordance with Section _____. In the event that any loss shall be incurred in respect of any Permitted Investment on deposit in any of the Certificate Account or the REO Account, the Servicer (in the case of the Certificate Account) and the Special Servicer (in the case of the REO Account) shall deposit therein, no later than the P&I Advance Date, without right of reimbursement, the amount of Net Investment Loss, if any, with respect to such account for the period from the immediately preceding Distribution Date to such P&I Advance Date *provided*, that neither the Servicer nor the Special Servicer shall be required to deposit any loss on an investment of funds in an Investment Account if such loss is incurred solely as a result of the insolvency of the federal or state chartered depository institution or trust company that holds such Investment Account, so long as such depository institution or trust company is not the Servicer or Special Servicer, as applicable, and satisfied the qualifications set forth in the definition of Eligible Account on the first day of the Calendar Month in which such loss was incurred.

XII. Defeasance

The Task Force discussed the desirability of promoting more uniform defeasance requirements in Pooling and Servicing Agreements. Specifically, the Task Force concurred on including language to incorporate certain recently-adopted rating agency criteria and expanding the definition of defeasance collateral to permit a broader spectrum of U.S. government securities that meet standards set forth in the REMIC regulations, even if not specifically identified in the applicable loan documents. Accordingly, it is recommended that the section of the PSA addressing defeasance be revised to include the following language:

(a) With respect to any Mortgage Loan which permits release of Mortgaged Properties through defeasance:

(i) the Master Servicer shall administer the defeasance in accordance with the terms and conditions specified in the documents for the Mortgage Loan, and shall be entitled to any fees paid in connection with such defeasance, provided that Master Servicer may, in its discretion, waive compliance with, or enter into a modification of the Mortgage Loan documents with respect to, any condition to defeasance specified in the Mortgage Loan documents if with respect to such waiver or modification, Master Servicer obtains, at the expense of the related Borrower both (A) an Opinion of Counsel that such waiver or modification will not result in an Adverse REMIC Event or an Adverse Grantor Trust Event, and (B) written confirmation from each Rating Agency that such waiver or modification would not, in and of itself, cause a downgrade, qualification or withdrawal of the then-current ratings assigned to the Certificates; and if the Master Servicer shall have obtained such Opinion of Counsel and such confirmation, it shall be deemed to be in compliance with the Servicing Standard with respect to such waiver or modification.

(ii) Notwithstanding the foregoing, to the extent consistent with the Mortgage Loan Documents, Master Servicer shall require that all of the following conditions be satisfied, in a manner consistent with the Servicing Standard, in connection with each defeasance:

(A) Defeasance collateral shall consist only of “government securities,” within meaning of Treasury Regulations Section 1.860G-2(a)(8)(i) “as defined in Section 2(a)(16) of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1)], that are not subject to prepayment, call or early redemption.

(B) The related Borrower shall provide an Opinion of Counsel to the effect that the Trustee has a valid, first priority, perfected security interest in the defeasance collateral (for the benefit of the holders of the Certificates) and the assignment thereof as collateral for the Mortgage Loan is valid and enforceable.

(C) The related Borrower shall provide, from an Independent certified public accountant acceptable to the Master Servicer, a math verification report that confirms the accuracy of the projections of the revenue stream from the defeasance collateral and the sufficiency (as to timing and amount) of such revenue stream (without regard to earnings on reinvestment) to meet all scheduled debt service requirements of the Mortgage Loan

through the maturity date of the Mortgage Loan or, if applicable, through the date upon which the hyper-amortization terms of the Mortgage Loan take effect, including any Balloon Payment.

(D) The related Borrower shall provide an Opinion of Counsel that such defeasance will not result in either an Adverse REMIC Event or an Adverse Grantor Trust Event.

(E) If the Mortgage Loan is secured by multiple properties and only a portion of the real property is being released, the defeasance collateral shall be sufficient to produce cash flow equal to 125% of the purchase price of the released property, subject to any provisions to the contrary in the Loan Documents.

(F) To the extent not inconsistent with the Mortgage Loan Documents, the Master Servicer shall not permit a Borrower to defease a Mortgage Loan if as of such time the Stated Principal Balance of such Mortgage Loan or the aggregate outstanding Stated Principal Balances of such Mortgage Loan and each other related outstanding Cross-Collateralized Mortgage Loan and each other outstanding Mortgage Loan with a related Borrower would: [**Conform to specific requirements of rating agencies for applicable transaction** (1) be one of the top ten Mortgage Loans or Mortgage Loan groups, as applicable, measured by Stated Principal Balance, unless the Master Servicer shall have obtained written confirmation from Fitch stating that upon such defeasance, none of the then-current rating or ratings of all outstanding Classes of the Certificates would be downgraded, qualified or withdrawn by Fitch as a result thereof, (2) be greater than \$5,000,000 or 1% of the aggregate Stated Principal Balance of all of the Mortgage Loans, unless the Master Servicer shall have obtained written confirmation from S&P stating that upon such defeasance none of the then-current rating or ratings of all outstanding Classes of the Certificates would be downgraded, qualified or withdrawn by S&P as a result thereof, (3) be equal to or less than \$5,000,000 or 1% of the aggregate Stated Principal Balance of all of the Mortgage Loans, unless the Master Servicer delivers to the Trustee and the Rating Agencies either (x) a letter or a certificate in the form of [**use any applicable form**], or (y) written confirmation from S&P stating that upon such defeasance none of the then-current rating or ratings of all outstanding Classes of the Certificates would be downgraded, qualified or withdrawn by S&P as a result thereof.]

(G) The Master Servicer shall not permit any defeasance to occur prior to the second anniversary of the Startup Day of the REMIC unless otherwise provided in the applicable Loan Documents.

(H) The Master Servicer shall require the related Borrower to pay all expenses associated with the defeasance, including but not limited to, the expenses of all Opinions of Counsel, Rating Agency confirmations, accountant's reports, intermediary and brokers' fees and representation by Master Servicer's counsel, provided that if the Borrower is not required to pay any expense pursuant to the Mortgage Loan Documents, such expense shall be paid by [the Depositor].

XIII. Servicing Compensation

There is sometimes disagreement about the split of fees between the Master Servicer and the Special Servicer. It is recommended that the agreement describe the split of fees with sufficient detail to ensure that each party clearly understands the fees to which it is entitled. Suggested language to include in the “Servicing Compensation” section is set forth below:

“The Servicer shall not be required to deposit in the Certificate Account pursuant to Section _____, ___% of all assumption, extension, modification, consent, waiver, earnout, defeasance and similar fees, all assumption and modification application fees and all charges for beneficiary statements or demands received on or with respect to the Mortgage Loans that are not Specially Serviced Mortgage Loans, to the extent that (i) such fees are paid by the Mortgagor on Mortgage Loans that are not Specially Serviced Mortgage Loans; and (ii) all amounts then due and payable with respect to the related Mortgage Loan have been paid. The Servicer shall remit ___% of all such fees related to transactions for which the Servicer must obtain the consent of the Special Servicer hereunder (other than application fees, processing fees, charges for beneficiary statements or demands) to the Special Servicer as additional special servicing compensation. The Servicer shall be entitled to retain the remaining [___%] of such fees and ___% of all application fees, charges for beneficiary statements or demands as additional servicing compensation with respect to Mortgage Loans that are not Specially Serviced Mortgage Loans. In addition, with respect to Mortgage Loans that are not Specially Serviced Mortgage Loans, the Servicer shall be entitled to retain as additional servicing compensation any charges for processing Mortgagor requests, beneficiary statements or demands and with respect to all Mortgage Loans, amounts collected for checks returned for insufficient funds and similar administration fees and ancillary income, in each case only to the extent actually paid by the related Mortgagor and shall not be required to deposit such amounts in the Certificate Account pursuant to Section _____.”

XIV. Access to Certain Information

Servicers have noted that there is often tension between the demands of certificateholders of subordinate classes who want access to detailed information about underlying mortgages and often want that information to be available to prospective purchasers of subordinate certificates, and borrowers who often want to preserve the confidentiality of loan specific information. Vague language in the pooling agreement can leave the Servicer uncertain as to whether it can provide requested information and to whom it can provide it. The language below is recommended to balance the competing interests of the certificateholders for information and borrowers for the preservation of confidentiality:

- (a) The Master Servicer and the Special Servicer shall afford to the OTS, the FDIC, and any other banking or insurance regulatory authority that may exercise authority over any Certificateholder, Certificate Owner, access to any records regarding the Mortgage Loans and the servicing thereof within its control, except to the extent it is prohibited from doing so by applicable law, the terms of the related Mortgage Loan Documents or contract entered into prior

to the Closing Date or to the extent such information is subject to a privilege under applicable law to be asserted on behalf of the Certificateholders. Such access shall be afforded without charge but only upon reasonable prior written request and during normal business hours at the offices of the Master Servicer or Special Servicer, as the case may be, designated by it.

(b) The Master Servicer shall maintain at its Primary Servicing Office and shall, upon reasonable advance written notice, make available for review by the Certificate Administrator, the Trustee, the Fiscal Agent, the Depositor, each Underwriter, each Rating Agency and the Controlling Class Representative, and by each Certificateholder, each Certificate Owner and each Person identified to the Master Servicer as a prospective transferee of a Certificate or an interest therein (by means of the execution and delivery of a certification substantially in the form of Exhibit __ hereto), copies of the Servicing Files. At the election of the Master Servicer, such access may be afforded by the delivery of copies of information as requested by the Certificate Administrator, the Trustee, the Fiscal Agent, the Depositor, such Underwriter, such Rating Agency, the Controlling Class Representative, such Certificateholder or such Certificate Owner or prospective transferee. Each such Person, by its request for such information, shall be deemed to have agreed to keep such information confidential, except to the extent that the Depositor grants written permission to the contrary or to the extent such information is or subsequently becomes public information (other than by the action of such Person). The Special Servicer shall, as to each Specially Serviced Mortgage Loan and REO Property, promptly deliver to the Master Servicer a copy of each document or instrument added to the related Servicing File, and the Master Servicer shall in no way be in default under this Section _____ solely by reason of the Special Servicer's failure to do so. In connection with providing access to or copies of any portion of the Servicing Files, the Master Servicer may require (a) in the case of Certificate Owners, a written confirmation executed by the requesting Person, in form reasonably satisfactory to the Master Servicer, generally to the effect that such Person is a beneficial holder of Certificates and will otherwise keep such information confidential and (b) in the case of a prospective purchaser, confirmation executed by the requesting Person generally to the effect that such Person is a prospective purchaser of a Certificate or an interest therein, is requesting the information for use in evaluating a possible investment in Certificates and will otherwise keep such information confidential. The Master Servicer shall be permitted to require payment of a sum sufficient to cover the reasonable out-of-pocket costs incurred by it in making such copies (other than with respect to the Rating Agencies).

(c) In connection with providing access to information pursuant to clause (a) and/or clause (b) of this Section ____, the Master Servicer and the Special Servicer may (i) affix a reasonable disclaimer to any information provided by it for which it is not the original source (without suggesting liability on the part of any other party hereto); (ii) in the case of access afforded to a Certificateholder, Certificateholder or prospective transferee of a Certificate or interest therein, require registration (to the extent access is provided via an internet website), the acceptance of a reasonable and customary disclaimer and otherwise adopt reasonable rules and procedures (including, without limitation, conditioning access on the execution and delivery of an agreement reasonably governing the availability, use and disclosure of such information) and the execution and delivery of a certification substantially in the form attached hereto as Exhibit __ or Exhibit ____, as the case may be, (iii) affix to any information provided by it a reasonable statement regarding securities law restrictions on such information and/or condition access to information on the execution of a reasonable confidentiality agreement; (iv) in the case of access afforded to a Certificateholder, Certificate Owner or prospective transferee of a Certificate or interest therein, affix to any information provided by it a reasonable notice to the effect that it may contemporaneously or thereafter provide such information to the parties to or beneficiaries of the

Agreement (including the Certificateholder and Certificate Owners) and/or condition access to information on the execution of a reasonable acknowledgement to such effect; (v) withhold access to confidential information or any intellectual property; (vi) withhold access to items of information contained in the Servicing File for any Mortgage Loan if the disclosure of such items is prohibited by applicable law or the provisions of any related Mortgage Loan Documents or would constitute a waiver of the attorney-client privilege, and (vii) in the case of any Certificateholder, Certificate Owner or prospective transferee, withhold information that the Master Servicer determines, in its reasonable judgment, should be disclosed simultaneously to all Certificateholders, in which case the Master Servicer shall promptly disclose information to the Trustee pursuant to the exercise of the Master Servicer's rights under Section _____ and thereafter provide access to such information to the requesting Person promptly following the date on which it is set forth in a Certificate Administrator Report or filed with the Commission on behalf of the Trust under the Exchange Act.

(d) Upon the request of the Controlling Class Representative made not more frequently than once a month during the normal business hours of the Master Servicer and the Special Servicer, the Master Servicer and the Special Servicer shall without charge, make a knowledgeable Servicer Officer available either by telephone (with Servicing Officers of the Master Servicer and Special Servicer participating simultaneously if the Controlling Class Representative so requests) or, at the option of the Controlling Class Representative if it provides reasonable advance notice, at the office of such Servicing Officer, to verbally answer questions from the Controlling Class Representative regarding the performance and servicing of the Mortgage Loans and/or REO Properties for which the Master Servicer or Special Servicer, as the case may be, is responsible.

(e) Notwithstanding any provision of this Agreement to the contrary, the failure of the Master Servicer or the Special Servicer to disclose any information otherwise required to be disclosed by it pursuant to this Agreement shall not constitute a breach of this Agreement to the extent that the Master Servicer or the Special Servicer, as the case may be, determines, in its reasonable and good faith judgment, that such disclosure would violate applicable law or any provision of a Mortgage Loan Document prohibiting disclosure of information with respect to the Mortgage Loans or the Mortgaged Properties, constitute a waiver of the attorney-client privilege on behalf of the Trust or otherwise materially harm the Trust.

(f) Neither the Master Servicer nor the Special Servicer shall be liable for providing, disseminating or withholding information in accordance with the terms of this Agreement. The Master Servicer and the Special Servicer may require any Certificateholder, Certificate Owner or prospective transferee of a Certificate or interest therein requesting the disclosure of information under this Article _____ to reimburse the Master Servicer and/or the Special Servicer, as applicable, for the out-of-pocket costs and expenses incurred in providing such information, including the costs and expenses of outside counsel the Master Servicer or the Special Servicer may retain to determine if the disclosure of such information would violate applicable law, any provision of a Mortgage Loan Document or would constitute a waiver of the attorney-client privilege on behalf of the Trust. In addition to their other rights hereunder, the Master Servicer and the Special Servicer (and their respective employees, attorneys, officers, directors and agents) shall be indemnified by the Trust for any claims, losses or expenses arising from any such provision, dissemination or withholding.

XV. Modifications, Waivers, Amendments and Consents

The following is recommended language to be added to the section addressing modifications, waivers, amendments and consents:

(a) Performing Loans. Except as set forth in this Section ____ and Section ____, the Servicer shall not agree to any modification, waiver or amendment of a Performing Mortgage Loan. The Servicer may agree to extend the maturity date of a Performing Mortgage Loan *provided, however*, that, except as provided in the following sentence, no such extension entered into pursuant to this Section _____ shall be for a period of more than twelve months (or such longer period not to exceed five years if upon receipt of (i) a written recommendation and analysis received from the Servicer and (ii) such documents as reasonably requested are delivered to the Special Servicer, the Special Servicer determines that such longer period will result in a greater recovery on a net present value basis to the Trust Fund) from the original maturity date of such Mortgage Loan or shall extend the maturity date beyond the earlier of (i) two years prior to the Rated Final Distribution Date and (ii) in the case of a Mortgage Loan secured by a leasehold estate and not also the related fee interest, the date ten years prior to the expiration of such leasehold estate. If such extension would extend the Maturity Date of a Mortgage Loan for more than twelve months from and after the original maturity date of such Mortgage Loan and the Mortgage Loan is not in default or default with respect thereto is not reasonably foreseeable, the Servicer must provide the Trustee with an Opinion of Counsel (at the expense of the related Mortgagor) that such extension would not constitute a “significant modification” of the Mortgage Loan within the meaning of Treasury Regulations Section 1.860G-2(b).

Notwithstanding the foregoing, the Servicer may modify or amend the terms of any Mortgage Loan in order to (i) cure any ambiguity or mistake therein, (ii) correct or supplement any provisions therein which may be inconsistent with any other provisions therein or correct any error, (iii) waive minor covenant defaults, (iv) release non-material parcels of a Mortgaged Property, (v) grant easements that do not materially affect the use or value of a Mortgaged Property or (vi) effect other non-material waivers, consents, modifications or amendments in the ordinary course of servicing a Mortgage Loan, *provided* that, if the Mortgage Loan is not in default or default with respect thereto is not reasonably foreseeable, the Servicer has determined in accordance with the Servicing Standard that such modification or amendment would not be a “significant modification” of the Mortgage Loan within the meaning of Treasury Regulations Section 1.860G-2(b). Except as specifically set forth in [Section ____ and Section [insert sections providing for Control Class Consents], the Master Servicer shall be solely responsible for granting or withholding all lender consents required pursuant to the Mortgage Loan Documents with respect to Performing Mortgage Loans and the Special Servicer shall be solely responsible for granting or withholding all lender consents required pursuant to the Mortgage Loan Documents with respect to Specially Serviced Mortgaged Loans.

The Servicer shall not permit the substitution of any Mortgaged Property (or any portion thereof) for one or more other parcels of real property at any time the Mortgage Loan is not in default pursuant to the terms of the related Mortgage Loan documents or default with respect thereto is not reasonably foreseeable unless either (i) such substitution is at the unilateral option of the Mortgagor or otherwise occurs automatically pursuant to the terms of the Mortgage Loan, within the meaning of Treasury Regulations Section 1.1001-3, or (ii) it has received an Opinion of Counsel to the effect that such substitution would not be a “significant modification” of the Mortgage Loan within the meaning of Treasury Regulations Section 1.860G-2(b). The Servicer may not waive the payment of any Yield Maintenance Charge without the consent of the Special Servicer with respect to any Performing Mortgage Loan and the Special Servicer may not waive the requirement that any prepayment of a Mortgage Loan be

made on a Due Date or, if not made on a Due Date, be accompanied by all interest that would be due on the next Due Date with respect to such Mortgage Loan.

(b) Specially Serviced Mortgage Loans. If the Special Servicer determines that a modification, waiver or amendment (including, without limitation, the forgiveness or deferral of interest or principal or the substitution of collateral pursuant to the terms of the Mortgage Loan or otherwise, the release of collateral or the pledge of additional collateral) of the terms of a Specially Serviced Mortgage Loan with respect to which a payment default or other material default has occurred or a payment default or other material default is, in the Special Servicer's judgment, reasonably foreseeable (as evidenced by an Officer's Certificate of the Special Servicer), is estimated to produce a greater recovery on a net present value basis (the relevant discounting to be performed at the related Mortgage Rate) than liquidation of such Specially Serviced Mortgage Loan pursuant to Section _____, then the Special Servicer will agree to such modification, waiver or amendment of such Specially Serviced Mortgage Loan, subject to the provisions of this Section _____ and Section _____.

The Special Servicer shall use efforts consistent with the Servicing Standard to cause each Specially Serviced Mortgage Loan to fully amortize prior to the Rated Final Distribution Date and shall not agree to a modification, waiver or amendment of any term of any Specially Serviced Mortgage Loan if such modification, waiver or amendment would:

- (i) extend the maturity date of any such Specially Serviced Mortgage Loan to a date occurring later than the earlier of (a) two years prior to the Rated Final Distribution Date and (b) if such Specially Serviced Mortgage Loan is secured by a leasehold estate and not also the related fee interest, the date occurring ten years prior to the expiration of such leasehold; or
- (ii) reduce the related Net Mortgage Rate on any such Specially Serviced Mortgage Loan to less than the lesser of (a) the original Net Mortgage Rate and (b) the highest Pass-Through Rate on any Class of Regular Certificates (other than the Class X Certificates); or
- (iii) provide for the deferral of interest unless (a) interest accrues thereon, generally, at the related Mortgage Rate and (b) the aggregate amount of such deferred interest does not exceed 10% of the unpaid principal balance of the Specially Serviced Mortgage Loan.

(c) REMIC Opinion. To the extent consistent with this Agreement, neither the Servicer nor the Special Servicer may agree to any waiver, modification or amendment of a Mortgage Loan that is not in default or as to which default is not reasonably foreseeable unless it provides the Trustee with an Opinion of Counsel (at the expense of the related Mortgagor or such other Person requesting such modification or, if such expense cannot be collected from the related Mortgagor or such other Person, to be paid by the Servicer as a Trust Fund expense) to the effect that the contemplated waiver, modification or amendment (i) will not be a "significant modification" of the Mortgage Loan within the meaning of Treasury Regulations Section 1.860G-2(b) and (ii) will not cause (x) any of the Lower-Tier REMIC or the Upper-Tier REMIC to fail to qualify as a REMIC for purposes of the Code or (y) either the Lower-Tier REMIC or the Upper-Tier REMIC to be subject to any tax under the REMIC Provisions.

(d) Fees. The Servicer and the Special Servicer each may, as a condition to its granting any request by a Mortgagor for consent, modification (including extensions), waiver or indulgence or any other matter or thing, the granting of which is within the Servicer's or the Special Servicer's, as the case may be, discretion pursuant to the terms of the instruments evidencing or securing the related Mortgage Loan and is permitted by the terms of this Agreement, require that such Mortgagor pay to the Servicer or the Special Servicer, as the case may be, as additional servicing compensation, a reasonable or customary fee, for the additional services performed in connection with such request. Except when a Mortgage Loan is in default or default with respect thereto is reasonably foreseeable, no fee described in this paragraph shall be collected by any Servicer or Special Servicer from a Mortgagor (or on behalf of the Mortgagor) in conjunction with any consent to any modification, waiver or amendment of a Mortgage Loan (unless the amount thereof is specified in the related Mortgage Note) if the collection of such fee would cause such consent, modification, waiver or amendment to be a "significant modification" of the Mortgage Note within the meaning of Treasury Regulations Section 1.860G-2(b). Notwithstanding any other provision of this Agreement, neither the Servicer nor the Special Servicer, as applicable, shall waive or reduce the payment of any fees by a Mortgagor that may be due or partially due to the other party without such other party's consent.

(e) Written Modifications. All material modifications (including extensions), waivers and amendments of the Mortgage Loans entered into pursuant to this Section _____ shall be in writing, signed by the Servicer or the Special Servicer, as the case may be, and the related Mortgagor (and by any guarantor of the related Mortgage Loan, if such guarantor's signature is required by the Servicer or Special Servicer, as applicable, in accordance with the Servicing Standard).

(f) Written Notices. Each of the Servicer and the Special Servicer, as applicable, shall notify the Rating Agencies, the Trustee, the Mortgage Loan Sellers (if such Mortgage Loan Seller is not a Servicer or Sub-Servicer of such Mortgage Loan or a Certificateholder) and each other in writing of any material modification, waiver or amendment of any term of any Mortgage Loan and the date thereof, and shall deliver to the Trustee or the related Custodian for deposit in the related Mortgage File, an original counterpart of the agreement relating to such modification, waiver or amendment, promptly (and in any event within 10 Business Days) following the execution thereof. In addition, the Special Servicer (as to Specially Serviced Mortgage Loans) shall promptly send a copy of such a modification, waiver or amendment to the Servicer and the Servicer (as to the other Mortgage Loans) shall promptly send to the Special Servicer a copy of such a modification, waiver or amendment with respect to which the Servicer has obtained the consent of the Special Servicer hereunder. Upon written request of any Certificateholder the Trustee shall forward a copy of such modification, waiver or amendment to such Certificateholder.

(g) Directing Certificateholder Consent. In the event the Servicer or the Special Servicer determines that a refusal to consent by the Directing Certificateholder or any advice from the Directing Certificateholder would cause the Servicer or Special Servicer, as applicable, to violate applicable law, the terms of any Mortgage Loan documents or the terms of this Agreement, including without limitation, the Servicing Standard, the Servicer or Special Servicer shall disregard such refusal to consent or advise and notify the Directing Certificateholder, the Trustee and the Rating Agencies of its determination, including a reasonably detailed explanation of the basis therefor.

XVI. Sub-Servicing Agreements

PSAs often provide that successor master servicers may terminate existing subservicers other than for cause and without payment of a termination fee. These provisions effectively penalize sub-servicers without cause and deprive them of expected servicing income. The Task Force recommends that PSAs require successor master servicers to retain existing sub-servicers when assuming master servicing duties, per the following language:

“Any successor Servicer hereunder shall, upon becoming successor Servicer, be assigned and shall assume any Sub-Servicing Agreements from the predecessor Servicer.”

Most PSAs establish standards for the appointment of sub-servicers and require that sub-servicing Agreements (containing certain corresponding provisions) be entered into between servicers and subservicers. Servicers have an interest in making sure that third party vendors which provide discreet services to servicers (such as property appraisers) are not considered sub-servicers. The following language may be used to ensure that only parties designated as sub-servicers by a servicer are considered sub-servicers on a transaction:

“Notwithstanding the foregoing, however, third-party contractors for the purpose of performing discrete, ministerial functions shall not be considered subservicers and shall not be subject to this section, provided that the Servicer shall remain responsible for the actions of such third-party contractors and to the extent required the applicable agreement shall pay all fees and expenses of such third-party contractors.”

In addition, to clarify the continued servicing rights of primary servicers, each Mortgage Loan Seller should represent and warrant:

“Other than as set forth on Schedule ____, as of the Closing Date, no party has any right to service any of the Mortgage Loans or receive any fee or other compensation in connection with the servicing, or termination of servicing, of any of the Mortgage Loans.”